

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

**FAO No.2839 of 2018 (O&M)
Date of Decision:26.02.2019**

**Shri Ram General Insurance Company Limited
.....Appellant**

Vs

**Smt. Santosh Devi and others
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

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

Mr. Ramesh Kumar Dhiman, Advocate
for respondents No.1 to 5.

RAJ MOHAN SINGH, J.

[1]. This appeal has been preferred by the appellant-Insurance Company against the award dated 03.02.2018 passed by the Motor Accident Claims Tribunal, Narnaul, (for short 'the Tribunal') whereby a sum of Rs.20,54,500/- as compensation was awarded on account of death of Dharmender in a vehicular accident.

[2]. Brief facts are that a claim petition was filed under Section 166 of the Motor Vehicles Act on the premise that an accident took place on 09.09.2015, when Dharmender was

returning from Nangal Chaudhary to his village on motorcycle. Rohtash son of Bhanwar Singh resident of Thanwas was also going towards Thanwas from Nangal Chaudhary. Behind the motorcycle of Dharmender (since deceased), Ishwar Singh son of Sh. Basant Lal resident of Thanwas was also coming towards Nangal Chaudhary. At about 4.30 p.m., when Dharmender reached near Jagdamba Brick-kiln near village Kalba, then from Behror side, the offending vehicle Mahindra & Mahindra Max Pick-up bearing registration No.HR-66-4474 being driven by Rohtas son of Rameshwar Dayal came in a rash and negligent manner and hit against the motorcycle of Dharmender after coming to the wrong side. As a result of impact, Dharmender fell down along with his motorcycle. The handle of the motorcycle struck against the abdomen of Dharmender. The driver of the offending vehicle ran away from the spot. Eyewitness Ishwar Singh identified the driver after chasing the offending vehicle to some distance and also noted down the registration number of the vehicle. Dharmender was removed to CHC, Nangal Chaudhary. Thereafter he was referred to Government Hospital, Narnaul, but he succumbed to his injuries on the way. Postmortem was conducted on the next day i.e. 10.09.2015.

[3]. After appreciating the material on record, the Tribunal concluded under issue No.1 that the accident in question took

place due to rash and negligent driving of driver of the offending vehicle. FIR was registered. Ishwar Singh was examined as PW-4 and Rohtash Singh was examined as PW-6. Their cross-examination did not yield any incriminating material worth reliance on behalf of the appellant/Insurance Company. At the time of the adjudication of the claim petition, criminal trial was pending against the driver of the offending vehicle.

[4]. The Tribunal while dealing with the issue No.2 assessed the compensation after adverting to the income, age and other components of the deceased for award of due compensation. The principles laid down by the Hon'ble Apex Court in **National Insurance Co. Limited vs. Pranay Sethi, 2017 SCC 1270** were also relied while computing total amount of compensation. An amount of Rs.20,54,500/- was assessed as due compensation in favour of the claimants/respondents and thereafter liability was fixed joint and several, wherein appellant/Insurance Company was held liable to make payment of the compensation to the claimants along with interest.

[5]. Issue No.3 was decided against the appellant/Insurance Company as driver and owner of the offending vehicle had not violated terms and conditions of the Insurance policy in any manner. The apportionment of compensation was ordered as per concluding part of the award.

[6]. Along with the present appeal, an application bearing CM No.10752-CII of 2018 has been filed under Order 41 Rule 27 read with Section 151 CPC for placing on record additional documents i.e. statements of PW-1 Ishwar Singh and PW-2 Rohtash recorded in the criminal trial arising out of FIR No.243 dated 10.09.2015 for the offences under Sections 304-A/279/337 IPC, registered at Police Station Nangal Chaudhary. It is worth to notice that statements of the aforesaid witnesses were recorded before the criminal Court after the adjudication of the claim petition.

[7]. Learned counsel for the appellant by relying upon **Surender Kumar Arora and Anr. vs. Dr. Manoj Bisla and Ors., 2012(3) PLR 244;** **The Oriental Insurance Co. Ltd. vs. Kamla and others, 2016(1) L.A.R. 635;** **United India Insurance Company Limited vs. Kamla Devi and others, 2010(53) R.C.R. (Civil) 651** and **FAO No.5613 of 2017 titled 'National Insurance Company Limited vs. Smt. Billo Devi and others', decided on 22.05.2015** contended that the factum of rash and negligent driving was to be proved by the claimants. In view of statements of the alleged eyewitnesses namely Ishwar Singh and Rohtash in the criminal Court, they have resiled from their version recorded before the Tribunal. Learned counsel alleged that the claim petition was filed in

collusion with the witnesses and owner of the offending vehicle. The public money cannot be allowed to be swallowed in such a clandestine manner.

[8]. On the other hand, learned counsel for respondents No.1 to 5 submitted that the criminal case is still pending and no final verdict has been given by the criminal Court. Even otherwise, the acquittal of the accused in the criminal trial is not binding upon the Tribunal as the Tribunal has to record its independent findings and conclusion on the basis of material produced before it. The Tribunal has assessed the evidentiary value of the material produced before it and came to the conclusion that the accident took place in the manner as pleaded by the respondents/claimants and lawful liability was fastened upon the appellant/Insurance Company.

[9]. Learned counsel by relying upon **Virender Singh and others vs. Himachal Road Transport Corporation and Ors., 2015(46) R.C.R. (Civil) 480** contended that the standard of proof in a criminal trial is altogether different where the prosecution has to prove its case beyond all reasonable doubts, whereas in the claim petition, the claimants are not required to prove their case beyond all reasonable doubts, but the concept is based on preponderance and probability.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. The criminal case is still pending before the criminal Court. The trial in motor accident claim cases is to be conducted in summary manner, where no strict principles of Evidence Act are applicable. In a welfare legislation, even lodging of FIR is not *sine qua non* for assessing the rash and negligent driving of the driver of the offending vehicle by the Tribunal for consideration of the claim petition on merits. Reference can be made to **Suresh Kumar vs. Yamin Ali and others, 2007(4) R.C.R. (Civil) 584; Bhanwar Lal Verma vs. Sharad Tholia & Ors., 2006(3) R.C.R. (Civil) 210** and **Girdhari Lal vs. Radhey Sham and others, 1993(2) PLR 109.**

[12]. It cannot be denied that the Tribunal has decided the case on 03.02.2018, even prior to adjudication to be made by the criminal Court. The statement made by PW-1 Ishwar Singh and PW-2 Rohtash before the criminal Court in the context of not supporting the case of the prosecution cannot be presumed to be an instance of collusion as there was no such occasion before the Tribunal to come across such a contingent situation because no such statements were available before the Tribunal for consideration of such allegations. Merely because the witnesses have not supported the case of the prosecution in

their testimonies before the criminal Court, the same cannot be an event of claim reversal of decision of the Tribunal at appellate stage by moving an application for additional evidence in the form of testimonies of the witnesses in criminal trial which has not been concluded so far on merits.

[13]. The provision in terms of Order 41 Rule 27 CPC cannot be applied and the appellant is not entitled to produce additional evidence at appellate stage because no such evidence was in existence at the time of adjudication of the claim petition by the Tribunal. As per requirement of Order 41 Rule 27(i)(a) CPC, the additional evidence can be considered, if the Court from whose decree the appeal is preferred has refused to admit the evidence which ought to have been admitted. Even the case is not covered under Order 41 Rule 27(i)(a) CPC as the ingredients of due diligence and knowledge cannot be satisfied as the statements of PW-1 Ishwar Singh and PW-2 Rohtash came to be recorded by the criminal Court only on 26.02.2018 i.e. after passing of award by the Tribunal on 03.02.2018. In view of legal position, this Court being the appellate Court does not require the proposed evidence for pronouncing the judgment for any other substantial cause.

[14]. In the cited precedents on behalf of the appellant, there was no such statement available in the context of additional

evidence. The judgment rendered in **United India Insurance Company Limited vs. Kamla Devi and others'** case (supra) was confined to the facts involved in the said case. The facts of the said case are not relatable to the issue of additional evidence as involved in the present case. Even as per findings recorded in para no.5 of the said judgment, the Court has recorded that recording of FIR is not material and the decision of the criminal Court is not binding upon the Tribunal as the Tribunal has to assess the evidence independently. It was only in the second context it was observed that public money cannot be allowed to be usurped on the basis of untruthfulness of the evidence in the criminal case. No such proposition arose in the cited case as to whether the proposition can be applied to a case which had already concluded and to a case where criminal trial is still pending for decision. The other precedents cited by learned counsel for the appellant do not touch the controversy as involved in the present case.

[15]. The fate of the present appeal entirely hinges upon the application under Order 41 Rule 27 CPC, which in my considered opinion is not worth consideration and the three ingredients of Order 41 Rule 27 CPC cannot be applied in the instant case. No substantial cause has been espoused by the appellant to take cognizance of the application for

consideration of some material adduced before the criminal Court on which criminal Court is yet to pass a decision on merits.

[16]. Keeping in view the totality of facts and circumstances of the case, I do not incline to interfere in the impugned award. Consequently, the application for placing on record the additional documents i.e. statements of PW-1 Ishwar Singh and PW-2 Rohtash and the appeal are found to be totally bereft of merits and are dismissed as such.

February 26, 2019
Atik

(RAJ MOHAN SINGH)
JUDGE

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