

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-847-2015 (O&M)

Date of Decision:10.01.2018

National Insurance Company Ltd.

...Appellant

V/s.

Pushpa Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. N.K. Malhotra, Advocate for respondents No. 1 to 4.

Mr. Kulvir Narwal, Advocate for respondent No. 5.

AMIT RAWAL, J. (Oral).

The present appeal has been preferred by the insurance company against the award passed by Motor Accident Claim Tribunal whereby the claim petition filed under Section 163-A of Motor Vehicle Act on account of the death of deceased Ramesh aged 50 years preferred by widow, two sons and one daughter, who is stated to have died in a road accident occurred on 27.10.2010, while being a pillion rider in motorcycle No. HR 12-M 4635 driven by Pawan Kumar has been allowed and a compensation of Rs. 3,44,500/- has been awarded.

Mr. D.P. Gupta, learned counsel appearing on behalf of the appellant submitted that the witnesses of the claimants have not been able to prove the accident whereas the PW-5 Ashok Kumar suffered a statement that he had heard that Ramesh had died being a pillion rider in the accident and the aforementioned motorcycle had slipped. He further submitted that no doubt in a petition under Section 163-A of the Act negligence has not to

be proved but the factum of the accident has to be proved. He also referred to the statement of PW-2 mechanic who stated that the vehicle was repaired on 31.05.2011. Even the DDR (Ex.R1) disclosed that the deceased was driving his own vehicle. All these factors i.e. the preponderance of evidence indicate cumulatively that claim petition is liable to be dismissed but yet the MACT has awarded the compensation, therefore, the present appeal.

Mr. N.K. Malhotra, representing the claimants, Mr. Kulwir Narwal, representing the owner and driver of the vehicle submitted that the DDR (Ex.R1) is not signed by the complainant and another DDR was registered on 01.11.2010 by the brother of the deceased. There is no illegality and perversity in the order. Even the testimony of the mechanic for repair of the vehicle could not help insurance company in setting aside the award as person did not have any money to get the vehicle repaired at a relevant point of time. Testimony of Ashok Kumar has gone unfettered and clinched the factum of the accident and therefore urge this Court for dismissal of this appeal. Mr. Narwal further submitted that nothing has come on record that deceased Ramesh was driving his own vehicle.

I have heard learned counsel for the parties, perused the paper-book and the record of the case and of the view that Ashok Kumar, through examination-in-chief stated that Ramesh was a pillion rider and the whole accident was told to him by respondent No. 1. No-one has stepped into the witness box. Statement of Ashok Kumar and his cross-examination read as under: -

“Pushpa vs Pawan etc

PW5

Ashok s/o Ram Kishan Aged 48 years resident of
980/23 DLF Colony, Rohtak

On S/A

Stated that I tender in evidence my duly sworn affidavit Ex PW5/A which may kindly be read as my evidence.

Xxxx by counsel for the respondent No. 1.

It is incorrect to suggest that I have tendered a false affidavit Ex PW5/A. It is incorrect to suggest that Ramish did not die in the alleged accident and Motorcycle No. HR 12M-4635 has been falsely involved in the accident.

XX by counsel for respondent No. 2.

I have seen Mark A photocopy of DD Report, I cannot exactly recognise the signature on Mark A. Self stated that police got signatures on some blank papers at Maharaja Aggarsain Hospital. It is wrong to suggest that my brother was driving the Motorcycle. Voluntarily said that he was pillion rider on Motorcycle No HR 12M-4635. It is incorrect to suggest that I was not pillion rider on the said Motorcycle which was driven by Pawan Kumar. Voluntarily said that I was not present at the spot of accident. I have never lodged any DD. It is wrong to suggest that a false DD No. 6A dated 01.11.2010 has been registered in PS Punjabi Bagh regarding the alleged accident false claim. It is incorrect to suggest that I am deposing falsely.

RO & AC

(Jagjit Singh)
ADJ, Rohtak
20.11.2013”

“Ex PW5/A

PUSHPA

vs.

PAWAN etc.

Evidence by way of Affidavit:

I Ashok s/o Ram Kishan r/o 980/23 D.L.F. colony Rohtak do hereby solemnly affirm and declare as under:

1. That Ramesh s/o Ram Kishan was my brother. That on 27/10/2010 my brother Ramesh and Pawan Kumar s/o Devender were coming to Rohtak from village Charra on

motor cycle no. HR-12M-4635. Pawan Kumar was driving motor cycle and Ramesh since deceased was the pillion rider. That at about 6:00 PM when they reached near village Bhaproda Distt Jhajjar, motor cycle slipped due to sudden applying of the breaks. Both the occupants Pawan Kumar and Ramesh got injured in the accident by falling on the road. Both were rushed to the PGIMS Rohtak with the help of passer by.

2. That whole episode of the accident was told by Respondent No. 1 to me and other family members. I with my other family members reached the PGIMS Rohtak after getting informed by relative of Pawan. My brother got grievous injuries in the said accident so we took him to the Maharaj Aggarsain Hospital Delhi where he admitted and died on 01/11/2010 due to accidental injuries. Police got signatures of mine on some black papers as we I was busy in the treatment of my brother. The D.D. report no.15 of 28/10/2010 of Police Chowki Mandhothi was not in the knowledge of the claimants and neither mine and the same came into our knowledge during the MACT proceedings. The said DD report no. 15 has been falsely lodged by the police officials in collusion with Respondent No. 1. Pawan Kumar and Ramesh since deceased both got injured in the accident and were admitted in the PGIMS Rohtak. Police has framed a false story to save the Respondent No. 1 from any police investigation.

Place: Rohtak

Dt: 20/11/2013

Deponent

Verification:

Verified that the contents of the paras no 1 to 2 of the Affidavit are true and correct to the best of my knowledge and belief.”

On cumulative reading of the aforementioned statement, the claimants have not supported the accident which was incumbent upon the claimants to examine the witnesses. No doubt I am in agreement with the submission of learned counsel for the parties that in a petition under Section 163-A, negligence has not to be proved but the insurance company should not be held liable in the absence of any direct and cogent evidence. This fact has not been considered by the learned MACT, had it been considered the correct perspective would have been taken. Thus, the award of the learned MACT is hereby set aside and the appeal stands allowed.

January 10, 2018
Divyanshi

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No