

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1072 of 2006

Date of Decision: 03.04.2018

Smt.Rajwanti

.....Appellant

Vs.

Kapoor Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- None for the appellant.

Ms.Samsher Kaur, Advocate, for respondent/Insurance Co.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant(for short 'the appellant'), against award dated 21.07.2005, passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') vide which claim petition of the claimant/appellant has been dismissed.

On 20.04.2001, at about 3:30 p.m. her son Sanesh alongwith his 2-3 class mates coming back from their school. The respondent No.2 Jai Parkash is the father of Sanesh. Respondent No.1 Kapoor Singh and Jai Parkash were coming on TATA 407 bearing registration No.HR-26A/4042 owned by Jai Parkash respondent No.2 and the offending vehicle was being driven by respondent No.1 Kapoor Singh who is real brother of respondent No.2 Jai Parkash. It has further averred that on seeing Sanesh and others, respondent No.1 applied brakes all of a sudden and since the vehicle was at a very high speed and was being driven rashly, respondent No.1 lost his control over it and deceased Sanesh came under the said vehicle. As a result, Sanesh received grievous injuries. He was shifted to General Hospital, Bhiwani and thereafter, sent to PGIMS Rohtak, but he succumbed to the injuries.

On notice, respondent No.1 and 2 appeared in the Court and filed

the effect that petition is wrong against law and fact, cause of action that the claimant had concealed material facts, estoppel and limitation were taken and prays for dismissal of the claim petition. On notice respondent No.3, National Insurance company also appeared and filed written statement with preliminary objections to the effect that petition is wrong against and fact and not maintainable in the present form and ultimately prayed for dismissal of the claim petition. On the pleadings of the parties, issues were framed by the learned Tribunal on 22.10.2003.

The learned Tribunal after going through the evidence and materials on record has held that claimant is wife of respondent No.2. Respondent No.1 and 2 are real brothers. The offending vehicle was owned by respondent No.2. The deceased was son of the claimant and respondent No.2 and was nephew of respondent No.1 Kapoor Singh. Admittedly no FIR was lodged with regard to this accident and a DDR was registered on 03.05.2001 i.e. after 13 days of the incident by respondent No.2 after going to police station himself. As per DDR Ex.R2, respondent No.2 stated that he did not want any action in the matter. A perusal of Ex.R2 further indicates that respondent No.1 Kapoor Singh who is stated to be driver of the offending vehicle owned by respondent No.2 and the accident is stated to have taken place on account of coming of Neel Gaye and dogs all of sudden in front of the offending vehicle. However, in the written statement filed by respondents No.1 and 2, it was stated that accident took place due to fault of deceased himself. The respondent No.1 and 2 carefully deviated from their version of Ex.R2 in their written statement wherein, it was averred that accident took place due to fault of the deceased himself. Respondent No.1 and 2 deliberately changed their version from Ex.R2 as so to project a new version of negligence of deceased-himself. The claimant did not lodge any report regarding this accident when the police. She also did not protest the matter before higher authorities regarding alleged misrepresentation made by respondent No.2 Jai Parkash. She did not make any criminal complaint against the respondents. She also admitted that she was living with respondent No.2 and there are no difference between them. From this it appears that respondents No.1 and 2 are in collusion with the claimant.

There was no evidence with regard to damage of vehicle. Moreover, if the

version of the complainant in DDR Ex.R2 is to be accepted, the vehicle had turned turtle and then hit the deceased but no injuries received by respondents No.1 and 2, hence, the version of DDR was rightly rejected by the learned Tribunal. Hence, the learned Tribunal has rightly observed the DDR Ex.R2 was lodged by respondent No.2, in order to show the involvement of the offending vehicle owned by him. The case of the appellant was apparently afterthought and is based on collusion between her and respondents No.1 and 2.

So after going through the Award in detail, no ground is made out to interfere in it as DDR Ex.R2 and written statement filed by respondents No.1 and 2 are contradictory. As such, present appeal is dismissed.

(RITU BAHRI)
JUDGE

03.04.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No