

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1141 of 2020 (O&M)

Reserved on : 7th December, 2022
Date of decision : 13th December, 2022

United India Insurance Company Ltd.
... Appellant

Versus

Sona & others
... Respondents

CORAM: HON’BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Ashwani Talwar and Mr. Satpal Dhamija, Advocates
for the appellant.

Mr. Chanderhas, Advocate for respondents No.1 to 3.

Mr. S.S. Mor, Advocate for respondents No.4 and 5.

MANJARI NEHRU KAUL, J.

The Insurance Company is before this Court to impugn the award dated 01.11.2019 passed by the learned Motor Accident Claims Tribunal, Jhajjar, wherein the following compensation was awarded to the claimants on account of the death of Arjun Dev (hereinafter referred to as, ‘the deceased’) in a motor vehicular accident which took place on 25.11.2017:-

Sr. No.	Head	Amount
1.	Monthly income	₹ 8,000/-
2.	Future prospects @ 40 %	₹ 3,200/-
3.	Deduction towards personal expenses @ ½	₹ 5,600/-
4.	Annual dependency (5600 x 12)	₹ 67,200/-
5.	Multiplier	17
6.	Loss of dependency (67,200 x 17)	₹ 11,42,400/-

7.	Loss of estate	₹ 15,000/-
8.	Funeral expenses	₹ 15,000/-
	Total compensation	₹ 11,72,400/-

The amount of compensation along with interest @ 6% p.a. was ordered to be paid by the respondents in the claim petition, jointly and severally. Claimant No.1-Sona (mother of the deceased) was held entitled to the whole amount of compensation, whereas claimants No.2 and 3 namely Rohtash and Sonu (father and elder brother) were held not entitled to the amount of compensation.

As per the pleaded case of the claimants in their claim petition filed under Section 166 of the Motor Vehicles Act, 1988, on the fateful day i.e. 25.11.2017 at about 12:00 p.m. when the deceased was riding his motorcycle bearing registration number HR-12M-2154 on the Jhajjar-Bahadurgarh road near village Kablana, he met with an accident with an unknown vehicle and suffered injuries. Some passersby shifted him to Civil Hospital, Jhajjar. On being informed, the elder brother of the deceased, Sonu (hereinafter referred to as, 'the complainant'), reached the hospital. On account of the serious condition of the deceased, he was referred to PGIMS Rohtak, however, he succumbed to his injuries during treatment. An FIR No.1048 dated 26.11.2017 under Sections 279 and 304A IPC was registered at Police Station Jhajjar on the statement of the complainant against driver of an unknown vehicle. It was claimed that subsequent to the registration of the FIR, driver of the offending vehicle, Basti Ram respondent No.4,

along with some respectables came to the village of the deceased where he admitted causing the accident in question with the offending vehicle i.e. TATA Canter bearing registration number HR-47C-3318 and also tried to effect a compromise with the family of the deceased. The complainant, thereafter, got his supplementary statement recorded before the police on 12.12.2017 wherein he alleged that the accident in question had been caused on account of the rash and negligent driving of respondent No.4 while he was driving the offending vehicle. It was also further claimed that after the accident in question, on 04.12.2017, one person by the name of Bijender, who was working in his fields, adjoining to the place of accident, got his statement recorded under Section 161 Cr.P.C. before the police, wherein he stated that respondent No.4 was responsible for the accident as he was driving the offending vehicle in a rash and negligent manner.

The learned Tribunal allowed the claim petition after holding that the death of the deceased had occurred on account of rash and negligent driving of respondent No.4 who was driving the offending vehicle.

Learned counsel appearing for the appellant Insurance Company has vehemently argued that on the face of it, it is a case wherein the offending vehicle has been falsely planted by the claimants in collusion with the police, just to extract compensation. Learned counsel has still further argued that the sequence of events clearly points to the accident in question being a 'hit and run' case. While

inviting the attention of this Court to the FIR, which was registered on the following day of the accident by the complainant, it has been urged that not only had it been stated therein that the deceased had been hit by an unknown vehicle but no description whatsoever of the offending vehicle was given. It was also submitted that it was not the case of the complainant that he had witnessed the accident, rather it was a matter of record that the deceased had been shifted to the hospital by passersby; it was later-on that complainant had been informed about the accident of his brother. Learned counsel further argued that in the above circumstances, more so when no description of the offending vehicle had been given in the FIR, there was no occasion for anyone, much less respondent No.4, to approach the family of the deceased for effecting a compromise. It was further submitted that strangely Bijender, out of nowhere, was introduced after ten days of the accident as an eye-witness, who not only gave the registration number of the offending vehicle but also allegedly stated that respondent No.4 had caused the accident in question while driving the offending vehicle in a rash and negligent manner. Learned counsel submitted that said Bijender was stated to be working in the fields when the accident in question took place, however there was no mention made qua his presence at the place of accident, anytime prior to 04.12.2017 and rather the consistent stand of the complainant was that an unknown vehicle had hit the deceased and thereafter fled away from the spot. It was further argued that the complainant made a supplementary

statement qua the involvement of the offending vehicle on 12.12.2017 i.e. much after the statement under Section 161 Cr.P.C. of Bijender and that all these circumstances, when seen in totality, clinchingly proved that the offending vehicle was in fact not involved in the accident in question. It was lastly argued by the learned counsel that said Bijender, the alleged eye-witness, did not even step into the witness box to prove the involvement of the offending vehicle in the accident in question and that the accident in question was caused due to rash and negligent driving of respondent no. 4, which created a huge dent in the case of the claimants.

Per contra, learned counsel appearing for the claimant/respondents vehemently opposed the prayer and submissions made by the counsel opposite. Learned counsel submitted that there was no question at all of any collusion between the claimants and the police. It was submitted that complainant, while stepping into the witness box, had categorically deposed that soon after the accident in question, respondent No.4, who was none other than the driver of the offending vehicle, had come along with respectables to their house wherein he had not only admitted to his fault but also tried to effect a compromise with them. Learned counsel still further submitted that Bijender was an eye-witness to the accident in question, as at that relevant time he was working in his fields. He further submitted that while getting his statement recorded under Section 161 Cr.P.C., Bijender gave a vivid account of the manner in which the accident in

question occurred. Learned counsel submitted that said Bijender was a natural witness as his presence at the spot could not have been doubted and still further, he had no axe to grind against the owner and driver of the offending vehicle. It was still further submitted that no doubt said Bijender did not step into the witness box to depose, however, it was on account of his death that his evidence could not be recorded. Learned counsel submitted that PW-2 Head Constable Ashok Kumar, who recorded the statement under Section 161 Cr.P.C. of the said eye-witness Bijender, however stepped into the witness box and proved the said statement. Hence, non-examination of Bijender could not be said to be fatal to the pleaded case of the claimants.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court finds force in the submissions made by the learned counsel for the appellant Insurance Company with respect to the involvement of the offending vehicle being suspect in the accident in question and also that the claimants failed to prove that the accident in question was caused due to rash and negligent driving of respondent no. 4-Basti Ram.

Admittedly, the FIR was registered on the following day of the accident i.e. 26.11.2017, at the instance of the complainant, who is the brother of the deceased, wherein he categorically alleged that his brother had met with an accident with an unknown vehicle. The complainant while stepping into the witness box as PW-1 had

categorically deposed that he had not personally witnessed the accident in question.

It is a matter of record that neither was the make of the vehicle nor the registration number or even any other details, like colour of the vehicle etc., mentioned in the FIR. It was only on 04.12.2017 that one Bijender, claiming himself to be an eye witness of the accident, got his statement under section 161 Cr.P.C recorded wherein the identity and registration number of the offending vehicle was revealed for the first time. However, strangely the complainant in his deposition stated that a few persons including the driver of the offending vehicle approached the claimants for a compromise soon after the accident in question. It indeed raises eyebrows and does not appeal to the prudence as to why and in what circumstances the driver of the offending vehicle would have chosen to approach the family of the deceased to confess his involvement in the accident in question when admittedly till that point in time neither the identity of the offending vehicle had been revealed to the police nor was there any suspicion raised qua the involvement of the offending vehicle.

The least claimants could have done to substantiate the aforesaid fact was to examine at least one of the respectables who accompanied the respondent No.4 to their house for settlement. Even if for the sake of arguments it is believed that the respondent No.4 had actually approached the complainant and since Bijender had also disclosed the identity of the offending vehicle in his statement under

recorded under Section 161 Cr.P.C. on 04.12.2017, this Court fails to comprehend and rather finds it extremely strange as to why then the complainant chose to keep quiet and not intimate the police about the involvement of the offending vehicle until, as late as 12.12.2017, i.e. the date when he got his supplementary statement recorded.

Furthermore, the identity of the offending vehicle was disclosed by the alleged eye-witness Bijender in his statement recorded under Section 161 Cr.P.C. on 04.12.2017 wherein he also stated that the accident in question occurred due to rash and negligent driving of the respondent no. 4. However, the said eye-witness Bijender died even before he could step into the witness box. In the circumstances, he could not be confronted with his statement under Section 161 Cr.P.C. and the truthfulness of his statement could not be tested on the anvil of cross examination. It needs to be observed here that statement under Section 161 Cr.P.C. made before the police is an unsigned statement and is not a substantive piece of evidence. It can be used only for the limited purpose for contradicting the witness who made it. Hence, in the absence of the witness stepping into the witness box even if on account of his death, the statement recorded under Section 161 Cr.P.C. would carry no evidentiary value.

No doubt, it was argued that PW-2 HC Ashok Kumar, while stepping into the witness box, did depose that he had recorded statement of the eye-witness Bijender, however, that would not by itself be a sufficient proof of the accident in question having occurred due to

the rash and negligent driving of respondent no. 4. It would be pertinent to observe here that for a claim petition, filed u/s 166 MV act, to succeed, it is sine qua non to prove that the accident due to which the death/injury occurred, took place due to the rash and negligent driving of the driver of offending vehicle. No doubt the proceedings before Motor Accident Claims Tribunal are summary in nature and the claimants are not supposed to prove their case beyond reasonable doubt as in criminal cases, however, the Court, in absence of any evidence at all, cannot by itself infer that the offending vehicle was in fact involved and the accident in question took place due to rash and negligent driving of the driver of the offending vehicle. The rashness and negligence cannot be presumed but has to be proved either by examination of an eye witness or by leading any other cogent evidence. In the present case the claimants have failed to establish not only the involvement of the offending vehicle but also that the accident in question occurred due to the rash and negligent driving of respondent No.4.

As a sequel to the above, the instant appeal is allowed and the impugned award dated 01.11.2019 is set aside.

(MANJARI NEHRU KAUL)
JUDGE

December 13, 2022

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No