IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8487 of 2017 (O&M) and
other connected appeals.
Date of Order:22.01.2018

United India Insurance Company Ltd.

..Appellant

Versus

Fakir Chand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ram Avtar, Advocate,
for the appellant.

ANIL KSHETARPAL, J (Oral)

C.M.No.27641-CII-2017 in FAO No.8487 of 2017
C.M.No.27697-CII-2017 in FAO No.8502 of 2017
C.M.No.27700-CII-2017 in FAO No.8503 of 2017

Prayer in these applications is for condonation of delay of 10 and 16 days in filing the appeals.

For the reasons mentioned in these applications, which is supported by an affidavits, the delay of 10 and 16 days in filing the appeals are condoned.

Applications are allowed.

FAO No.8487 of 2017

The Insurance Company has filed three appeals No.8487, 8502 and 8503 of 2017, which are connected and arising out of a motor vehicular accident.

Three claims petitions filed on account of one death and two injuries, came to be consolidated and decided against the respondents.

Learned Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') after recording a finding that the vehicle being driven by respondent-Mukesh Kumar was rash and negligent, allowed the claim petitions.

Learned counsel for the Insurance Company has challenged the judgment on the ground that initially the FIR was registered against an unknown vehicle and the registration number of the vehicle involved in the accident was disclosed after a period of 23 days. He further submitted that in the case of Fakir Chand, filed on account of death of Naresh Kumar whose driving licence has not been produced and, therefore, the finding recorded by the learned Tribunal that Naresh Kumar was a driver, is erroneous.

A reading of paragraph 21 of the impugned judgment shows that Naresh Kumar had received training at Drivers Training School, Haryana Roadways Gurgaon and certificate therefrom was produced on file as Ex.PA. In these circumstances, the learned Tribunal has relied upon the evidence to arrive at such findings.

In the present case, no evidence has been produced on behalf of the respondents as neither the driver nor the owner has stepped into the witness box. Even the Insurance Company has not produced any evidence. Copy of the driving licence of Mukesh Kumar, driver of the offending vehicle, its registration certificate and insurance policy was tendered into evidence.

Lilu Ram, who was driving the vehicle which had met with an accident due to rash and negligent driving of the offending vehicle has stepped into the witness box as PW3. Lilu Ram has stated that he was driving the vehicle when the other vehicle being driven by Mukesh Kumar while over taking their vehicle, hit from the side which resulted in imbalance and hence their vehicle went astray and hit a canal bridge and then turned turtle. In that accident, Naresh Kumar received fatal injuries whereas Lilu and Burfo Devi sustained grievous injuries.

The Insurance Company was given opportunity to cross-examine the witness Lilu Ram, but he withstood the statement made by him in examination-in-chief.

It is further not in dispute that the police after investigation has prima-facie found that Mukesh Kumar has committed an offence and challan has been presented. No doubt, the vehicle number was disclosed after a period of 23 days, however, it is normal that the police in a hit and run case, locates the vehicle involved during the course of investigation.

Mere delay of 23 days in disclosing the number of the vehicle cannot be taken as a circumstance to arrive at a finding that the offending vehicle has been falsely implicated particularly when no evidence has been produced by either driver, owner or the Insurance Company.

Next argument of learned counsel for the Insurance Company is that there is no evidence on the file to prove that Naresh Kumar, the deceased, was driver.

Next argument of learned counsel for the appellant is that deceased Naresh Kumar was bachelor and the claim petition has been filed only by his father. He has submitted that father cannot claim to be dependent on his son.

Learned counsel for the Insurance Company has read over the statement of Fakir Chand, who has appeared in the witness box as PW1. No suggestion was given to Fakir Chand to the effect that Fakir Chand was earning or Naresh Kumar was not having any source of income.

Learned counsel for the Insurance Company has further argued that the learned Tribunal has assessed the income of the deceased as Rs.12,000/-, although, there is no evidence. He submits that only minimum wages could be granted.

This Court has considered the submission of learned counsel for the Insurance Company.

Once it has come on record that the deceased has taken training and passed a certificate course from Drivers Training School, Haryana Roadways, Gurgaon, it cannot be said that the income of Naresh Kumar could only be taken as of unskilled labour. Naresh Kumar, the deceased, was resident of Gurgaon that is a National Capital Region and the accident took placed on 01.03.2014. The deceased was at the time 24 years of age.

Keeping in view the aforesaid facts, this Court does not find any misreading of evidence or non consideration of evidence arrived at by the learned Tribunal. The appeals are dismissed.

January 22, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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