

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

Date of decision: 30.8.2019

1.

FAO No. 1688 of 2015(O&M)

Baldev Sharma

.....Appellant

VERSUS

Kulbir Singh and others

.....Respondents

Present: Mr. Sagar Aggarwal, Advocate for the appellant.

Mr. D.P. Gupta, Advocate for the insurance company.

2.

FAO No. 1801 of 2015(O&M)

National Insurance Co. Ltd.

.....Appellant

VERSUS

Baldev Sharma and others

.....Respondents

Present: Mr. D.P. Gupta, Advocate for the appellant.

Mr. Sagar Aggarwal, Advocate for the claimants.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.1688 and 1801 of 2015 as these have emerged out of award dated 20.11.2014 passed by the Motor Accidents Claims Tribunal, Kaithal (in short 'the Tribunal') whereby compensation has been assessed on account of death of Priyanka in a motor vehicular accident that took place on 26.10.2012.

FAO No.1688 of 2015 has been filed by the claimant seeking enhancement of compensation whereas the other appeal has been filed by

National Insurance Company Ltd. (hereinafter referred to as the ‘insurance company’) to assail the award.

FAO Nos.1688 and 1801 of 2015

Counsel for the insurance company would argue that findings recorded by the Tribunal on issue No.1 are not based upon correct appreciation of evidence and liable to be set aside. It is further argued that claimant examined Vijay Kumar, brother of the deceased to discharge onus of issue No.1 but said Vijay Kumar in his cross examination has admitted that he recorded his statement under Section 161 Cr.P.C. and in the said statement, registration number of the offending tractor has not been mentioned. It is further argued that Vijay Kumar further admitted that his statement was recorded by the Police at Delhi on 07.11.2012 at about 11/12 AM and thereafter the police did not meet him any time.

It is argued that testimony of Vijay Kumar is conspicuously silent that if he did not know registration particulars of the vehicle at the time of recording of his statement Ex.RA on 07.11.2012 in respect of accident dated 26.10.2012 how could he know about particulars of the offending vehicle while making statement claiming to be an eye-witness to the occurrence.

Counsel representing the claimant, on the contrary, has supported findings of the Tribunal on issue No.1 and has prayed for grant of additional compensation claimed in the appeal preferred by husband of deceased.

On 19.03.2019, this Court passed the following order:-

“Counsel for the insurance company has challenged the award on three counts namely (i) testimony of Vijay Kumar the

alleged eye witness to the occurrence is not sufficient to prove involvement of the vehicle in question in the occurrence (ii) grant of compensation in respect of death of foetus and (iii) claim of compensation in respect of death of Priyanka. He would argue that statement of Vijay Kumar recorded on 7.11.2012 in respect of accident dated 26.10.2012 does not make reference to registration particulars of the offending vehicle. FIR lodged at the behest of Baldev Sharma, husband of the deceased on 2.11.2012 also does not make reference to registration particulars of the offending vehicle. The Investigating Officer has not been examined to prove as to how the vehicle in question has been connected with the occurrence.

Counsel for the claimants prays for time to seek instructions about status of criminal trial and any document in possession of Vijay Kumar with regard to his treatment in the hospital. Be listed on 26.4.2019.”

Counsel for the respondent/claimant would inform that criminal trial has culminated in judgment of acquittal dated 01.08.2015 passed by the Additional Chief Judicial Magistrate, Jind. He would further inform that there is no document in possession of Vijay Kumar with regard to his treatment in a hospital in respect of injuries allegedly sustained by him in the occurrence.

Counsel for the claimant, in response to a query, would fairly inform that testimony of Vijay Kumar alone is relevant for deciding issue

No.1. Vijay Kumar tendered into evidence his affidavit Ex.PW2/A and reiterated version of the claimant that on the fateful day, he along with his sister Priyanka was going from village Geong to village Gatoli. He was driving motorcycle bearing No.HR-12L-5833 and Priyanka was a pillion rider. When he reached in the area of village Kandela at about 2 PM, offending tractor bearing No.HR31-D-3197 of red colour make Mahindra Arjun driven by respondent Kulbir Singh rashly and negligently and at a fast speed came from opposite side and struck against motorcycle driven by him after coming on wrong side of the road. He and Priyanka fell down and he sustained some minor injuries whereas Priyanka received multiple serious and grievous injuries on various parts of her body.

A relevant extract from his cross examination, reads thus:-

“My statement was recorded by the police at Delhi on 7.11.2012 at about 11/12:00 a.m. I had mentioned the registration number of the offending tractor bearing registration No.HR31-D-3197. Statement under Section 161 of Cr.P.C. Ex.RA shown to the witness wherein it is not so recorded. I am not summoned witness and deceased Priyanka was my sister. Police did not meet me anytime after recording my statement at Delhi.”

Perusal of Ex.RA would reveal that the same does not contain particulars of the offending vehicle. There is nothing on record suggestive of the fact that Vijay Kumar ever expressed his grievance that his statement under Section 161 Cr.P.C. was not correctly recorded by the police. Counsel for the claimant, despite being provided with an opportunity to produce any document in possession of Vijay Kumar with

regard to his medical treatment failed to produce the same or even did not inform about the name of hospital where Vijay Kumar had gone for his treatment after the accident. FIR in this case was lodged at the behest of Baldev Sharma, husband of the deceased on 02.11.2012 and the same also does not make reference to registration particulars of the offending vehicle. There is nothing on record suggestive of the fact that Baldev Sharma and Vijay Kumar did not meet each other prior to lodging of FIR on 02.11.2012. Had it been true that Vijay Kumar was present at the spot or the accident had taken place in the manner deposed by Vijay Kumar, there was no reason for Vijay Kumar not to lodge the FIR at the first available opportunity. A cumulative view of the aforesaid facts and circumstances leads to an irresistible conclusion that Vijay Kumar was not present at the spot nor the accident had taken place in the manner deposed by Vijay Kumar and for that reason registration particulars of the offending vehicle were neither given in the FIR lodged on 02.11.2012 by Baldev Sharma, husband of the deceased nor in the statement of Vijay Kumar recorded under Section 161 Cr.P.C on 07.11.2012. In this view of the matter, I find merit in contention of the insurance company that findings recorded by the Tribunal are not based upon correct appreciation of materials on record and the Tribunal has seriously erred by relying upon testimony of Vijay Kumar to conclude that claimant has successfully discharged onus of issue No.1. That being so, findings of the Tribunal on issue No.1 cannot be allowed to sustain and are accordingly set aside. As the claimant failed to establish that accident is the result of rash and negligent driving of offending vehicle by its driver, claimant cannot maintain his claim for grant of compensation either against the driver or owner or insurer of alleged

offending vehicle. As such, findings of the Tribunal on issue No.2 with regard to entitlement of the claimant to get compensation and assessment of compensation are set aside.

In view of what has been discussed hereinbefore, the appeal filed by the insurance company is allowed. The award passed by the Tribunal is set aside. The application filed by the claimant for grant of compensation is dismissed. As a natural corollary, appeal filed by the claimant for enhancement of compensation is dismissed having rendered infructuous.

AUGUST 30, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no