

In the High Court of Punjab and Haryana, at Chandigarh

F.A.O. No. 180 of 2021 (O&M)

Date of Decision: 02.07.2021

United India Insurance Company Limited

... Appellant(s)

Versus

Gurtek Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gopal Mittal, Advocate
for the appellant.

Anil Kshetarpal, J.

1. This appeal has been filed by the insurance company assailing the correctness of the award passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter after referred to as “the Tribunal”) on 25.11.2020.

2. The claimant/respondent No.1 to 5 filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the 1988 Act”) claiming compensation to the tune of ₹ 75,00,000/- on account of death of late Sh. Jaswant Singh in a motor vehicular accident on 12.12.2017. As per the case of the claimants, late Sh. Jaswant Singh was driving the motorcycle, whereas Smt. Gurtek Kaur (now his widow) was a pillion rider. At about 8.30/8.40 p.m., when they reached near PWD Rest House, a Mahindra XUV bearing registration No. PB-11-BE-0077, driven by Lakesh Kumar in a rash and negligent manner, came from the rear side and struck against the motorcycle and due to its impact, both the occupants fell

on the road and received multiple grievous injuries. Late Sh. Jaswant Singh was immediately taken to Rajindra Hospital, Patiala. However, the doctor referred him to the Post Graduate Institute of Medical Education and Research, Chandigarh (hereinafter referred to as “the PGI, Chandigarh”). Late Sh. Jaswant Singh succumbed to his injuries on 12.12.2017 at the PGI, Chandigarh. The driver of the offending vehicle ran away from the spot after stopping for some time.

3. The driver and the owner of the offending vehicle contested the petition and claimed their false implication. Whereas the insurance company filed a written statement claiming that the claim petition is the result of collusion between the claimants and the driver and the owner.

4. In order to prove their case, the claimants examined Suneet Kumar, Smt. Gurtek Kaur and Gurnam Singh. On the other hand, neither the driver nor the owner of the offending vehicle entered the witness box. The insurance company also did not lead any oral evidence. The learned Tribunal, after appreciating the evidence, found that the claimants have successfully proved their case and therefore, assessed the amount at ₹42,13,192/- as compensation. Smt. Gurtek Kaur (widow) was also held entitled to an additional amount of ₹40,000/-.

5. While filing the appeal, the insurance company has also filed an application under Order XLI Rule 27 CPC with a prayer to permit the recording of depositions of Lakesh Kumar-the driver and the Investigating Officer in additional evidence. It would be noted here that the respondents in the claim petition were granted as many as four opportunities to lead oral evidence. However, no oral evidence was led.

6. The learned counsel representing the insurance company sought an adjournment on 04.12.2019 to lead separate evidence. However, he closed his evidence on 17.12.2019 without leading any oral evidence.

7. From the reading of the application, it is apparent that the insurance company has failed to make out a case for additional evidence. The only reason pleaded in the application is that the award would cause wrongful loss to the appellant/insurance company. The aforesaid reason does not fulfill the requirements of Order XLI Rule 27 CPC. Still further, on the one hand, the insurance company has taken a stand that the claimants in collusion with the driver and the owner of the offending vehicle have filed the claim petition, whereas on the other hand, now the insurance company wants to examine the driver. The learned Tribunal had given sufficient opportunities to the driver and the owner as well as to the insurance company to lead their evidence but they failed to do so. Hence, this Bench finds that the insurance company has failed to make out a case for permission to lead additional evidence. Consequently, the application under Order XLI Rule 27 CPC for permission to lead additional evidence is dismissed.

8. Learned counsel appearing for the insurance company, while referring to the deposition of Smt. Gurtek Kaur and Gurnam Singh, contends that there are material contradictions and therefore, the involvement of the vehicle in question has not been proved. He further contends that the deposition of Gurnam Singh is not reliable/credible.

9. This Bench has considered the submissions. It may be noted here that the accident took place on 08.12.2017 at about 8.30 p.m. Late

Sh.Jaswant Singh was immediately taken to Rajindra Hospital, Patiala (a Government Hospital) from where he was referred to the PGI, Chandigarh. The postmortem report, issued by the PGI, Chandigarh, has been produced which clearly shows that the deceased died in a motor vehicular accident. In this case, the FIR was registered on 12.12.2017 on the statement of Smt. Gurtek Kaur wherein she stated that a white coloured vehicle had caused the accident. On 14.12.2017, the statement of Gurnam Singh was recorded by the police. He claimed that he was an eye-witness and was instrumental in shifting late Sh. Jaswant Singh to the hospital. He, after coming to know that late Sh. Jaswant Singh has died, went to the police station and made a statement. Both Smt. Gurtek Kaur and Gurnam Singh have appeared in evidence. No doubt, Smt. Gurtek Kaur has stated that the police told her the registration plate number as well as the names of the driver and the owner of the offending vehicle, however, this fact is not incorrect. Gurnam Singh, the other eye-witness, did not state that he informed Smt. Gurtek Kaur in this regard. Still further, the accident had taken place in the month of December, 2017 at about 8.30 p.m. Smt. Gurtek Kaur was travelling as a pillion rider with her husband late Sh. Jaswant Singh. The offending vehicle had come from behind and struck the motorcycle in question. Thus, Smt.Gurtek Kaur had no occasion to note down the registration plate number or the type of the offending vehicle. The statement of Gurnam Singh appears to be natural. He has stated that he is a Municipal Councillor and was driving on the same road at the time of the accident and he witnessed the accident. No doubt, in the cross-examination, he has stated that he did not take the injured to the hospital or called the ambulance. However, he

went on to explain that the other persons present, who had gathered at the site of the accident, called the ambulance and since he had to purchase some goods, therefore, he left the spot. He has explained that he had shifted the injured from pucca road to the road berm. He left the spot only after the other persons present had made the arrangements. The statement of Gurnam Singh cannot be discarded only on the ground that he did not call the ambulance or inform the police immediately.

10. Still further, the insurance company has not led any evidence to prove its plea of collusion between the claimants on the one hand and the owner and driver on the other hand.

11. Keeping in view the aforesaid facts, no ground to interfere in the award passed by the learned Tribunal is made out. Hence, the appeal is dismissed.

12. However, it has been noticed that there is a typographical in the amount of the award. In para 34 of the award, it has been held that five claimants are entitled to equal share in the compensation of ₹42,13,192/-. The widow shall be entitled to an additional amount of ₹40,000/- towards the loss of consortium. However, in para 39 of the award, due to a typographical error, the amount stated is ₹43,13,192/-. The insurance company shall be at liberty to file an application before the learned Tribunal for correcting the aforesaid error.

(Anil Kshetarpal)
Judge

July 02, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No