

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 1024 of 2016(O&M)

Date of Decision: August 13 , 2018.

The Oriental Insurance Company Ltd.

..... APPELLANT (s)

Versus

Bhag Kaur and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.N.Singal, Advocate
for the appellant.

Mr. Vikram Bali, Advocate
for respondents No.1 and 2/claimants.

Respondent No.4 ex-parte.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by the Oriental Insurance Company Limited challenging award dated 19.11.2015 passed by the learned Motor Accident Claims Tribunal, SAS Nagar Mohali (hereinafter referred to as, the 'Tribunal').

Respondents No.1 and 2/claimants were proceeded against ex-parte on 06.05.2016. Learned counsel for respondents No.1 and 2 submits that their

non-appearance was due to unavoidable circumstances and not on account of negligence, therefore, respondents No.1 and 2 be permitted to join the proceedings. No serious objection thereto has been raised.

In view of the above, respondents No.1 and 2 are permitted to join the proceedings.

Brief facts necessary for adjudication of the case are that, the claimants/respondents No.1 and 2 filed a petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') seeking compensation on account of the death of Amar Singh. Appellant No.1 is the widow and appellant No.2, the son of Amar Singh. It was averred that Amar Singh lost his life in a motor vehicle accident which took place on 08.04.2008 at the bus stand of village Chappar Chiri when he was proceeding from Kharar to Sohana via Landran on his motorcycle bearing registration No.PB-27-C-1530. It was asserted that a car bearing registration No.PB-12-C-6804 which was being driven in a rash and negligent manner by respondent No.4-Karam Chand Gupta came from the opposite side and struck against the motorcycle of Amar Singh. As a result thereof, Amar Singh fell on the road. Ultimately he succumbed to multiple grievous injuries received by him. Claim petition filed by the claimants was resisted by the Insurance Company as well as the driver and owner of the offending vehicle by filing separate written statements.

From pleadings of the parties, the learned Tribunal framed the following issues on 15.10.2014:-

- “1. Whether Amar Singh died in a road side accident caused by respondent No.2 while driving motorcycle No.PB-12-C-6804, in a rash and negligent manner? OPC
2. Whether the claim petition is not maintainable? OPR

- 3. Whether the claimants are entitled to receive compensation as prayed for, if so to what extent and from whom? OPC
- 4. Whether the respondent No.2 being driver of the abovesaid vehicle was not holding valid and effective driving licence, route permit, at the time of accident? OPR-3
- 5. Whether the respondent No.1 had committed breach of terms and conditions of the Insurance policy, if so, its effect? OPR-2
- 6. Relief.”

The learned Tribunal on consideration of the facts and circumstances concluded that the accident in question had occurred due to the rash and negligent driving of the offending vehicle by respondent No.4-Karam Chand Gupta. Accordingly, Issue No.1 was decided in favour of the claimants. Consequently, a total sum of ₹4,98,000/- was afforded to respondents No.1 and 2/claimants as compensation, which is detailed hereunder:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	4500 x 12 = 54,000/-
2.	Multiplier	54,000 x 9 = 4,86,000/-
3.	Future prospects @15%	72,900/-
4.	Deductions @ 1/3 rd	1,86,300/-
5.	Loss of dependency	3,72,600/-
6.	Funeral expenses	25,000/-
7.	Loss of consortium	1,00,000/-
8.	Total	4,97,600/-
	Rounded off	4,98,000/-

Aggrieved therefrom, the present appeal has been filed by the Insurance company.

Learned counsel for the appellant vehemently argues that the learned Tribunal has grossly erred in holding the Insurance Company liable in this case. It is pointed out that thorough investigation was conducted by the

police authorities in FIR No.99 dated 08.04.2008 (Ex.R1) which was admittedly registered against an unknown vehicle. Registration number of the offending vehicle was also not mentioned in the FIR and during investigation neither the offending vehicle or its driver could be traced. It is submitted that after more than six years thereof, claim petition has been filed by respondents No.1 and 2 on 17.04.2017. It is thus contended that the learned Tribunal has rendered a perverse award. It is thus prayed that this appeal be allowed and the impugned award dated 19.11.2015 be set aside.

Learned counsel for respondents No.1 and 2/claimants however submits that present are the proceedings where the matter has to be decided on preponderance of probabilities. Registration of the FIR in this case itself proves that the accident in question did occur with the offending vehicle due to the rash and negligent driving of its driver-Karam Chand Gupta. Mere filing of an untraced report does not affect the case set up by respondents No.1 and 2/claimants. Learned counsel for respondents No.1 and 2 relies upon the judgment of the Hon'ble Supreme Court in Kusum Lata and others v. Satbir and others, 2011(3) SCC 646. It is further submitted that the driver in this case did not step up in the witness box therefore, an inference has to be drawn that the accident did occur. It is therefore prayed that the present appeal filed by the Insurance Company be dismissed and the impugned award be upheld.

I have heard learned counsel for the parties and have through the certified copy of the records furnished by learned counsel for the appellant.

There is no dispute that in the FIR (Ex.R1) which was registered on the statement of claimant/respondent No.2, there is no mention of the

registration number of the offending vehicle or name of its driver. It is further not in dispute that an untraced report (Ex.R2) was presented in the matter before the learned Area Magistrate on 16.12.2008. Statement of the complainant Gulzar Singh (respondent No.2) was recorded on 18.12.2008 to the effect that he has no objection in case the untraced report is accepted. Respondent No.2-Gulzar Singh, was duly identified by Gurdev Singh, Lambardar. Their statements were recorded separately. The said untraced report was accepted by the learned Magistrate on 18.12.2008. After more than six years of the accident in question, claim petition was filed by respondents No.1 and 2 on 17.04.2017.

I have perused Ex.R3 i.e. order dated 18.12.2008 passed by the learned Sub Divisional Judicial Magistrate, Kharar whereby the untraced report has been accepted. It is to be noticed that respondent No.2-Gulzar Singh specifically stated that he has no objection in case the untraced report is accepted. Therefore, it is not open for respondent No.2 to contend at this stage that the police authorities in a malafide manner did not mention the number of the offending vehicle or the name of its driver in the FIR, despite respondent No.2 specifically revealing the same to the police officials. It is further noticed that in the claim petition filed after nearly six years on 17.04.2014, it is specifically mentioned in para 20 thereof that a claim petition had also been filed earlier by the claimants-respondents No.1 and 2. The same was dismissed as withdrawn on 18.05.2012 due to some technical defect. Learned counsel for respondents No.1 and 2 is unable to give the details of the said petition which was filed earlier. It is apparent that for another two years, respondents No.1 and

2/claimants did not take any action and the present claim petition was subsequently filed on 17.04.2014.

Moreover, there is no evidence on record to show that the accident in question was indeed caused by the offending vehicle due to the rash and negligent driving of its driver-Karam Chand Gupta. Judgment of the Hon'ble Supreme Court in Kusum Lata's case (supra) is not applicable in the peculiar facts and circumstances of the present case. Therefore, it cannot be said that the claimants were successful in proving their case even on preponderance of probabilities.

Similarly, in the factual matrix of the case it cannot be said that as the driver did not step up in the witness box, the accident in question must be taken to be proved. The learned Tribunal has clearly erred in deciding Issue No.1 by holding that the accident in question had taken place due to the rash and negligent driving of car bearing No.PB-12-C-6804 by its driver-Karam Chand Gupta. Evidence on record does not even suggest the same. The learned Tribunal has clearly erred in allowing the claim petition filed by the respondents/claimants.

The present appeal is accordingly allowed. Impugned award dated 19.11.2015 passed by the learned Motor Accident Claims Tribunal, SAS Nagar Mohali is consequently set aside.

(LISA GILL)
JUDGE

August 13 , 2018.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No