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

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**FAO No. 7096 of 2019 (O & M)
Date of decision : 15.12.2021**

Future General Insurance Company Limited (correct name is Future Generalli India Insurance Company Limited)

……Appellant

Vs.

Manjit Kaur and others ……Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Pradeep Kumar, Advocate, for the appellant

Mr. Deepak Sharma, Advocate, for respondents No.1 to 5

Rajbir Sehrawat, J. (Oral)

The present appeal has been filed by the appellant Insurance Company (respondent No.3) challenging the award dated 20.8.2019, passed by the Motor Accident Claims Tribunal, Mohali (in short 'the Tribunal'), vide which an amount of Rs.25,25,000/-was awarded to the claimants (respondents herein) on account of death of Bahadar Singh @ Bahadur Singh in a motor vehicular accident.

The parties herein are being referred to as they were described in the claim petition.

The brief facts of the case, as mentioned in the award passed by the Tribunal are; that on 12.11.2018 Bahadar Singh @ Bahadur Singh was travelling on his motor cycle bearing registration no. PB65-AK-9322 and Dev Dutt was sitting as a pillion rider. They were coming from Panchkula towards Zirakpur. Bhupinder Singh was travelling on another motor cycle bearing registration no. PB65-V-0452. At about 11:05 p.m., when they reached in front of Shagun Hotel, Baltana, then a car bearing registration no. HR03-X-7829, being driven by respondent no.1 in a rash and negligent manner and at a very high speed, struck against the motor cycle of Bahadar Singh. As a result, the occupants of the motor cycle fell down and they sustained injuries. Bahadar Singh was shifted to Civil Hospital, Dera Bassi. However, he died while on the way. On account of the said accident, FIR No. 43 dated 13.11.2018 was also got registered under Sections 279, 304A, 427 IPC at Police Station Dhakoli. With these facts, the widow, the minor children and the parents of the deceased filed claim petition asserting therein that the deceased was of the age of 29 years. He was serving in a factory namely; Punjab Chemicals and Crop Protection Limited, Dera Bassi. He was drawing salary of Rs.11,460/- per month with over time; total amounting to Rs.13,000/-per month. Beside this, he was also engaged in private business of selling milk and earning Rs.20,000/- per month from the same. Thus, monthly income of the deceased was claimed to be Rs.33,000/-. Accordingly, the compensation was claimed.

Pursuant to the notice issued by the Tribunal, the owner and the driver of the offending vehicle appeared before the Tribunal and filed their written statement, disputing the maintainability of the petition. The averments made in the petition on merits were also controverted. It was further asserted by respondents No.1 and 2 that no accident had taken place due to any rash and negligent driving of the vehicle by respondent No.1 The case put up by the claimants was fabricated. Respondent No.3-Insurance company filed separate written statement and it was claimed therein that the respondent was not having a valid and effective driving licence at the time of accident. The offending vehicle was being driven in contravention of the terms and conditions of the Insurance policy. The written statement further disputed the facts mentioned in the claim petition qua the age and income of the deceased. Not only that, even the factum of the accident, as such, was denied by the respondent-Insurance company.

To substantiate their assertions, the claimants examined PW-1/the widow of the deceased and Bhupinder Singh as PW-2, as the eye witness to the occurrence. These witnesses proved the factum of the evidence, as well as, the involvement of the offending vehicle in the accident. On the other hand, respondents No.1 and 2 stepped into the witness box as RW-1 and RW-2 and they deposed on the lines of their assertions taken in the written statement that no accident had taken place. Further, the respondent No.3-Insurance company did not lead any evidence before the Tribunal.

After considering the pleadings and respective evidence of the parties, the Tribunal awarded the compensation of Rs.25,25,000/- to the claimants. It is against this award that the present appeal has been filed by respondent No.3-Insurance company.

Arguing the case, learned counsel for the appellant has submitted that the claimants had put up a false story just to grab the compensation. It is further submitted that although the FIR; qua the accident; was registered on the very next day and in that; even the number of the vehicle was mentioned, however, the name of the driver was not mentioned in the FIR. The name of the driver was involved during the investigation by the police after a delay of 12 days. The claimants did not even examine the investigating officer of the case to prove the fact as to how the name of the driver was involved in the matter. The counsel has relied upon the judgment rendered in **'Oriental Insurance Company Limited v. Meena Variyal and others; 2007 (2) RCR (Civil) 698'** and the judgment rendered by this Court in **'Kamla Devi and others v. Dharampal and others; 2016 (2) PLR 127'**. The counsel has further submitted that, in fact, it is the case of collusion between the owner of the vehicle and the claimant. Otherwise, the owner would have known the name of the driver and the police would have come to know of the name of the driver immediately on contacting the owner and not after 12 days. Hence, the liability of payment deserves to be shifted to the owner of the vehicle.

No other argument was raised qua any other aspect.

On the other hand, counsel for the respondents has submitted that the assertions made in the claim petition and the facts and situation leading to the accident have duly been proved before the Tribunal by leading positive evidence. The eye witnesses of the accident have been duly examined and all other aspects; relating to the age; and the income of the deceased have also been proved on record. Not only that, even the driver and owner of the offending vehicle appeared in the witness box and although they tried to negate the accident itself, however, they could not succeed in their attempt. Otherwise also, once the eye witness had proved the involvement of the vehicle, no scope is left for any other conclusion on the basis of any other perceived circumstances. Hence, it is submitted by counsel for the respondents/claimants that the award has rightly been passed. The present appeal deserves to be dismissed.

The owner and the driver of the vehicle have not come present despite having been served the notice of the appeal. Hence, this Court is deprived of the benefit of assistance of the owner and the driver.

Having heard the counsel for the parties and having perused the record, this Court does not find substance in the arguments of the counsel for the appellant. It is not even disputed that the FIR qua the accident in question was recorded on the very next day; and in the said FIR, the registration number of the offending vehicle had come on record. The eye-witness of the accident has also been examined as witness. He has proved all the aspects of the case including the factum of the accident and the involvement of the offending vehicle in the same. Hence, the claimants have successfully proved the fact that the deceased Bahadar Singh died in the accident, caused by the offending vehicle, as named by the claimants. Although registration of FIR is not a *sin qua non* for maintaining a claim petition in a motor accident claim case, however, in the present case, the FIR was also registered on the very next day. Not only this, the FIR does contain the number of the offending vehicle as well. Still further, it is not even disputed that respondent No.1 is facing criminal trial on account of this fatal accident. Hence, the findings recorded by the Tribunal in this regard cannot be faulted on any count.

Although counsel for the appellant has tried to dispute the liability by submitting that the factum of respondent No.1 being actual driver of the offending vehicle has not been proved on record, and that the owner was colluding with the claimants, however, even this argument of the counsel for the appellant is liable to be noted only to be rejected. The involvement of the offending vehicle has been duly proved on record by the eye witnesses. The owner and driver of the said vehicle have appeared before the Tribunal as witnesses. They have not admitted the factum of the accident, as such, rather they are trying to deny the accident in toto. Therefore, any possibility of their collusion with the claimants is ruled out from this fact itself. So far as the assertion of respondent No.1 not being the driver of the offending vehicle at the relevant time is concerned, the Insurance company has not led any evidence, whatsoever, on record; to substantiate this assertion; by any means. Not only this, the driver and the owner of the offending vehicle while appearing as RW-1 and RW-2 before the Tribunal, have not even been cross examined on this aspect by the Insurance company. Hence, there is neither any positive evidence led by the Insurance company nor there is any cross examination of the owner of the vehicle in question qua the respondent No.1 not being a driver at the time of accident. Hence, this argument does not have any force.

Although counsel for the appellant has relied upon the judgments rendered by the Supreme Court in **Oriental Insurance Company's** case (supra) and by this Court in **Kamla Devi's** case (supra), however, this Court finds that the said judgments are not applicable to the facts of the present case. In case of Oriental Insurance Company (supra), the driver had not even appeared and owner had not filed written statement. In the present case, as mentioned above, the claimants have duly examined the eye-witness to prove the involvement of vehicle. On the other hand, no evidence of any kind has been led by the appellant Insurance company to prove its assertion that respondent No.1 was not the driver at the relevant time. Even the owner has not been cross examined on this aspect. Hence, it does not lie in the mouth of the Insurance company now to dispute their liability by making an attempt to create a new story; that the vehicle in question was driven by somebody else who was not having the valid and effective driving licence at the relevant time and, therefore, respondent No.1 was substituted in his place. There is nothing on record to prove these assertions. So far as the claimants are concerned, they are required only to tell the number of the offending vehicle. It is none of their business to prove as to who was driving the vehicle. Since FIR is not even a *sin-qua-non* for filing of the claim petition, therefore, no mandatory liability upon the claimants qua summoning the Investigating Officer of the criminal case as a witness in the claim petition can be read into the law of evidence, by any means.

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

All the pending applications stands disposed of as such.

(RAJBIR SEHRAWAT)
JUDGE

15.12.2021
Ashwani

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