

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

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**CM-47-CII-2022 in/and
FAO No.3007 of 2021 (O&M)
DATE OF DECISION : 07th FEBRUARY, 2022**

United India Insurance Company Limited

.... Appellant

Versus

Narender Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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

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RAJBIR SEHRAWAT, J. (Oral)

CM-47-CII-2022

This is an application for placing on record Annexures A-6 and A-7.

For the reasons mentioned in the application, the same is allowed. Annexures A-6 and A-7 are taken on record, subject to all just exceptions.

Main Case

This is an appeal filed by the appellant-Insurance Company against the award dated 20.07.2021 passed by the Motor Accident Claims Tribunal, Rewari, whereby the claimants/respondents were awarded an amount of Rs.62,81,430/- along with interest on account of death of Roobina.

For the purpose of the present appeal, the parties are referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts of this case are that on 11.11.2018 at around 8.30 A.M., Roobina was travelling in a three-wheeler. When the three-wheeler had reached near Bharat Petrol Pump situated in the area of village Gudiyani, District Rewari, a tractor bearing registration No.HR-36X-3660, being driven rashly and negligently by respondent No.1, struck against the said three-wheeler, which resulted in an accident. In the said accident, Roobina died. On account of death of Roobina, the claim petition was filed asserting therein that the deceased was of 33 years of age and she was employed as Staff Nurse with PHC Gudiyani, District Rewari. She was earning a monthly salary of about Rs.35,000/- per month. An amount of Rs.50,000/- was spent on transportation of the deceased and on the funeral expenses. Accordingly, a compensation of Rs.1.00 Crore was claimed in the claim petition. Beside this, an FIR No.266 dated 11.11.2018 was also registered regarding this accident under Sections 279, 304-A and 337 IPC at Police Station Kosli. The police had also filed challan in the said case.

On being put to notice, respondent Nos.1 and 2 had filed their joint written statement denying the accident altogether. It was asserted that the claim petition has been filed only to extort money from the respondents. However, it was claimed that respondent No.1 was having the valid driving licence and the vehicle was insured with respondent No.3. Respondent No.3-Insurance Company had first filed an application under Order 7 Rule 11 CPC for rejection of the claim petition

alleging therein that there was no cause of action. The said application was dismissed. A separate written statement was filed by respondent No.3-insurance company asserting therein that the respondents/insured has violated the terms and conditions of the insurance policy by using the vehicle for hire for carriage of goods and without permit or fitness. It was further pleaded that there was a collusion between the petitioners and the respondents in order to defraud the respondent-insurance company. It was further asserted that it was the driver of the three-wheeler only who was driving the vehicle in rash and negligent manner causing the accident, hence, it was a case of contributory negligence. On merits, it was denied that the accident had taken place with the vehicle in question. The claim was collusive in nature just to extort the compensation without any lawful ground. The employment of the deceased was also denied by the respondent-insurance company.

The parties led their respective evidence. To substantiate the assertions made in the claim petition, the petitioner himself appeared as a witness in the case. The petitioners have also examined the eye witness Surender Kumar as PW-1. PW-2 Sunil Dutt Sharma was examined to prove the employment record of the deceased. Beside this, the police official was also examined to prove the pendency of the criminal case against the respondent-driver of the offending vehicle. While appearing in the witness box, the eye witness Surender Kumar has categorically deposed that he had seen the accident in question because the same had happened near his petrol pump. He has further stated that he had disclosed the entire facts, including the number of the tractor in question to the police besides the make and model of the same. On the other hand,

the driver of the offending vehicle appeared and denied the accident in toto. The insurance company has not examined any witness. Besides examining the driver of the offending vehicle Pawan Kumar as RW-1, certain documents regarding the registration and insurance of the tractor were also placed on record. After appreciating the above said evidence of the parties, the Tribunal has awarded the total amount of Rs.62,81,430/- as compensation, which includes loss of consortium, loss of estate and funeral expenses.

Arguing the case, the counsel for the appellant has submitted that the claim petition has been filed in collusion with the owner and driver of the offending tractor. The evidence on record has been misread by the Tribunal because it has come in the statement of the police official that the vehicle number was told to the police by one Mahender and not by PW-1 Surender Kumar. The counsel has further submitted that mere pendency of the criminal case against its driver is not a ground to draw the presumption qua involvement of the vehicle in accident. The claimants have to categorically prove in all preponderance of the probabilities the involvement of the vehicle and driver of the offending vehicle in accident. The counsel has further submitted that one of the claimants is the mother-in-law of the deceased, however, mother-in-law is not entitled to receive any compensation because she is not the legal representative of the deceased. Accordingly, it is submitted that the award passed by the Tribunal deserves to be set aside.

Having heard the counsel for the appellant-insurance company, this Court does not find any substance in the submissions of the appellant. The claimants have duly proved on record; by examining

the eye witness, the factum of the accident with the offending tractor in question. He has categorically deposed that he was an eye witness to the accident as such and further, that he has disclosed the details of the tractor to the police, including the registration number of the same. Despite lengthy cross-examination of this witness, nothing adverse could be extracted to impeach the testimony of this witness. Although, the counsel for the appellant has submitted that the police official while appearing as a witness has deposed that the number of the tractor in question was not disclosed by PW-1 Surender Kumar, rather it was disclosed by one Mahender and that Mahender has not been examined as a witness, therefore, the case of the claimant is totally doubtful. However, this argument is also without any substance. The police official, while appearing as a witness has categorically used the plural word 'witnesses' while deposing as to who had disclosed the number of the vehicle. Therefore, the term 'witnesses', obviously means that more than one witnesses had disclosed the registration number to the police official. It was for him to record the statement of anyone or all of them qua that aspect. By any means; the claimants or the eye witness of the accident could not have forced the police to record the statement in the manner in which he had disclosed the same to the police. In any case, the registration number of the offending vehicle has already come on record by very cogent evidence. No evidence has been led by anyone of the respondents to establish the fact that the tractor in question was not present at the time and place alleged by the claimants in the claim petition. Hence, mere inconsistency; here and there; in the police version would not be sufficient to discredit the testimony of the eye witness.

Although the counsel for the appellant has heavily relied upon the fact that the police have recorded that the registration number of the offending vehicle was disclosed to the police by Mahender and not by PW-1 Surender Kumar, however, as mentioned above, this is otherwise explained in the same statement. Otherwise also, the criminal case is altogether irrelevant for the purpose of claim petition. The criminal proceedings are different and separate than the claim petition. It is the evidence which has come during the proceedings of the claim petition which would be material and not the police record as such. The police proceedings, can be of only a collateral assistance to the Tribunal to arrive at a conclusion qua involvement of the vehicle if the driver of the offending vehicle was facing the trial. However, the criminal case in itself would not be a ground either to dismiss or to allow the claim petition; as such. The claim petition has to be adjudged on the basis of evidence led in the claim petition only.

Moreover, the respondent-insurance company has asserted in the written statement that the offending vehicle was not involved in the accident in question, yet, the insurance company has not led any evidence on file to substantiate their assertions. Hence, the said assertion of the insurance company has remained totally un-proved as such. Although the driver of the offending vehicle has appeared in the witness box and tried to deny the involvement, however, besides making a bald statement that his vehicle was not involved in the accident, he has not given anything more to substantiate his assertion qua presence of his vehicle on the spot at the time and place of accident. Since, as per the record, he is facing the criminal trial, therefore, it is nothing but his self serving statement to get

some mileage in the criminal case, by denying the accident altogether even in the claim petition. Hence, his testimony cannot be given precedence over the testimony of the independent eye witness; who has proved the case of the claim petitioners.

So far as the aspect of the mother-in-law being entitled to the compensation is concerned, this aspect has already been dealt with by Hon'ble the Supreme Court in ***N.Jayasree and others Vs. Cholamandalam MS General Insurance Company Limited, Civil Appeal No.6451 of 2021 (arising out of SLP (C) No.14558 of 2019)***, decided on 25.10.2021 and held that the mother-in-law is a legal representative in such a situation; and hence she is entitled to the compensation arising out of the accident. Otherwise also, the apportionment of the compensation is not the concern of the insurance company as such. If not one, then the other legal heirs would get the same. In any case, the respondent-insurance company is liable to pay the same.

No other argument was raised.

In view of the above, finding no merit in the present appeal qua the pleas raised by the appellant, the same is dismissed.

All pending miscellaneous applications are also disposed of as such.

07th FEBRUARY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes