

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

FAO-4401-2015 (O&M)

Date of decision: 08.03.2022

United India Insurance Company Limited

....Appellant

Versus

Rajvinder Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Mohan Gupta, Advocate for the appellant
Mr. Vikas Gupta, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The Insurance Company calls in question the award dated 09.04.2015 passed by the Motor Accident Claims Tribunal, Amritsar, (hereinafter referred to as 'the Tribunal') while allowing the petition filed under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation on account of death of late Late Sh.Sakattar Singh son of Karnail Singh, in an automobile accident. As per the case of the claimants, on the unfortunate day of 29.07.2013, Late Sh.Sakattar Singh was going towards his house in village Timmowal on foot and at about 11:00 pm when he reached near village Chajjalwaddi, a motorcycle bearing no.PB-08-BR-0680 belonging to respondent no.2 driven by respondent no.1 came from behind and ran into Late Sh.Sakattar Singh who received multiple grievous injuries and died at the spot. Late Sh.Sakattar Singh is stated to be 40 years of age. Pursuant to notice of

the petition sent, respondent no.1 and 2 appeared in person on 21.04.2014 and thereafter absented. Hence, proceeded ex parte. The Insurance Company (respondent no.3) contested the petition on the ground that no accident took place with motorcycle bearing no. PB-08-BR-0680. In evidence, claimant no.1 Rajvinder Kaur appeared as PW1 whereas Gurmeet Singh was examined as PW2, Darshan Singh as PW3 Dr. Ashok Chanana as PW4 and Head Constable Amandeep Singh as PW5 were also examined. The Insurance Company tendered a photocopy of the insurance policy Ex.R-1.

As already noticed, the accident is stated to have taken place on 29.07.2013. The post-mortem report of the deceased was prepared on 30.07.2013 when the opinion with regard to reasons of death were kept pending to await the report of the chemical examiner. On 08.08.2013 the FIR Ex.P-1 was registered on the statement of Sh.Gurmeet Singh, cousin of the deceased Late Sh.Sakattar Singh. It was stated by Gurmeet Singh that his cousin Late Sh.Sakattar Singh has died due to the excessive consumption of liquor.

When Sh.Gurmeet Singh appeared to depose he reiterated that after lapse of certain time, he was informed with regard to the accident by a person from village Khakh. He admitted that he was not present at the spot at the time of the accident.

Sh.Darshan Singh was examined as PW3. He claims to have witnessed the accident. He has stated that after witnessing the accident, he reported about the accident to the police station, Khilchian, District Amritsar and thereafter, narrated the entire incident to Gurmeet

Singh. He has further stated that Mahavir Singh, the driver of the motorcycle came from behind and crashed into Late Sh.Sakattar Singh from the back side.

The Tribunal held that involvement of the motorcycle is proved.

Heard learned counsel representing the parties at length and with their able assistance perused the judgment passed by the Tribunal as well as record of the Tribunal which was requisitioned.

Learned counsel representing the appellant contends that on 08.08.2013 i.e after a period of 10 days Sh. Gurmeet Singh has stated that Late Sh.Sakattar Singh died due to the excessive consumption of liquor. He further submits that there is no evidence to prove that the FIR which was registered against the driver of the motorcycle, Mahavir Singh has been taken to its logical end. In other words, he submits that no evidence has been produced to prove that the police after conclusion of the investigation presented a final report under Section 173 Cr.P.C against Mahavir Singh. He further contends that admittedly Gurmeet Singh is not an eye witness and the statement of Darshan Singh, who appeared in evidence for the time on 10.11.2014, cannot be accepted when he never ever appeared before the police authorities. He submits that neither in the FIR nor in the claim statement, name of Darshan Singh has not been disclosed. He further contends that as per the case of the claimants Mahavir Singh while driving his Enfield motorcycle, had hit the deceased from behind. However, there is no injury at the back side of Late Sh.Sakattar Singh. Further while drawing the attention of

the Court to the injuries suffered by Late Sh.Sakattar Singh, he submits that there is no evidence to prove that the vehicle in question was involved in the accident.

Per contra, learned counsel representing the claimants has controverted the aforesaid arguments to contend that Dr. Ashok Chanana has stated that Late Sh.Sakattar Singh died due to shock as a result of injuries. He, hence, prays for dismissal of the appeal.

From the facts noticed above, it is evident that Gurmeet Singh after a period of 10 days of accident has stated before the police that Late Sh.Sakattar Singh died due to the excessive consumption of liquor. Sh. Gurmeet Singh appeared in evidence as PW2 but did not state that Darshan Singh informed him about the accident. The claimants have not produced any evidence to prove that the police after completing the investigation has presented the challan against Mahavir Singh. Furthermore, it is important to take note of the injuries suffered by the deceased. As per Dr.Ashok Chahana, the following injuries were received by the deceased:-

“1. Mutliple (4) reddish brown abrasions varying in size from 2x1cm to 4x2.5 cm were present on the outer area of right eye and right side of forehead.

2. A grazed abrasion of 10x4.5 cm was present on the front and right side of chest in the inframammary region.”

It is evident that there was no injury on backside of Late Sh.Sakattar Singh. It is the positive case of the claimants that Mahavir Singh came on his Enfield motorcycle and hit the deceased from behind. In such situation, Late Sh.Sakattar Singh, in an ordinary course would

have received some injury on the back side. However, there is no evidence. Moreover, Darshan Singh is stated to have informed the police about the accident. However, that fact has not been proved on the file. As already noticed, the FIR was registered on the statement of Gurmeet Singh who initially stated that the death is due to the excessive consumption of liquor.

It is also evident that name of Darshan Singh cropped up for the first time only in November, 2014 i.e after a period of one year and three months from the date of the accident. It is not possible to accept the statement of Darshan Singh on its face value, particularly, when his statement has been found to be incorrect on more than one ground. There is no reason as to why Darshan Singh did not get the FIR registered when he had witnessed the accident. As already noticed, the first informant of the FIR is Gurmeet Singh.

Furthermore, had there been any accident with the motorcycle in question resulting in death of Late Sh.Sakattar Singh, the motorcycle would have suffered some damage or its driver Mahavir Singh would have received some injuries as he had allegedly hit Late Sh.Sakattar Singh from behind. The accident took place at about 11:00 pm. There is no explanation as to why Darshan Singh was allegedly present at the spot.

The claimants are required to prove their case on preponderance of probabilities. Some amount of evidence is to be led by the claimants to prove not only the involvement of the vehicle but also that the accident has taken place due to rash and negligent driving of the

offending vehicle. In the present case, this Court does not find that claimants have led the sufficient evidence.

Keeping in view the aforesaid facts, the judgment passed by the Tribunal is set aside. Resultantly, the claim petition filed before the Tribunal shall stand dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

08.03.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE