

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

312 Date of Decision : 22.11.2018

1. FAO No.5830 of 2012 (O&M)

Sanjeev Kumar and others

..... Appellants

Versus

Binder Ram and others

..... Respondents

2. FAO No.5831 of 2012 (O&M)

Smt. Shamma Rani and others

..... Appellants

Versus

Binder Ram and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Manpreet Singh, Advocate for
Mr. Parvez Singh, Advocate
for the applicants-appellants.

Mr. R.N.Singal, Advocate
for respondent No.3-insurance company.

AJAY TEWARI, J. (Oral)

CM-26994-CII-2012 in FAO-5830-2012

For the reasons recorded, the application is allowed. Delay
of 22 days in re-filing the appeal is condoned.

CM-26995-CII-2012 in FAO-5830-2012

For the reasons recorded, the application is allowed. Delay
of 50 days in filing the appeal is condoned.

CM-26996-CII-2012 in FAO-5831-2012

For the reasons recorded, the application is allowed. Delay of 22 days in re-filing the appeal is condoned.

CM-26997-CII-2012 in FAO-5831-2012

For the reasons recorded, the application is allowed. Delay of 50 days in filing the appeal is condoned.

Main cases

This order shall dispose of above mentioned two appeals. These two appeals have been filed against the dismissal of two claim petitions which had arisen out of the same accident. As per the claim petition on 12.06.2010 Surinder Kumar, his brother Tilak Raj, Rajeev Kumar, Rajeev Kumar's wife, their daughter Riya were going in a Swift Car bearing No.PB-29K/0809 being driven by Raman Kumar and they met with an accident with the Jeep insured by the respondent which was being driven in a rash and negligent manner. An FIR was lodged in the month of September, 2010 and thereafter the claim applications were filed for compensation. The same having been dismissed the present appeals have been filed.

Counsel for the appellants has argued that the only reason which the Tribunal has taken to reject the claim petitions was the fact that the FIR was lodged after delay but in a case where two brothers have died, the trauma suffered by the family members can be such that it can take three months to get over the shock.

In the circumstances, it is taken that the unrebutted testimony of Sanjeev Kumar could not have been discarded. On the other hand the counsel for the insurance company points out that in the first statement made before the police on 12.06.2010 the appellant No.1 had given a detailed statement in which he had mentioned that on that date Sanjeev Kumar, Ramesh Kumar, Tilak Raj, Raman, Rajeev, Rajni Bala and Riya were going to participate in the funeral ceremony of Smt. Sheela Rani (the sister of Surinder Kumar and Tilak Raj) from Tarn Taran to Moga and he was also going on his motor cycle towards Moga side. His motor cycle was about 1 km behind the vehicle when he heard the sound of tyre burst. The front tyre of the car had burst as a result of which it lost its balance and collided with the Mahindra Jeep as a consequence of which all the persons sitting in the car got injured and he had signed that statement also. As per the counsel for respondent No.3-insurance company, the different version recorded in the FIR after 3 ½ months as well as the explanation of Sanjeev Kumar have rightly been rejected by the trial Court. The trial Court noticed that the explanation given by Sanjeev Kumar was that his signatures were obtained by the police and he had not made any statement because he was in a complete state of shock at that time. The Tribunal held that the details about the family members and the purpose for which they were going from Tarn Taran to Moga could only have been disclosed by Sanjeev Kumar and therefore the argument that he had merely signed the paper was not adequate explanation for the contradictory stands taken in the first statement and the second statement. Counsel for respondent No.3-insurance company

has further pointed out that none of those other passengers who had survived in the accident appeared to testify. Moreover once it was the case that they were also injured no claim applications were filed by any one else including the driver have not been examined.

In my opinion, the argument of the counsel for respondent No.3-insurance company carries more weight. It can not be doubted that claim applications under Motor Vehicles Act, 1988 are to be decided with the beneficial mind set and without being bogged down under the strict procedure which covers civil suit but that can not be extended to say that whatever is stated by the claimants has to be taken as a gospel truth. The explanation given by Sanjeev Kumar that he had signed the papers on 12.06.2010 does not cut much ice because in that such details have been mentioned which could only be disclosed by Sanjeev Kumar. There is no reason brought out why the driver or the other passengers were not examined or why no claim petition was filed for the injuries which were suffered by the other passengers or the driver.

Resultantly, I find no merit in these appeals and the same are dismissed.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

22.11.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No