

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

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**FAO No. 1385 of 2020 (O & M)
Date of decision : 20.3.2020**

National Insurance Company Limited

.....Appellant

Vs.

Amarjit Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Harjinder Singh, Advocate, for the appellant

Rajbir Sehrawat, J. (Oral)

This is an appeal filed by the Insurance Company of the offending vehicle, challenging the award passed by the Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal), in an accident case, whereby the petition has been allowed and the compensation has been awarded to the claimants/respondents.

The brief facts giving rise to the present appeal are that; the respondents had filed claim petition asserting therein that on 28.9.2016, Devender son of Avtar Singh; along with his cousin sister Daljeet Kaur; were coming to Village Sonkara, District Karnal on a motor cycle bearing registration No. HR-08N-2873, which was being driven by him at a moderate speed. Daljeet Kaur was the pillion rider. When they reached behind railway crossing, Dhand, then a tractor trolley bearing registration No. HR-21J-4708, being driven by respondent No.4 herein, in a rash and negligent manner, came from Dhand side and struck against the motor cycle. Due to the impact, Daljeet Kaur fell down and received serious injuries on vital parts.

Subsequently, she succumbed to her injuries. It was further asserted that Daljeet Kaur was doing embroidery work and earning Rs.5000/-per month. On the basis of these assertions, the claim petition was preferred.

On notice, the driver and the owner filed their joint written statement and contested the petition by asserting that no accident has taken place with their vehicle. A false story has been created only to get the amount of compensation. Further it was asserted that the amount claimed by the claimants was highly excessive and exorbitant one. The Insurance company/appellant herein, filed separate written statement alleging therein the connivance and collusion of the owner and driver with the claimants. Further it was asserted that the driver was not holding valid insurance policy and valid driving licence at the time of accident. The vehicle was being plied in contravention of the provisions of the insurance policy, as well as, the Motor Vehicles Act.

To prove their respective assertions, the parties led their evidence. After appreciating the evidence, the Tribunal held that the driver of the offending tractor was negligent and was responsible for causing accident. Still further, the Insurance policy and the driving licence were found to be valid. Accordingly, the claim petition was allowed and a total sum of Rs.15,82,000/- was awarded as compensation; on account of death of Daljeet Kaur. Aggrieved against the same, the present appeal has been preferred.

The solitary argument of learned counsel for the appellant is that; for the same accident FIR No. 104 dated 28.9.2016 was got registered at Police Station Dhand, against respondent No.1, under Sections 279, 336 and 304A IPC. In the said FIR, the complainant had mentioned the number of the

offending tractor as HR-08-6626. However, subsequently, due to collusion of the claimant, the driver and the police, the vehicle insured by the appellant has wrongly been involved. To involve the vehicle insured by the present appellant, the complainant had got recorded a supplementary statement before the police. Although on the basis of the said statement, the driver of the offending vehicle was involved in the criminal case. However, the fact remains that the alleged eye witness has changed the version earlier given in the criminal case. Still further, it is submitted that the collusion of the driver is also shown by the fact that although the police did not give any notice to him to appear before them, yet the driver himself had appeared and produced the tractor. Accordingly, it is submitted that the petition has wrongly been allowed. The Insurance Company has wrongly been put under unnecessary liability.

Having heard learned counsel for the appellant and having perused the file, this Court does not find any substance in the argument of counsel for the appellant. As is evident from the record, the claim petition has been supported by the eye witness. In the evidence in claim petition, the eye witness has categorically deposed and mentioned the number of the tractor insured by the appellant/Insurance Company, as the offending vehicle. Although a cross question has been put to this witness to the effect that he had given a different registration number in his initial version given to the police, however, the circumstances leading to this change have duly been explained by the witness. Although it is submitted by counsel for the appellant that the driver has even been acquitted of the charges in the criminal case, however, the evidence led or material collected during the proceedings of the criminal case or the result thereof, is not even relevant for the purpose of the decision of the claim

petition as such. The claim petition has to be decided as per the assertions in the pleadings and the evidence led on file. The same has rightly been decided by the Tribunal.

Another aspect of the matter is that it was the assertion of the appellant and the driver of the offending vehicle that no accident had been taken place with the vehicle insured by the appellant. The defendants in the claim petition were required to prove their assertion by leading positive evidence to this effect. However, the driver has chosen not even to appear as a witness before the Tribunal. Hence, the claimant has been deprived of the opportunity to cross examine on the assertions of the driver and the Insurance Company that their vehicle was not involved in the accident. The Tribunal has rightly drawn the adverse inference against them on this count.

The appellant/Insurance Company was also very much a party before the Tribunal. If it had taken a plea that accident was not caused by the vehicle insured by the appellant, then it is incumbent upon the appellant/Insurance Company to prove this assertion. However, the Insurance Company has not led any evidence in this regard. The least the Insurance Company could have done is that it could have summon the driver as a witness through the process of the Court; and if the appellant had a suspicion that the driver was colluding with the claimant, then the appellant could have put him to cross examination with the permission of the Tribunal. However, no such course was adopted by the appellant/Insurance Company.

Although it is also submitted by the counsel for the appellant that the offending vehicle, which was produced before the police, was mechanically examined and the same was not found in damage condition, therefore, it is

clear that this vehicle was not involved in the accident, however, as is clear from the record, that the mechanical inspection of this vehicle was conducted after 8 days of the accident. Therefore, the subsequent condition of the vehicle, which can very well be intervened by due repairs, is not relevant for the purpose of assessing the involvement of the vehicle in the accident.

No other argument was raised.

In view of the above, finding no merit in the present appeal, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

20.3.2020
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No