

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

FAO No.2458 of 2018 (O&M)

Date of decision: 15.09.2021

Reliance General Insurance Co. Ltd.

..Appellant

Versus

Ami Ram and ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

Mr. Rohit Rana, Advocate for
Mr. Kunal Dawar, Advocate
for respondent No.1 and 2.

Mr. Sumit Gupta, Advocate
for respondent No.3 and 4.

ANIL KSHETARPAL, J.

Through this appeal, the insurer calls into question the correctness of the award of Rs.12,04,000/- passed by the Motor Accidents Claims Tribunal, Palwal, (in short 'the Tribunal') while allowing a petition under Section 166 of the Motor Vehicles Act, 1988.

Some facts are required to be noticed. On the complaint of Ved Ram (son of Samwaliya), an FIR No.127, dated 30.03.2017, was registered alleging that late Sh. Kuldeep and Hoshier Singh were coming to their village from Hathin on a motorcycle driven by late Sh. Kuldeep while Hoshier Singh was on the pillion when some unknown vehicle caused the accident by hitting

Sukhram (son of Samwaliya and the brother of the first informant) reached at the spot and shifted them to Palwal Hospital where after looking at the condition of Kuldeep, the doctor referred him to Nalhad Hospital, Nuh, where he died during treatment. The FIR was registered at 12.20 hours on 30.03.2017 whereas the alleged accident occurred at 7.30 pm on 29.03.2017. While filing the claim petition under Section 166/140 of the 1988 Act, it was alleged that Kuldeep and Hoshier Singh sustained serious injuries and both of them were shifted in an ambulance to the Government Hospital, Palwal. Although, a copy of the challan has not been exhibited, however, it is a part of the record. From reading thereof, it is not possible to discern as to how the police reached at the conclusion that the accident was caused due to rash and negligent driving of Hari Kishan son of Rati Ram (respondent No.3). The respondent contested the claim petition by stating that no accident with tractor No.HR-30-Q-2423 took place. The claimants, in order to prove their case, produced a copy of the FIR as Ex.P1 and examined Hoshier Singh (son of Vikram) as PW3. In examination in chief, he stated that he suffered grievous injuries and was shifted to the Government Hospital, Palwal. However, on being cross examined by the learned counsel representing the insurer, he stated as under:-

“Police did not recorded by statement with regard to the accident in question till date. It is also correct that neither I moved any complaint in written nor given any oral statement to the policed with regard to accident in question. I was going

on motorcycle but I do not remember its number and the same was driven by Kuldeep and myself was the pillion rider on it. Myself and Kuldeep sustained injuries in this accident. I was not medically examined by any doctor. Volunteered I obtained desi treatment from Hathin. I cannot tell the name of the person who allegedly treated me. Kuldeep has shifted in GH, Palwal. It is correct that Kuldeep was not shifted by me to any hospital. It is correct that I never disclosed the alleged no. of offending vehicle to the police as police had not enquired from me with regard to the accident. I do not know who lodged the FIR with regard to the accident in question. It is correct that no other person was present at the time of accident except myself and Kuldeep. I remained at the spot after the accident about 1½ hours. Kuldeep had shifted to the hospital after 10 minutes of the accident. I do not know whether Kuldeep was holding any driving licence or not at the time of accident. I do not know whether the same was insured or not. I do not know the owner of the vehicle. The motorcycle was driven at the speed of 20 KMPS. I had not notice how may person were sitting in the tractor-trolley. Motorcycle was damaged from back portion however tractor-trolley was not damaged in this accident. The attached trolley loaded with bricks after the dala about 3-4 feet higher. The bricks were not fallen from the trolley. The person who were sitting in the trolley did not sustained any injuries in this accident. It is correct that the persons who were sitting upon the tractor also did not sustained injuries in this accident. It is incorrect to suggest that no such accident ever took place in my presence or that we have planted the vehicle in collusion with the respondent No.1 and 2 in order to get compensation illegally. It is incorrect to suggest that the accident if any had taken place due to the fault of deceased himself while driving his motorcycle in rash and negligent manner and struck the same with some unknown vehicle and it was a case of hit and run. Kuldeep was my cousin brother. It is incorrect that Kuldeep was not wear any helmet. It is incorrect to suggest that the contents of my affidavit are false and I am deposing falsely. It is incorrect that the deceased was not holding any D/L.”

As already noticed, the Tribunal has held that respondent No.3

was rash and negligent in driving the tractor, therefore, the insurance company is liable.

Heard the learned counsel for the parties at length and with their able assistance perused the paper book and the record of the Tribunal.

The learned counsel representing the appellant while referring to the statement of Hoshiar Singh contends that the claimants have failed to prove the involvement of the tractor as also the rash and negligent driving on the part of respondent No.3. He further contends that the Tribunal has erred in ignoring vital aspects of the case. Per contra, learned counsel for the claimants has submitted that once the police, after completion of investigation, has filed a challan against respondent No.3, the Tribunal has correctly passed the award in favour of the claimants.

From a perusal of the FIR, claim petition as well as the examination in chief of PW3 Hoshiar Singh-the alleged eyewitness, it is apparent that he suffered grievous injuries and was shifted along with late Sh. Kuldeep to the Government Hospital, Palwal. However, in the cross examination, he has stated that he was never medically examined by any doctor and he obtained desi (home remedies) treatment from Hathin. Moreover, he failed to disclose the person who treated him. It is the case of the claimants that Hoshiar Singh also suffered grievous injuries along with late Sh. Kuldeep and they both were shifted to Government Hospital, Palwal, however, no record of treatment at Palwal has been produced. Moreover,

regard to the accident till the date of deposition i.e. 12.02.2018 and he has never moved any complaint or given any oral statement to the police. He has also not disclosed the vehicle number to any other person. In such circumstances, careful examination of the final police report assumes significance. As already noticed that the aforesaid final report has not been proved on file, however, its copy is available. On perusal thereof, it is apparent that the police while submitting a final report, has failed to disclose the material collected to conclude the involvement of Hari Kishan respondent No.3. Further, on a careful reading of the final report, it is apparent that the police has failed to record any material or disclose as to how it reached at the conclusion that tractor No.HR-30-Q-2423 was involved in the accident and was driven rashly and negligently by the driver Hari Kishan. It is the case of Hoshiar Singh that he was sitting on the pillion when the tractor hit them from behind and the motorcycle was damaged from its rear side. Obviously, if Hoshiar Singh was sitting on the pillion seat and the tractor hit them from behind, ordinarily, Hoshiar Singh would have suffered serious injuries, however, no material has been brought on this aspect. Furthermore, Hoshiar Singh has admitted that he did not shift his cousin Kuldeep to the hospital. Still further, as per the FIR, the claim petition and the statement of Hoshiar Singh in examination in chief, he along with Kuldeep were shifted to the Government Hospital, Pawal, in an ambulance. However, in the cross

examination, he stated that he remained at the place of accident for one and half hour after the accident. In addition, the statement of Hoshiar Singh does not inspire confidence. On careful perusal of the statement, it becomes apparent that he was not present at the time of accident. The claimants have not produced any other evidence apart from the statement of the alleged eye witness Hoshiar Singh who cannot be believed in the absence of corroboration. The claimants have also failed to examine the investigating officer to show as to how the police came to the conclusion with regard to involvement of respondent No.3.

In the considered view of this Court, the Tribunal has committed an error in overlooking the aforesaid aspects of the case. The Tribunal further committed error while concluding that from the statement of Hoshiar Singh, it is proved that the accident in question was the result of rash and negligent driving of respondent No.3 while driving tractor HR-30-Q-2423. The Tribunal committed an error in accepting the statement of Hoshiar Singh in the absence of any corroborating evidence.

Keeping in view the aforesaid facts, this Bench is left with no choice but to accept the appeal while setting aside the award passed by the Tribunal. However, since, late Sh. Kuldeep has died in an automobile accident, hence, the claimants shall be entitled to apply for compensation as

With these observations, the appeal is allowed.

All the pending miscellaneous application(s), if any, are also disposed of.

15.09.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE