IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1363 of 2020 (O&M)
Date of Decision: 18.04.2022

United India Insurance Company Ltd. ....Appellant

Versus

Smt. Manju alias Manju Sharma and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.P. Gupta, Advocate for the appellant.

ALKA SARIN, J.

CM-3910-CII-2020

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 40 days in filing the present appeal.

For the reasons stated in the application, the same is allowed. The delay of 40 days in filing the present appeal is condoned.

FAO-1363-2020 (O&M)

The present appeal by the Insurance Company has been filed against award dated 28.08.2019 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal').

The brief facts to the present *lis* are that the claimant-respondent nos.1 to 3 filed a claim petition on the ground that on 13.03.2018 Shammi Kumar was going on an Activa on the left side of the road at a moderate speed from his residence towards Kamani Chowk for work. At about 08/08.10 a.m., when he reached near the turning of Sarojani Colony on Jagadhari-Delhi Road, a Tipper bearing registration no.HR-37-D-3918 (hereinafter referred to as the 'offending vehicle') came from the rear side at a high speed and in a rash and negligent manner without blowing any horn and struck against the Activa. Shammi Kumar (hereinafter referred to as the 'deceased') fell on the road and the offending vehicle ran over him, as a result of which he received multiple grievous head injuries and died at the spot. The driver of the offending vehicle (respondent no.5 herein) ran away from the spot. FIR No.133 dated 13.03.2018 under Sections 279 and 304-A of the Indian Penal Code, 1860 was registered at Police Station Yamuna Nagar by one Anil Kumar. The claimants claimed a compensation of ₹60 lakhs along with interest @ 18% per annum.

In a joint written statement filed by respondent nos.4 and 5 herein i.e. owner and driver of the offending vehicle, respectively, it was denied that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle and it was further alleged that the accident took place due to the negligent driving of the deceased who was driving the Activa at a high speed.

The appellant-Insurance Company filed a separate written statement taking the usual pleas that the driver of the offending vehicle was not having a valid driving licence and that the offending vehicle was not having a valid route permit and registration and fitness certificates at the time of the accident. Further, the factum of the accident was also denied.

From the pleadings of the parties, the following issues were framed :

1. Whether Shammi Kumar died in the Motor Vehicular Accident which took place at about 08.00/08.10 a.m. on 13.03.2018 within the jurisdiction of PS Yamuna Nagar on account of rash and negligent driving of Tipper bearing

No.HR-37-D-3918 by respondent no.2 Nirmal Singh as alleged ? OPP

2. If issue no.1 is proved, whether the petitioner is entitled for compensation? If so, to what extent ? OPP

3. Whether the respondent no.2 was not having legal and valid driving licence at the time of alleged accident ? OPR (Respondent no.3 Insurance Company).

4. Whether the offending vehicle bearing registration no.HR-37-D-3918 was not having valid registration certificate, fitness certificate, route permit and insurance at the time of alleged accident ? OPR

5. Whether the claim petition is bad for non-joinder and mis-joinder of necessary parties ? OPR

6. Relief.

On issue no.1, the Tribunal, on the basis of the evidence and statement of eye-witness, PW-4 Robind Kumar, held that the accident had occurred with the offending vehicle as a result of the same being driven in a rash and negligent manner. The Tribunal awarded a compensation of ₹28,70,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

The sole argument raised by learned counsel for the appellant-Insurance Company is regarding factum of the accident. Learned counsel for the appellant-Insurance Company would contend that the eye-witness, PW-4 Robind Kumar, though is stated to be an eye-witness of the accident, however, he had not got his statement recorded on the day of the accident though it has been stated in his evidence by way of affidavit that the police had come to the spot in his presence. It is further the contention that the FIR was lodged against an unknown vehicle.

I have heard learned counsel for the appellant-Insurance Company.

In the present case admittedly an FIR was lodged and respondent nos.4 and 5 (owner and driver) are facing trial. In the written statement filed by respondent nos.4 and 5 the factum of accident was not denied. However, it was stated that the accident took place because of the rash and negligent driving of the deceased. The argument raised by learned counsel for the appellant-Insurance Company that from the evidence of the eye-witness, PW-4 Robind Kumar, it is clear that the present is a false and fabricated case, cannot be accepted. Perusal of the evidence by way of affidavit and the cross-examination of the eye-witness, PW-4 Robind Kumar, shows that though the police did come to the spot in the presence of the said eye-witness, however, they did not record his statement or any other person's statement and it was only after two days that the said witness was called to the police station for recording of the statement.

Learned counsel for the appellant-Insurance Company has not been able to point out anything from the cross-examination of the eye-witness, PW-4 Robind Kumar, which would even remotely point out that the accident had not taken place with the offending vehicle. Further, respondent no.5, the driver of the offending vehicle, did not deny the factum of the accident in his written statement. He also did not step into the witness-box, in order to rebut the version of the claimants. There is nothing on the record from which it could be concluded that the eye-witness, PW-4 Robind Kumar, was a planted witness.

No other point has been urged by learned counsel for the appellant-Insurance Company.

In view of the pleadings and evidence on the record and the findings recorded, I do not find any illegality or infirmity in the impugned award passed by the Tribunal. The present appeal is without merit and is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

18th April, 2022
jk

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO