

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

**F.A.O. No. 1867 of 2012(O&M)
Date of Decision: 08.01.2019**

New India Assurance Company Limited

.....Appellant.

Versus

Rajesh Kumar and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Ashwani Talwar, Advocate
with Mr. Akash Sridhar, Advocate
for the appellant.

Mr. Ishaan Cooner, Advocate
for Mr. J.S.Cooner, Advocate
for respondents no.1 to 4.

LISA GILL, J (Oral).

This appeal has been filed by the Insurance Company challenging award dated 20.12.2011, passed by the learned Motor Accident Claims Tribunal, Patiala (for short 'Tribunal'), whereby compensation has been awarded by the learned tribunal to the claimant-respondents on account of death of Nek Ram.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'Act'), on 23.08.2001, Nek Ram along with his son Rajesh Kumar and nephew Mohinder Singh, were standing near a tea stall located near Haryana Service Station on G.T.Road, Ambala Cantt. A Maruti car bearing registration no. HR-04-7717 at about 8.45.p.m., came

from the side of Shahbad. The said Maruti car was being followed by a jeep i.e. Tata Sumo bearing registration no. PB-11-J-0159, which was driven in a rash and negligent manner. The driver of the jeep over took the Maruti car from wrong side i.e. from the left hand side, without blowing horn and in that process the said Tata Sumo came on the extreme left side of the road where the abovesaid persons were standing. The said jeep struck into Nek Ram. As a result thereof, Nek Ram received multiple injuries and died on his way to the hospital. FIR No. 93 dated 23.08.2001, under Sections 279, 337, 304-A IPC, Police Station City Parav, was registered against respondent no.5-Anil Kumar, in this respect.

A claim petition was filed by one of the claimants at Ambala, but the same was withdrawn in February 2003. Present petition under Section 166 of the Motor Vehicles Act was filed by all the claimant-respondents again at Patiala seeking compensation.

Respondents no.1 and 2 filed separate written statements denying the claim set up by the claimants.

Respondent no.3-Insurance Company, filed a written statement raising various preliminary objections and denying the averments on merits. Respondents prayed for dismissal of the petition.

Following issues were framed by the learned tribunal:-

1. Whether deceased Nek Ram died in a motor vehicle accident caused by respondent no.1 rashly and negligently on 23.08.2001?OPP
2. Whether the claimants are entitled to the compensation as prayed for, if so from whom?OPP
3. Whether respondent no.1 was not holding a valid driving license at the time of alleged accident, if so its effect? OPR
4. Whether the claim petition is not maintainable?OPR
5. Relief.

The following additional issue i.e. Issue No.4-A was framed by the learned tribunal on 16.07.2011:-

4-A. Whether this Court does not have the territorial jurisdiction to try the claim petition?OPR-3.

Both the parties led evidence in support of their respective claim/stands.

Learned Tribunal on consideration of the evidence on record, concluded that the accident in question took place due to the rash and negligent driving of the offending vehicle i.e. Tata Sumo bearing registration no. PB-11-J-0159 by respondent no.5-Anil Kumar. Learned tribunal awarded a total sum of ₹7,90,000/- to respondent no.4-Meera Devi as compensation alongwith interest at the rate of 9% per annum from the date of filing of the petition till the date of realization.

Aggrieved therefrom, present appeal has been filed by the Insurance Company. It is informed that no appeal or cross-objections have been preferred by the claimants.

Learned counsel for the appellant-Insurance Company vehemently argues that petition under Section 166 of the Act filed by the claimant-respondents no.2 to 4 is barred by *res judicata*. The claimants did not approach the tribunal with clean hands. Claim petition was earlier filed on 13.02.2003 before the learned tribunal at Ambala by one of the claimant i.e. Rajesh Kumar-respondent no.1. The said claim petition was dismissed as withdrawn on 27.02.2003. Instead of making any efforts to revive the said petition, present petition was filed after a lapse of nearly five years. Subsequent claim petition has been filed by the widow, both the sons and

married daughter of the deceased-Nek Ram without disclosing details of the previous petition.

It is further submitted that the accident in question is not proved to have been caused by the offending vehicle driven by respondent no.5-Anil Kumar. FIR, Ex.P-5, was registered on the statement of Rajesh Kumar son of Nek Ram. Details of the offending vehicle or of its driver are not mentioned in the said FIR. PW-3-Kulbir Singh son of Dharam Pal, who is alleged to have revealed the details of the offending vehicle was in collusion with the claimants. Learned counsel further contends that Nek Ram as per the certificate, Ex.R-8, issued by Dr. Bela Sharma, was brought dead in Civil Hospital, Ambala Cantt on 22.08.2001. Therefore, it is proved on record that the accident in question did not take place on 23.08.2001. It is further argued that excessive compensation has been awarded to the claimants. It is thus prayed that the impugned award be set aside thereby dismissing the claim petition. Insurance company in any case, it is submitted cannot be held liable to pay the compensation.

Learned counsel for the claimants per contra refutes the said averments while submitting that the learned tribunal has rendered a well reasoned and logical judgment which calls for no interference. It is thus prayed that the impugned award dated 20.12.2011, be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Primary argument raised by learned counsel for the appellant is that the claim petition filed by the respondent-claimants is barred by *res judicata* as earlier petition filed by one of the claimants was dismissed as

withdrawn in February 2003. Moreover, withdrawal of the said petition has not been mentioned in the present claim petition. Therefore, the claimants having not approached the tribunal with clean hands and are not entitled to any relief. Claim petition should have been dismissed on this ground alone.

I do not find any merit in this argument for the reason that it has been conclusively held in a number of judgments of this Court that Motor Vehicles Act is a beneficial piece of legislation. Once there is no adjudication on merits and the matter has been dismissed as withdrawn, it would not have the effect of debarring the claimant from seeking the compensation, if at all, made out from the pleaded facts as may be proved on record. A Division Bench of this Court in **Dashmesh Bus Service Vs. Jagir Kaur and others 1986 ACJ 443**, while dealing with the question whether a claim for compensation under Section 110-A of the Act being dismissed as withdrawn debarred subsequent filing of a claim under the Workmen's Compensation Act, 1923 observed as under:-

“Firstly we are quite doubtful as to whether a Tribunal under the Motor Vehicles Act can be equated with a civil court for purposes of the above noted provision but even if it can be, we do not find it possible to hold that mere filing of a claim under Section 110-A of the said Act and later getting it dismissed as withdrawn can have the effect of debarring the claimant from the relief under the Act.”

In **Smt. Suresh Devi and others Vs. Jasbir Singh and others 2013 (15) R.C.R (Civil) 456**, it has been reiterated that dismissal of the first claim petition as withdrawn or on any other technical ground, would not debar the claimants from filing a subsequent petition. In **Suresha Devi's** case (Supra) second petition filed by the claimants therein was dismissed by

the tribunal on the sole ground that the first petition, earlier filed by the claimants before another tribunal, was dismissed as withdrawn without any liberty to file afresh. Said order was set aside by this Court. It has been observed as under:-

“The judicial approach thus seems to be liberal in regard to prosecution of claim petitions under the Act. The dismissal of the claim petition otherwise than on merits, has not been held to be a bar to fresh petition irrespective of the fact whether the first petition was dismissed as withdrawn or was dismissed in default.”

Moreover, PW-1-Rajesh Kumar, in his affidavit Ex.PW-1 has specifically stated that a claim petition was earlier filed by their Advocate at Ambala. He could not reach Ambala at the relevant time and his Advocate withdrew the case. Therefore, it cannot be said that there is any active concealment of any material fact by the claimants. Learned tribunal has thus rightly observed that this petition under Section 166 of the Act filed by the claimants is maintainable.

It is further proved on record that the accident in question took place on 23.08.2001 due to the rash and negligent driving of the offending vehicle by respondent no.5-Anil Kumar. Doubtlessly, Rajesh Kumar, at the time of recording of the FIR has not disclosed the registration number of the offending vehicle or the details of its driver. However, final report under Section 173 Cr.P.C., was filed by the police authorities after proper investigation in the matter. Details of the offending vehicle were furnished by Kulbir Singh-PW-3 after few days of the accident i.e. on 26.08.2001. PW-3-Kulbir Singh specifically deposed that the offending vehicle struck against one of the person standing at tea stall and driver of the offending

vehicle fled from the spot along with his vehicle. PW-3 further stated that since he was travelling with his wife and children, therefore he did not go to the police station immediately for reporting the matter as he was hesitant to approach the police fearing some sort of harassment. However, when he came to know about the death of one person in the accident on 25.08.2001 from Jagdish Lal, Mechanic, he got his statement recorded in the police station on 26.08.2001. It is further stated by PW-3 that he identified the driver of the offending vehicle (Tata Sumo) when he was called for the identification parade by the police. It is specifically stated that this was the same driver who on 23.08.2001 at about 8.45.p.m., hit the person who was standing near the tea stall near IOC Depot at G.T.Road. Perusal of the cross-examination of PW-3 reveals that the insurance company-respondents could not illicit anything favourable to them.

It is further submitted that the driver of the offending vehicle was acquitted as Kulbir Singh did not depose before the learned Judicial Magistrate in the criminal proceedings. Though this averment is not substantiated, but even if accepted to be correct, mere acquittal of the accused in the criminal proceedings without there being any specific evidence to show collusion cannot be sufficient to discard the case of the claimants. Reference in this respect can also be gainfully made to the decision of the Hon'ble Supreme Court in **Mangla Ram Vs. The Oriental Insurance Company, 2018 AIR (SC) 1900**. It has been held by the Hon'ble Supreme Court in **Parmeshwari v. Amir Chand and others, 2011(2) RCR (Civil) 153** that in cases under this Act, it is the touchstone of preponderance of probabilities on which the case of the claimants has to be tested. There

should not be insistence on proof beyond reasonable doubt as in criminal cases.

Learned counsel for the appellants is unable to point out any evidence on record which may indicate collusion between the claimants, owner and the driver of the offending vehicle. No relationship or proximity between the claimants and the said driver or even PW-3-Kulbir Singh is evident.

Another argument raised by learned counsel that the accident, if any, took place on 22.09.2001 is completely devoid of any merit. This is so for the reason that the so called certificate, Ex.R-3, issued by Dr. Bela Sharma, has been rightly concluded to be a false certificate by the learned tribunal. Learned counsel for the appellant is unable to deny that process was issued by the learned tribunal to procure the presence of Dr. Bela Sharma to prove the said report but process was returned back with a report from the Principal Medical Officer, General Hospital, Ambala City that Dr. Bela Sharma was never ever posted at Civil Hospital, in the year 2003. Reliance by learned counsel for the appellant on this certificate is thus clearly misplaced.

No serious arguments have been addressed in respect to the quantum of compensation awarded by learned tribunal. In my considered opinion, there is no ground whatsoever to interfere in the impugned award dated 20.12.2011.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 20.12.2011 passed by the

learned tribunal, Patiala, which calls for interference by this Court at the instance of the appellant-Insurance Company.

Appeal is accordingly dismissed with no order as to costs.

08.01.2019
s.khan

[LISA GILL]
Judge

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