

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

FAO-1165-2015 (O&M) and
X-objections No.34-CII-2015
Date of Decision: 3.9.2019

National Insurance Company Limited

.....Appellant

Versus

Asha Kapoor and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. V.Ramswaroop, Advocate, for the appellant.

Mr. Vivek K.Thakur, Advocate, for the respondent-claimants.

Mr. Dinesh Mourya, Advocate for
Mr. G.S. Sandhu, Advocate, for respondent No.4.

NIRMALJIT KAUR, J. (ORAL)

Both the appeal and the cross-objections are decided by this common order as the same arise out common award.

The appeal is filed by the National Insurance Company Limited against the award dated 23.8.2014 passed by the Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') seeking setting aside the said award with a further prayer to dismiss the claim petition on the following grounds as raised herein:-

(a) Firstly, the insured vehicle No.PB-11AT-4734 has been falsely involved on 15.7.2011 after three months of the accident, whereas, the accident occurred on 6.4.2011. In the FIR, neither the name of the driver nor the number of the insured vehicle was mentioned. As per the FIR, rash and negligent driving of the driver of one motorcycle No.PB-11AT-7224

was mentioned.

(b) As per the statements of complainant-Sushil Singh and Gurpreet Inderpal Singh, the negligence was of the driver of one motorcycle No.PB-11AT-7224.

(c) Vehicle No.PB-11AT-7224 was in fact a Vespa Scooter registered in the name of one Surjit Singh son of Basta Singh.

(d) The alleged offending vehicle PB-11AT-4734 was involved in collusion with the local police and the driver-cum-owner Jaswinder Singh was charge-sheeted.

(e) Jaswinder Singh had denied the involvement of his vehicle.

(f) The author of the FIR was never examined. The name of Gurpreet Inderpal Singh, who was examined was not mentioned in the list of witnesses by the police, which is exhibited as R-3.

(g) There has been no judicial application of mind. Besides this, there is no deduction of income. The income of the deceased has been assessed on the higher side. The claimants are getting family pension and hence, no pecuniary loss to the wife of the deceased.

Learned counsel for the respondent-claimants on the other hand has pointed out that the entire case of the appellant-Insurance Company fails in view of the conviction of Jaswinder Singh, the driver of the offending vehicle No.PB-11AT-4734, vide order and judgment dated 21.3.2017 passed by the Chief Judicial Magistrate, Patiala. The said judgment has been placed on record.

Learned counsel for the appellant-Insurance Company does not dispute the same but submitted that conviction is not final and is sure to be

challenged.

Secondly, learned counsel for the respondents further referred to Ex.PW-4/B, which shows that the said vehicle was sent for repair on 13.4.2011 soon after the accident and the appellant-Insurance Company reimbursed the expenditure incurred qua the repair of the offending vehicle and it is further stated that as per the information received from the Insurance Company under the Right to Information Act, 2005, a total amount of ₹ 3,180/- was paid to Jaswinder Singh, driver who is the insured against the vehicle No.PB-11AT-4734. The said document is taken on record by this Court as Ex.A along with Ex.B, which is a copy of the register mentioning entry and dispatch of the registered of the vehicle maintained by the company qua the various claim amount disbursed.

These documents were not disputed or objected to by learned counsel for the appellant.

Learned counsel for the parties were heard at length.

The contention of learned counsel for the appellant has been well met by the Tribunal. Gurpreet Singh-CW-3 testified that he was standing in the vicinity and saw deceased-Ashok Kapoor on his Active Scooter, which was followed by Sushil Singh in his Bullet motorcycle. He also deposed that it was he, who took the deceased to the hospital alongwith Sushil Singh and Sushil Singh gave the wrong number of motorcycle inadvertently being confused and shocked. Said Sushil Singh never came forward for his examination and therefore, the same cannot be held against the claimants as long as another claimant witness Gurpreet Singh CW-3 has testified. He has corroborated the entire story put forward by the claimants.

Just because Sushil Singh mentioned wrong vehicle number does not mean that the subsequent investigation and the truth that came to light, should be ignored. It is an admitted case that challan was filed against Jaswinder Singh and he faced the trial of the criminal case registered against him under Sections 279, 337 and 304-A IPC. Both the FIR and the charge-sheet were proved on record.

Further, it is evident from the judgment placed on record Ex.C, which is not disputed by learned counsel for the appellant that the driver of the offending vehicle stands convicted. Moreover, said Sushil Singh came and deposed in the criminal case and admitted that he was under shock at that time, due to which he gave wrong number of the motorcycle. Showing the involvement of the vehicle in the said accident as well as the driver-cum-owner of the vehicle, is evident from the judgment passed by the Chief Judicial Magistrate, Patiala while convicting driver Jaswinder Singh, which is reproduced as under:-

“32. PW9 Sandeep Kaushal, Network Manager at Chittosho Motors has identified the signatures of Gurpreet Singh on Ex.PW9/B to Ex.PW9/D. He also identified the signatures of Shiv Kumar Supervisor on Ex.PW9/A. Perusal of Ex.PW9/A reveals that it is the estimate of Chittosho Motors dated 7.4.2011 i.e. immediately a date after the alleged accident i.e. 6.4.2011 where insurer name has been mentioned as Jaswinder Singh. Perusal of Ex.PW9/B reveals that job type has been mentioned as accidental customer request. Although the date 13.4.2011 has been mentioned on Ex.PW9/B but when this

document is read with document Ex.PW9/A, it is interpreted that the vehicle was given for repair on 7.4.2011 and delivered after repair on 13.2.2011. Moreover, it is not the case of the accused that no accident took place with his motorcycle. Since it is duly proved on record from Ex.PW9/A to Ex.PW9/D that offending motorcycle was sent for repairs to Chittosho Motors on 7.4.2011 immediately a day after the alleged accident and disclosure of the documents reveal that customer request was for repair due to accident. The accused has failed to prove as to how his motorcycle was damaged and in the order, accident reported by him his motorcycle was damaged. Although Gurpreet Singh and Gobind Singh as alleged by the learned defence counsel have not been examined to prove Ex.PW9/A to Ex.PW9/D but the same have been proved on record in the evidence of PW9 Sandeep Kaushal. Moreover, from these documents it is proved on record that the offending vehicle belong to the accused met with an accident on 6-7/4.2011.”

Once, the appellant-Insurance Company has reimbursed the amount towards the repair of the offending vehicle on account of damage in pursuance to the said accident. It does not lie in their mouth to now turn down saying that the said vehicle was not involved in the accident. They cannot now deny the compensation to the claimants on the one hand and give reimbursement towards the repair of the same vehicle on the other hand. Hence, there is no ground to interfere in the well reasoned award passed by the Tribunal.

The respondent-claimants have also filed cross-objections praying for enhancement of the amount stating therein that the Tribunal failed to take into consideration the fact that the deceased, namely, Ashok Kapoor was an outstanding International player. He participated in various departmental games i.e. National Games, Asian Games and other National and International Tournaments. In this regard, the cross-objectors/claimants have placed on record about 40 certificates of deceased Ashok Kapoor in power lifting and working in the department against sports quota. The Tribunal has failed to take into consideration the achievement of deceased Ashok Kapoor in the field of sports and the earning from the sports, as he was also working as a Chief Coach in power lifting at Punjabi University, Patiala, whereas, he was getting requisite amount of prize as well as other benefits as he was continuously participated in the tournaments and winning the prizes in the same. It was further submitted that deceased-Ashok Kapoor earned so many gold medals in various International and National Tournaments and was also eligible for promotion to the non-gazetted category of the post in view of the circular vide order No.13/Sports Policy/L/E-14 of the Punjab State Electricity Board submitted before the Tribunal. His income from the sports has not been included and in view of his extra-ordinary achievements in the fields of sports, there should be 100% increase towards the future prospects of the deceased.

However, this Court finds that in case, the amount is marginally increased on account of higher future prospects and deducted, on the other hand on account of the income tax while taking the income of the deceased, the amount would almost even out. Hence, this Court does not deem it

proper to accept the cross-objections filed by the claimants seeking enhancement.

In view of the above discussions, no interference is called for in the award dated 23.8.2014 passed by the Tribunal. Hence, both the appeal and the cross-objections are dismissed.

(NIRMALJIT KAUR)
JUDGE

3.9.2019
sharmila

Whether Speaking/Reasoned	:	Yes
Whether Reportable	:	No