

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO No.951 of 2015

Date of Decision.06.02.2018

Gindo Devi and another

.....Appellants

Vs

Surinder Bala and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Ram Avtar, Advocate
for respondent No.2.

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AMIT RAWAL J.(ORAL)

The present appeal has been filed by the claimants whereby the claim petition seeking compensation on account of death of deceased-Ram Kumar has been dismissed. The deceased was walking on the left side of service lane leading from Sukhmani Hospital to Derabassi Bus Stand when a scooter bearing registration No.PB-70-C-2728 struck against him from behind, resulting into serious injuries which proved fatal.

Mr. Ashwani Arora, learned counsel appearing on behalf of the appellants submitted that in pursuance of the aforementioned accident, claim petition was filed stating therein that the scooter rider was negligent in driving the scooter namely Surinder Bala and she had ran away from the spot along with the scooter. There was no fault of the deceased. In this regard, an FIR bearing No.255 dated 21.11.2011 under Sections 279, 304-IPC was registered with police Station Dera Bassi, SAS Nagar. Ram Kumar was aged 65 years and retired from CRPF in 1995. He was working as Security Guard with Avdesh Track Private Limited, Village Jawaharpur,

Derra Bassi and stated to be drawing a pension of ₹6356/- per month and also earning a salary of ₹3850/- per month from the aforementioned employment. In this way, he was earning ₹10,206/- per month.

Surinder Bala appeared and denied the occurrence of the accident by stating that she was falsely implicated but thereafter proceeded ex parte. In support of the claim petition following documents were placed on record:-

Ex.P1	Postmortem report of Ram Kumar dated 22.11.2011
Ex.P2	Voter Identity Card of Gindo Devi dated 8.11.1994
Ex.P3	Voter Identity Card of Ram Kumar dated 10.12.1995
Ex.P4	Pension Payment Order of Ram Kumar to be commenced from 1.1.1994.
Ex.P5	Copy of Bank Passbook of Ram Kumar of State Bank of Patiala, Narnaul.
Ex.P6	Copy of ESIC Card of Ram Kumar.
Ex.P7	Copy of Senior Citizen Identify Card of Gindo Devi.
Ex.P8	Copy of Disability Certificate of Suman daughter of Ram Kumar
Ex.P9	Certificate issued by Avdesh Tracks Private Limited in respect of salary of Ram Kumar dated 11.1.2013
Ex.P10	Certified copy of FIR No.255 dated 21.11.2011 u/s 279, 304-A IPC, PS Dera Bassi, SAS Nagar, Punjab.

The respondents i.e. driver & owner and insurance company in their defence brought on record Ex.R4 to Ex.R6 and the Ex.RY, the judgment dated 03.12.2013 rendered by the Judicial Magistrate 1st Class, Derabasi whereby Surinder Bala was acquitted and by relying upon the aforementioned judgment, the Tribunal dismissed the claim petition.

The award of the Tribunal is not sustained in the eyes of law as the post-mortem report revealed the involvement of the Kinetic Scooter in the alleged accident bearing aforementioned registration and the accident was witnessed by one Jeevan Kumar. However, the eye witness Jeevan

matter is that involvement of the vehicle in the accident was not denied, thus, there was no occasion for the Tribunal to absolve the insurance company by dismissing the claim petition. Even non-appearance of the owner of the scooter could not be fatal to the adjudication of the claim petition, thus, urges this Court for setting aside the finding under challenge.

Per contra, Mr. Ram Avtar, learned counsel appearing on behalf of the insurance company submitted that it is an apparent case of collusion. The eye witness despite having not identified the driver of the vehicle also stated that no accident had occurred or witnessed by him, which leads to irresistible conclusion that the alleged vehicle was not involved in the accident, thus, urges this Court for upholding the award.

I have heard learned counsel for the parties and appraised the paper book. In the criminal case, the prosecution witnesses i.e. PW-3 Jeevan Kumar and PW-4 Balwinder Singh turned hostile and resiled from their statements made before the police as they not only failed to identify the accused but also stated that no accident had taken place. Paragraph 9 of the judgment rendered by the Criminal Court reads as under:-

“In order to prove its case, the prosecution has examined PW-3 Jeewan Kumar, informant and PW4 Balwinder Singh eye-witness. PW3 and PW4 have resiled from their statements before the police and they were declared hostile. They have failed to identify the accused present in the court. They have stated that the accused present in the Court was not the person who was driving the Kinetic Honda bearing No.PB-70-C-2728 on the day of accident. PW3 has failed to identify the accused. PW4 has stated that no occurrence took place in

his presence. Therefore, there is no corroborated evidence on the record to establish the identity of the accused. Even the prosecution version regarding the manner of occurrence is not proved from the evidence on record.”

It has become a common practice in the pleadings to involve owner of the vehicle of their own choice for claiming compensation, who ultimately resile in the Criminal court. I must appreciate the role of the insurance company, which had been active and vigilant in defending the claim petition by placing on record the judgment rendered by the Criminal Court as some time the judgments are rendered later on but no effort is made to place on record by way of additional evidence. Once Jeevan Kumar had given contrary statement in the Criminal Court, his statement qua witnessing the accident in the claim petition cannot be looked into for adjudication. No other evidence had been led to enable me to form a different opinion than the one arrived at by the Tribunal that the vehicle in question was not involved in the accident.

In view of the aforementioned, I do not find any illegality and perversity in the award passed by the Tribunal. No ground for interference is made out. Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 06, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes