

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

FAO No. 4520 of 2013 (O&M)

Date of decision: 02.08.2022

Oriental Insurance Company Ltd.

...Appellant

Versus

Sarvesh Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Neeraj Khanna, Advocate
for the appellant-Insurance Company.

Mr. S. K. Chauhan, Advocate
for the respondents-Claimants.

ARVIND SINGH SANGWAN, J. (Oral)

Challenge in this appeal is laid to the award dated 01.06.2013 passed by the Motor Accident Claims Tribunal, Narnaul (*for short 'Tribunal'*), vide which a compensation of Rs. 32,15,425/- was awarded to the respondents-claimants on account of untimely death of Anil Kumar.

Brief facts of the case are that on 05.08.2010, Anil Kumar (since deceased) along with respondent No. 8 Jitender Singh was going to on a motorcycle bearing registration number HR-16-F-6691, being driven by respondent No. 8, and met with an accident on account of rash and negligent driving of respondent No. 8 Jitender Singh. Anil Kumar sustained injuries in the accident and later on, he died on 20.08.2010 while under treatment at Base Hospital, Delhi Cantt. On account of death of Anil

Kumar, a claim petition was filed, in which respondent No. 8 has contested the same by filing the written statement and stating that in fact no accident has taken place. Similar stand was taken by the Insurance Company i.e. the present appellant that no accident has taken place.

The Tribunal framed issue No. 1 with regard to factum of accident and whether it was caused due to rash and negligent driving of Jitender Singh, resulting into death of Anil Kumar. The Tribunal, on appreciation of evidence led by the claimants, recorded its findings as under:

“7. In order to prove this fact that Anil Kumar son of Sajjan Singh died in a road accident, which took place on 05.08.2010, near Satnali turn, in the area of village Satnali (Police Station Satnali) due to rash and negligent driving on the part of respondent No. 1, the driver of vehicle bearing Regn. HR-16F-6691; Leela Singh, the eye witness of the accident stepped into the witness box as PWI and deposed by way of his affidavit Ex.PW1/A that on 05.08.2010 he was standing on Satnali turn at about 6.00 p.m. and he saw that Anil Kumar (since deceased) along with respondent No. 1 was coming on motorcycle bearing No. HR-16F-6691. which was being driven by respondent No. 1 in a rash and negligent manner and at a very fast speed, without observing traffic rules and when they reached near turn of Satnali, the motorcycle fell down on the road due to rash and negligent driving of respondent No. 1 and Anil Kumar also fell down on the road and sustained multiple and grievous injuries on his person. He has further deposed that Anil Kumar (since deceased) belonged to his village and he personally knew him and after the accident he informed the family members of Anil Kumar and

thereafter, the family members took Anil Kumar to so many hospitals and during the treatment, he died. He has further specifically deposed that the accident had been caused due to rash and negligent driving of respondent No.1

8. Then the petitioners have examined PW3 Krishan Kumar, Additional Ahlmad of the court of the Judicial Magistrate 1st Class, Mohindergarh, who has deposed that he has brought the file of criminal case titled as 'State versus Jitender', bearing FIR No.78 dated 31.10.2010 under Sections 279/304-A IPC, Police Station Satnali and the charge has already been framed against the accused (respondent No.1) on 09.03.2011 and the case is fixed for prosecution evidence. He has proved the certified copy of report under Section 173 Cr.P.C as Ex.PI, certified copy of superdginama as Ex.P5 and the copy of the FIR as Ex.P6.

9. Then the petitioners have examined PW4 EHC Satbir Singh who has deposed that he has brought the FIR register of Police Station Satnali and as per that record, FIR No.78 was registered on 31.10.2010 under Sections 279/304-A IPC on the statement of Sarvesh Devi (petitioner) and after investigation, challan was presented in the court against Jitender (respondent No.1). He has proved the copy of the FIR already exhibited as Ex.P6.

10. Then the petitioners have examined PW5 Naib Sub. Satyavir Singh, posted at Base Hospital, Delhi Cantt. who has deposed that he has brought the original MLC register of patient namely Sep. Anil Kumar No.2698573. He has proved the MLC No.498/08/10 as Ex.PW5/A.

11. Then, the petitioners have examined PW7 Sachin Kumar LDC Safdarjung Hospital, New Delhi who has deposed that he has brought the attested copy of postmortem report of Anil Kumar. He has proved the

same as Ex.PW7/A.

12. Now, perusal of MIC Ex.PW5/A and PMR Ex.PW7A shows that history of road side accident on 05.08.2010 at 6.00 p.m at Satnali (Mohindergarh) is mentioned therein.

13. The above documents prove that the police had registered a case against respondent No.1 Jitender Singh and had collected material during investigation indicating that respondent No.1 had caused the accident by his rash and negligent driving and thereafter, challaned him. There is a presumption that the investigating officer had discharged his duties in honest manner and had challaned respondent No.1 because he had caused the accident by his rash and negligent driving. The above evidence on the file also establishes that respondent No.1 Jitender Singh is facing trial for causing death of Anil Kumar which prima facie establishes that the accident in question took place due to rash and negligent driving of respondent No.1 while driving motorcycle bearing No.HR-16F-6691 resulting into the death of Anil Kumar.

14. The evidence adduced by the petitioners regarding cause and manner of the accident has gone unrebutted on the record. Respondent No.1 had denied the accident in his written statement and he has not bothered to even step into the witness box to deny the factum of accident. On account of non-appearance of respondent No.1 in the witness box, I am inclined to draw an adverse inference against the respondents. In this context. I draw support from a judgment of our own Hon'ble High Court reported as ***Bhagwani Devi versus Krishan Kumar Saini and others 1986 ACJ 331.***

15. Learned counsel for the respondents have then urged before me that the alleged accident took place on 05.08.2010 whereas FIR has been lodged on 31.10.2010.

They have further urged that there is no explanation of delay in lodging the FIR and have thus urged that the delay in lodging the FIR leads to an inference that the vehicle in question as well as the driver have been falsely involved in the case.

16. However, after giving a thoughtful consideration to the plea raised on behalf of respondents, I do not concur with the same in so far as the accident occurred on 05.08.2011 and a perusal of police proceedings in the FIR. P6 shows that on 31.10.2010 when EASI Parbhu alongwith HC Rajesh Kumar was going to village Digrota in connection with patrolling duty and investigation of a case and at Satnali Mandi Chowk, Sm.Sarvesh alongwith her father-in-law met them and presented an application alongwith photocopy of MLR and PMR and on the basis of that application present FIR was registered. A perusal of FIR Ex.P6 further shows that in that application she has mentioned that her husband had sustained serious injuries in the accident on 05.08.2010 and he was treated at Base Hospital, Delhi, but on 20.08.2010 he died and she had given birth to a child and due to her delivery and due to sudden demise of her husband, she lost her mental awareness and now she has little bit recovered from the shock of death of her husband and she had inquired all the facts regarding the accident from eye witness Leela Singh. Thus, from the FIR it stands made out that Smt. Sarvesh Devi was shocked due to sudden demise of her husband and due to delivery and when she got recovered she presented an application for registering of FIR. Thus, the delay in lodging the FIR is well explained in the FIR itself. Then petitioner Smt. Sarvesh Devi while she stepped into the witness box she has also reiterated these facts on oath. Otherwise also; delay in lodging the FIR which is well

explained cannot be a ground to doubt the claimant's case and deny justice to the victim. Reliance in this regard can be placed upon the judgment of Hon'ble Supreme Court reported as ***Ravi versus Badrinarayan 2011 (1) Law Herald (Accident Claims) 252***. Thus, I rebut the plea raised on behalf of the respondents.

17. In the wake of circumstances discussed above, the preponderance of probabilities tilts to a conclusion that. Anil Kumar son of Sajjan Singh died in a road accident which took place on 05.08.2010 near Satnali turn in the area of village Satnali (Police Station Satnali) due to rash and negligent driving on the part of respondent No.1, the driver of vehicle bearing Regn.No.HR-16F-6691. This issue stands decided in favour of the petitioners.”

The lower Court's record is requisitioned.

Learned counsel for the appellant/Insurance Company has primarily challenged the impugned award on the ground that the accident in question was not proved and the liability on the Insurance Company has been wrongly fastened by the Tribunal.

Learned counsel for the appellant has referred to the statement of PW-3 Krishan Kumar, Additional Ahlmad to submit that the FIR No. 78 under Sections 279/304-A IPC was registered on 31.10.2010, whereas the alleged accident took place on 05.08.2010 and there is a delay of about 03 months in registration of the FIR, which is not explained by the claimants.

Learned counsel for the appellant has further argued that the Tribunal has wrongly recorded a finding that the accident took place as per PW-2 Sarvesh Devi has stated that she did not witness the accident, however, she has stated that the accident was caused due to rash and negligent driving of the offending vehicle.

Learned counsel for the appellant has referred to the statement of PW-1 Leela Singh, the eyewitness of the accident, to submit that his presence at the spot is doubtful as in the FIR, there is no reference with regard to his presence at the spot and there is no record in the hospital that he brought injured Anil Kumar to the hospital.

In reply, learned counsel for the respondents/claimants has submitted that the accident was duly proved. He has referred to the statement of PW-1 Leela Singh, who has deposed that on 05.08.2010, he was standing on roadside when he saw that deceased Anil Kumar and Jitender Singh were coming on the motorcycle bearing registration number HR-16-F-6691, which was driven by Jitender Singh in a rash and negligent manner at a very high speed, without observing traffic rules. When they reached near turn of Satnali, the motorcycle fell down on the road due to rash and negligent driving of Jitender Singh and Anil Kumar also fell down on the road and sustained multiple grievous injuries. This witness has further stated that Anil Kumar was known to him as he belonged to his village and he informed the family of Anil Kumar, who took him to various hospitals and he died during treatment on 20.08.2010. In cross examination, this witness has stated that the police has recorded his statement but he cannot tell as to when his statement was recorded. He further stated that Anil Kumar was taken to hospital by him and two other persons, whose name are not know and he denied a suggestion that no accident has taken place due to rash and negligent driving of the offending vehicle. On further cross-examination, he stated that the father of the deceased was called by

him in the hospital and further denied a suggestion that he did not witness the accident.

Learned counsel for the respondents/claimants further submitted that PW-2 Sarvesh Devi, who is widow of Anil Kumar, appeared and proved the expenses incurred on the treatment of Anil Kumar before his death.

It is further submitted that PW-3 Krishan Kumar, Additional Ahlmad exhibited copy of FIR No. 78 dated 31.10.2010 under Sections 279/304-A IPC, Police Station Satnali as well as report under Section 173 Cr.P.C., copy of RC, copy of Driving Licence, copy of Insurance Policy, copy of Superdginama, as per summoned case file.

Learned counsel for the respondents/claimants has relied upon a judgment of Hon'ble Supreme Court rendered in **2011 AIR (SCW) 1530, Ravi vs. Badrinarayan and others** to submit that it is held that mere fact that the FIR is lodged after three months of accident cannot be discarded once the evidence has come on record to prove the accident. In this judgment, Hon'ble Supreme Court has also held as under:

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the

ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.

No other point was argued before me.

After hearing learned counsel for the parties and going through the record and on re-appreciation of pleadings and evidence, I find no illegality or infirmity in the findings recorded by the Tribunal.

The accident was witnessed by PW-1 Leela Singh, whose testimony could not be shaken by the appellant-Insurance Company in cross

examination, except by giving a suggestion that he did not witness the accident. Even Jitender Singh, driver of the offending vehicle, did not appear as a witness to rebut the claimants' evidence.

Mere fact that the FIR was registered at a subsequent stage, which was not only proved but the statement of PW-4 EHC Satbir Singh also prove that on completing the investigation, the challan already stood presented against Jitender Singh which supports the version of the claimants that accident was caused due to rash and negligent driving of the offending vehicle.

Moreover, the claimant/widow of deceased has explained the delay in registration of the FIR as she was under trauma, firstly because her husband Anil Kumar (deceased) remained under treatment in different hospitals for 15 days and thereafter, also she was under shock.

Accordingly, finding no merit in the present appeal, the same is dismissed.

02.08.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>