IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5221 of 2019(O&M)
Date of Decision:25.09.2019

Cholmandalama MS General Insurance Co.Ltd.

.................APPELLANT

Vs.

Amit and others

.................RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Abhimanyu Batra, Advocate for the appellant-Insurance Company.

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DR. RAVI RANJAN, J.(Oral Judgment)

This appeal has been preferred by the appellant-Insurance Company assailing the Judgment and Award dated 15.05.2019 passed by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') *in CIS Registration No. MACP 59/2017*, by which the Tribunal, after holding that the motor vehicular accident caused the serious injuries to the injured-Amit, has awarded the compensation amount of Rs.4,43,952/- alongwith interest @7.5% to be calculated from the date of the filing of the claim petition till realization of the compensation amount.

The sole issue which has been raised by learned counsel for the appellant-Insurance Company at the time of the hearing is that the claimants have miserably failed to prove the involvement of the concerned offending vehicle as well as negligent and rash driving on the part of its driver.

It is urged that in the absence of the aforesaid, the injured was not entitled to receive any compensation amount. In view of the limited issue which has been raised on behalf of the appellant-Insurance Company and finding recorded by the Tribunal in that regard is required to be considered.

Short facts of necessary details for consideration of the *lis* stand enumerated as under:-

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 on account of injuries suffered by Amit in a motor vehicular accident which allegedly took place on 06.07.2016 at about 08.00 p.m. Near Shiv Faiber Factor G.T.Road in the area of village Kohand, P.S. Gharaunda, District-Karnal.

As per the petitioner/claimant, on 06.07.2016 at about 08.00 P.M., he was returning from his village Badoli, District Panipat on his *Scooty,* which was being driven by the claimant-Amit and one Sahil @ Banti (complainant/informant) was pillion rider. According to the claimant, the said Scooty was being driven at a moderate speed at the extreme left side of the road by following the traffic rules. When they reached near Shiv Faiber Factory G.T.Road in the area of village Kohand, P.S.Gharaunda, District Karnal, Bolero Pickup vehicle (hereinafter referred to be as "offending vehicle") driven on wrong side by respondent No.1 of the claim petition, in a rash and negligent manner, came from Panipat side and directly hit the *Scooty.* As a result of that both the riders fell down. The accident caused multiple, serious and grievous injuries upon claimant-Amit whereas the complainant/informant, namely, Sahil sustained minor/blunt injuries. One Mahender Singh son of Jagdish Chand resident of Village Gharunda, District Karnal shifted them to CHC Gharaunda in the offending vehicle driven by respondent No.1(of the claim petition), i.e., Bolero Pickup, white in colour bearing Registration No.HR-56-9539.

The driver disclosed his name as *Wazir* son of Har Chand, resident of village Nidani, District Jind. Thereafter, the family members of the petitioner/claimant took him to Maharaja Aggarsain Private Hospital, Panipat and got him admitted there on 06.07.2016 where head surgery was performed upon the claimant. He remained admitted in that hospital till 10.07.2016. Thereafter, he got admitted in Sunflag Hospital, Rohtak on 10.07.2016 where his right leg was operated and he remained there upto 22.07.2016. He further went to AIIMS, New Delhi for treatment of his eyes as due to grievous head injury, he had completely lost the vision in his left eye. The doctors opined after performing certain tests, that nerves of his left eye got damaged and the damage was incurable and irreversible. He claimed that his family had spent more than Rs.10 lakhs on his treatment including the medicines, attendant, hospital charges and special diet etc.

A case bearing FIR No.373 dated 10.07.2016 was registered with respect to the aforesaid accident under Sections 279, 337 and 338 IPC, Police Station Gharaunda, District Karnal against the driver of the offending vehicle on the statement of Sahil @ Banti.

It has also been averred that, at the time of the accident, the injured was about 21 years of age and was doing job in J&J Pharma Nirmal Enclave, Opposite Civil Hospital, Karnal and was earning Rs.16,000/- per month. The petitioner/claimant raised a claim of a sum of Rs.50 lacs alongwith interest @18%, by way of compensation.

In response to the notices given in the claim petition, the driver and the owner of the offending vehicle contested the claim petition by filing their joint written statement. Apart from taking preliminary objections, it was denied that the alleged accident had taken place with Bolero Pickup bearing Registration No.HR-56-9539. It has also been averred that there was unexplained and inordinate delay of 4-5 days in registration of the FIR. A stand was also taken that a false FIR was registered against respondent No.1 at the instance of the petitioner/claimant in collusion with the police. Further averment is that the petitioner/claimant has procured false medical treatment record. However, at the same time, it is also stated that the offending vehicle was insured with respondent No.3-Insurance Company(appellant herein) at the time of the accident. The respondent No.3-Insurance Company also filed its written statement. Apart from taking preliminary objections, respondent No.3-Insurance Company took a plea that respondent No.1, i.e., the driver of the offending vehicle was not holding a valid and effective driving licence. It is denied that the alleged accident took place involving Bolero Pickup No.HR-56-9539 as also there was unexplained and inordinate delay of about 4-5 days in registration of the FIR. A stand was also taken that a false FIR was registered against the driver and, in fact, no such injury was suffered by the petitioner/claimant as also that the offending vehicle was not insured with respondent No.3-Insurance Company on the date of alleged accident.

The Tribunal, on appreciation of rival pleadings, framed following issues:-

> "1. Whether the accident in question was caused by respondent No.1 while driving Pickup vehicle bearing registration No.HR-56-9539 in a rash and negligent manner causing injuries to the petitioner, as alleged ?OPP.
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> 2. If issue No.1 is proved, whether the petitioner is entitled to any compensation and if so, to what extent and from whom? OPP.
>
> 3. Whether the respondent Nos. 1 and 2 have violated any term and condition of the insurance policy? OPR-3.
>
> 4. Relief."

However, as has been recorded above, since the sole ground taken by learned counsel for the appellant-Insurance Company at the time of hearing of this appeal, revolves around the issue No.1, other issues are not required to be delved upon but it has to be noted that the all the issues have been decided in favour of the petitioner/claimant.

The First ground raised by learned counsel for the appellant-Insurance Company is regarding the delay of 4-5 days in registration of FIR.

It is contended that the informant was a pillion rider on the same motorcycle and he could have lodged the First Information Report on the same date, i.e., on the date of the accident itself but the FIR has been lodged after 4-5 days. However, a question would be, in the case of serious injuries of the nature which was received by the injured in the concerned motor vehicular accident, which was head injury as well as serious injury on the right leg, what would be the focus of the friends and family members? Whether they would go to the police and lodge a First Information Report or would take the injured person to the hospital so that the proper treatment is given to him? The answer would has to be obviously that the first focus of the family members would be to bring him to the hospital so that proper treatment could be given to him.

It is apparent from the record that the surgical operation was conducted at one hospital upon the head of the injured and in another hospital his right leg was operated and he completely lost vision in his left eye as diagnosed by the doctors at AIIMS, New Delhi. In such a situation, if 4 or 5 days of delay has occurred in lodging the FIR, that would not be fatal and, as such, due to it the claimant can be non-suited. That apart, HC-Bahadur Singh has stated in his testimony that he was informed telephonically regarding the accident and regarding the admission of the injured-Amit in Maharaja Aggarsain Hospital, Panipat. He reached Maharaja Aggarsain Hospital, Panipat and moved an application to the doctor regarding fitness of injured-Amit so that his statement could be recorded but the doctor declared the injured unfit to make any statement. He again reached on 09.07.2016, but the doctor again declared injured to be unfit. Eventually on 10.07.2016, after recording the statement of Sahil(informant), the FIR was registered.

Having regards to the aforesaid facts and circumstances of the case, there would be no difficulty in holding that there was satisfactory explanation regarding the delay in lodging First Information Report.

In a decision rendered by Hon'ble Supreme Court of India in **Ravi Vs. Badrinarayan and others** 2011 (4) SCC 693, it has been held that in a case in which the First Information Report was lodged after three months of the accident, that delay in lodging the FIR should not be treated as fatal for such type of proceeding if claimant has been able to demonstrate that there was cogent reasons for it. In that case, in spite of delay of three months in lodging FIR, the Hon'ble Apex Court has allowed the claim. Accordingly, it is held that the delay of 4-5 days in lodging the FIR in the present case would not be fatal.

The second issue raised on behalf of counsel for the appellant-Insurance Company is with respect to the MLC Register, (Ex.RA). According to him, it shows that the injury was a result of accident of the motorcycle of the injured with *Activa.* It is contended that the *Scooty* of the injured collided with the Bike on the road. Thus, it demolishes the entire case. The aforesaid limb of argument raised on behalf of the appellant-Insurance Company is noted only to be rejected for the following reasons:-

Pradeep was not an eyewitness who had seen the accident as to by which vehicle it actually took place. His knowledge is based upon the history of occurrence given to him by informant Sahil (PW2). Secondly, in the First Information Report Sahil (informant), who was pillion rider to the *Scooty* which was being driven by the injured-Amit, has stated that, in fact, the driver of the offending vehicle, i.e., Bolero, took the injured on his vehicle and brought him to the hospital, thus, in view thereof, such recording in the MLC register by the doctor would not be of much value. It is further urged that said Sahil was accompanying Pradeep, thus, he could have also briefed the doctor regarding the incident but that has not happened. However, learned counsel for the appellant-Insurance Company forgets that though may be minor or blunt in nature, Sahil (informant) also received certain injuries. Thus, his focus would be upon the injuries of the claimant as well as his own injuries. Therefore, recording in the MLC that the Bike of the injured collided with Activa Scooty is neither here nor there because the driver did not have any courage to appear and rebut the evidence led by the claimant to support his pleading that his vehicle was not involved in the accident so that he could have been put to the test of cross-examination. In the absence of that, such submission would be of no value because there are catena of materials available on record which suggests that actual accident took place due to rash and negligent driving by the offending Bolero Pickup and the injured was taken to hospital to the offending vehicle only.

It is also apparent from the final report submitted by the police under Section 173 Cr.P.C. which has reached to the conclusion after investigation that the alleged accident was a result of rash and negligent driving by the driver of the offending vehicle. The Court concerned has accepted the report and has taken cognizance in the matter and the driver is facing criminal trial.

Aforesaid would be sufficient to hold that the accident was a result of rash and negligent driving of the driver of the offending vehicle.

The third point which has been raised by learned counsel for the appellant-Insurance Company is that the claim case is a result of collusion between the driver, owner and the complainant. However, learned counsel forgets that fraud is to be specifically pleaded and proved by leading evidence. Mere raising allegation would not be sufficient. There is nothing on record to show such collusion between the aforesaid. If the alleged collusion is to succeed then there must have been involvement of the police also because, after investigation, police has submitted charge-sheet but there is nothing on record save and except raising a finger of suspicion. It is well settled that suspicion, however be strong, cannot take place of evidence and, as such, this limb of argument is also found not tenable.

In the result, this appeal, being devoid of any merit, is dismissed. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

25.09.2019
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No