

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1543 of 2018
Date of Decision : 26.03.2018

Reliance General Insurance Co. Ltd.

....Appellant

Versus

Smt. Sehjam and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjeev Kodan, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal against award dated 05.02.2018 passed by Motor Accident Claims Tribunal, Gurugram (later referred to as 'the Tribunal'), whereby claimants-respondents no. 1 to 9 were awarded compensation of ₹18,05,680/- for death of Majid in a motor vehicle accident with car bearing registration no. HR-51-AM-7932 (later referred to as 'the offending vehicle').

2. As per case of claimants, respondent no. 1-Manoj Kumar, driver of the offending car was driving it in a rash and negligent manner and when they reached ahead of Solpur Toria towards village Maholi, respondent no. 1 lost control on the car and hit it with a tree with great force resulting in death of Majid and Aasin @ Aamin.

3. Learned counsel for the appellant has argued that the matter was reported to the police vide DDR No. 12 dated 24.03.2016, which was lodged by driver of the offending vehicle i.e. Manoj Kumar, wherein he had stated that the accident had taken place when a 'Neelgai' (blue-bull) had come in front of his car and in his efforts to save it, his car hit an eucalyptus tree. He has further argued that after 43 days of the accident, an application was also moved against driver of the offending vehicle to S.P. Nuh, Mewat with allegation that the accident had taken place due to his rash and negligent driving of the car but the police dismissed that application. The legal representatives of other deceased in the accident,

namely, Aasin @ Aamin had also filed claim petition before the Motor Accident Claims Tribunal, Mewat but the same was filed under the provisions of Section 163A of the Motor Vehicle Act with the averment that there was no negligence on the part of driver of the offending vehicle in causing the accident. He has argued that first version before the police regarding the accident is material version and subsequent version, if any, given by claimants or any eye-witness is not relevant. The Tribunal has wrongly ignored the DDR and first version recorded by the police, while allowing application filed by claimants under Section 166 of the Motor Vehicle Act and recording the finding that the accident was caused due to rash and negligent driving of the offending vehicle by its driver. In support of his contention, he has relied on observations of coordinate Bench of this Court in cases of **Pritam Singh vs. Jaswant Singh and others, 2016 (2) PLR 125, Jagdish Kaur and others vs. Raghbir Singh and others, 2004 (1) PLR 670, Satya Devi and others vs. Jugal Kishore and others, 2014 (4) RCR (Civil) 61, Vinod Kumar vs. Balwan Singh and others, 2016 (1) PLJ 463 and Reliance General Insurance Co. Ltd. vs. Munshi Singh and others, 2015 (9) RCR (Civil) 190.** He has argued that claim petition filed by claimants under Section 166 of the Motor Vehicle Act was not maintainable as the accident was not caused due to rash and negligent driving of the offending vehicle by its driver. Eye-witness to the occurrence, namely, Khalid Hussain PW-4 was not named in the DDR, as such, is a procured and interested witness.

4. Police recorded the DDR on the statement of driver of the offending vehicle in which he has stated that the accident was not caused due to his rash and negligent driving of the offending vehicle, rather a 'Neelgai' (blue-bull) came in front of his car and while saving that cattle his car hit the eucalyptus tree. It was a self serving statement of driver of the offending vehicle as a culprit will never say that he had committed a wrong. The Tribunal has relied on the testimony of PW-4 Khalid Hussain, who has stated that he witnessed the accident, which was caused

due to rash and negligent driving of the offending vehicle by respondent no. 1. He was cross-examined at length but his testimony could not be shaken. Manoj Kumar, driver of the offending vehicle has neither appeared as witness nor he was examined by the appellant to give version of the accident different than the version as stated by claimants, which find support from the testimony of PW-4 Khalid Hussain.

5. Here learned counsel for the appellant has argued that Manoj Kumar could be examined by claimants to prove the manner in which the accident had taken place. The above argument of learned counsel for the appellant carries no weight, firstly, because claimants were not competent to examine respondent and secondly, claimants have to prove their own case and it is for the respondent to rebut the testimony of Khalid Hussain PW-4, which has been rightly relied upon by the Tribunal being un-rebutted. Citations referred by learned counsel for the appellant are not relevant to advance the plea raised by learned counsel for the appellant. In case of **Pritam Singh (supra)**, first version of the accident was given by claimant himself and then came up with different version. In case of **Jagdish Kaur (supra)**, Som Nath, uncle of the deceased had come with first version. In case of **Satya Devi (supra)**, this fact was specifically stated in the DDR that due to darkness, the complainant could not note down number of the truck. In case of **Vinod Kumar (supra)**, claimants had given a specific version about the accident and came up with a different version after four months while in case of **Munshi Singh (supra)**, FIR was registered against unknown vehicle and unknown driver. Even make of the vehicle or its colour was not provided to the police. The pillion rider, who had stated that he noted details of the vehicle had in fact fallen unconscious after the accident and was not in a position to note details or to provide any information to the police. In neither of aforesaid cases, driver or owner of the vehicle had come forward to give version regarding manner in which the accident had taken place. In aforesaid cases either claimant or eye-witnesses

had come up with improved or different version than first version given to the police by him. It was under these circumstances that their testimonies was doubted and not relied upon. In this case after recording the DDR, it was duty of the police to verify version, as given by driver of the offending vehicle, and to take further steps in the matter. It appears that the police has not taken any further steps to investigate the manner of accident. Manoj Kumar, on whose statement DDR was recorded by the police, has not dared to step into the witness box to give his own version regarding the accident.

6. The Tribunal has committed no error while relying on statement of PW-4 Khalid Hussain. The version given by claimants and the eye-witness cannot be termed as second or improved version of the accident, as such, I find no merit in the arguments advanced by learned counsel for the appellant that claim petition was not maintainable or that PW-4 Khalid Hussain was an interested witness in this case.

7. No other argument has been advanced by learned counsel for the appellant.

8. As a sequel of my above discussion, the instant appeal has no merit and the same is dismissed.

March 26, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No