

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

FAO No. 2641 of 2019(O&M)

Date of decision: 10.7.2019

Shri Ram General Insurance Co. ltd.Appellant

VERSUS

Nilam Rani and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajbir Singh, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 14.09.2018 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib (in short 'the Tribunal') whereby compensation has been assessed on account of death of Harpreet Singh son of Nirmal Singh in a motor vehicular accident that took place on 14.12.2017.

Counsel for the appellant would inform that the appeal has been preferred to assail findings of the Tribunal on issue No.1 attributing rashness and negligence to Iqbal Singh for causing the accident. It is argued with vehemence that the alleged offending vehicle has been falsely indicted in the claim proceedings with a clear intent to extract compensation from the insurance company. To bring home his contention, counsel has sought to place reliance upon testimony of Gurjinder Singh, author of the FIR and an alleged eye-witness to the occurrence, recorded in the criminal proceedings wherein he resiled from his statement made to the police and did not support cause of the prosecution. It is further argued that Nirmal Singh, father of the deceased, had stated in his cross examination before the criminal Court that he was not eye-witness to the said accident.

According to counsel, since Gurjinder Singh, whose testimony is the basis of recording findings on issue No.1, has altogether failed to connect the offending vehicle and driver with the occurrence in the criminal proceedings, his testimony is not worthy of credence and reliance, therefore, findings of the Tribunal on issue No.1 are liable to be set aside. In addition, it is argued that Gurjinder Singh is the cousin brother of deceased. In the FIR registered by him, there is no reference to registration particulars or particulars of the driver of offending vehicle that creates a doubt with regard to his presence at the spot. Another submission made by counsel is that even if it is accepted that occurrence had taken place because of hitting of tractor with scooter driven by the deceased, the present is a case of contributory negligence of both the vehicles and claimants shall not be entitle to compensation to the extent of negligence attributable to the deceased. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Bijoy Kumar Dugar Vs .Bidyadhar Dutta and others, 2006(2) RCR (Civil) 590.**

Indisputably, FIR with regard to the occurrence was lodged on the day the accident took place on 14.12.2017 at the behest of Gurjinder Singh, a relative of the deceased and claimants. On due investigation of the FIR, challan was presented in the Court against Iqbal Singh (respondent No.1) though eventually Iqbal Singh was acquitted of the offence charged against him.

Counsel for the appellant, in response to a query, would fairly inform that there is no material on record to prove that there was collusion between the claimants and owner or/and driver of the offending vehicle except that he would state that village Bakshiwala of Amarjit Singh –

respondent No.7 and that of the claimants is nearby. Iqbal Singh did not appear in the witness box to counter case of the claimants and testimony of Gurjinder Singh with regard to his involvement in the occurrence in question. An adverse inference is liable to be drawn for failure of the insurance company to call upon the driver to appear in the witness box to counter case of the claimants.

Gurjinder Singh is not one of the claimants and beneficiary of compensation claimed by Nilam Rani and others. The claimants had no control over Gurjinder Singh to ensure that he supports cause of the prosecution even in criminal proceedings or stick to his statement made before the Tribunal. The matter would have been different had Gurjinder Singh been one of the claimants in the case because in that eventuality the Court might have taken a serious view of different stand taken by Gurjinder Singh in the claim proceedings viz-a-viz criminal proceedings. Nirmal Singh, father of deceased, never claimed himself to be an eye-witness to the occurrence either before the Tribunal or the criminal Court, therefore, there is no change in his stance while deposing before different Foras. In this view of the matter, the appellant cannot derive advantage to its contention from different versions recorded by Gurjinder Singh before the Tribunal and the criminal Court.

This brings the Court to second submission with regard to present being a case of contributory negligence of the deceased. Gurjinder Singh had categorically stated that one of the lights of the offending vehicle was off and driver brought the tractor on wrong side and hit against scooter driven by Harpreet Singh. Counsel for the appellant has failed to point out any facts elicited in cross examination of Gurjinder Singh to

challenge his testimony in this regard. On the contrary, as has been noticed hereinbefore, Iqbal Singh did not appear in the witness box to counter case of the claimants. In the given scenario, it is difficult to accept contention of the appellant that as the occurrence took place between vehicles coming from opposite directions, contributory negligence can be attributed to Harpreet Singh. That being so, the appellant cannot derive any advantage to his contention from the judgment in **Bijoy Kumar Dugar's case** (supra) decided in view of the peculiar facts and circumstances obtaining in the case.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

JULY 10, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no