

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

**FAO-2509-2017 (O&M)
Pronounced on: 26.04.2022**

United India Insurance Company LimitedAppellant

Versus

Shashank Joshi and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Ashwani Talwar, Advocate and
Mr. Varun Sharma, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondents No.1 to 3.

Service qua respondent No.4 dispensed with.

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred on behalf of the insurance company (insurer of the offending vehicle i.e. Bolero Jeep bearing registration No.HP-20B-5758) to impugn the award dated 11.01.2017 passed by the Motor Accidents Claims Tribunal, Rupnagar (for short, 'the Tribunal') in a claim petition filed by respondents No.1 to 3-claimants. Vide impugned award respondents No.1 to 3-claimants were awarded the following compensation:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.5,000/-
2.	Annual Income	Rs.5,000/- x 12 = Rs.60,000/-
3.	Deduction towards personal expenses (1/3rd)	Rs.20,000/-
4.	Annual dependency	Rs.60,000/- - Rs.40,000/-
5.	Multiplier	11
6.	Loss of dependency	Rs.40,000/-x11 =Rs.4,40,000/-
7.	Funeral expenses	Rs.20,000/-

8.	Total compensation	Rs.4,60,000/-
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In brief, the case as set out by respondents No.1 to 3-claimants in their claim petition filed under Section 166 of the Motor Vehicles Act, 1986 (for short, 'the Act') was that on 03.03.2013 at about 08:15 P.M., deceased Naresh Joshi was going on his bicycle followed by his brother. When the deceased reached MP *di kothi*, the offending vehicle came in a rash and negligent manner and hit the bicycle of the deceased as a result of which he fell down on the road and received multiple injuries all over his body. While being taken to PGI, Chandigarh, the deceased succumbed to his injuries. It was pleaded that the brother of the deceased on account of glaring headlights of the offending vehicle was unable to note down its registration number, however, the accident in question was witnessed by one Uma Kant. It was pleaded that on 04.03.2013, an FIR was got registered by brother of the deceased and on the basis of statement made by Uma Kant on 10.03.2013, the offending vehicle was taken into possession.

On being put to notice, the appellant company while appearing as respondent No.2 before the Tribunal disputed the involvement of the Bolero Jeep bearing registration No.HP-20B-5758 in the accident in question and submitted that Uma Kant was in fact a planted witness. The Tribunal on the basis of pleadings, material and evidence led recorded a finding that deceased Naresh Joshi had died on account of injuries sustained by him after being hit by the offending vehicle. The compensation which already stands reproduced above was thus awarded by the Tribunal to respondents No.1 to 3-claimants in equal shares and appellant insurance company and respondent No.4

herein were held liable to pay the compensation amount jointly as well as severally.

Learned counsel for the appellant insurance company, while making his submissions before this Court, has reiterated the stand taken by it before the Tribunal that a false and fabricated version had been put forth by the claimants in collusion with the police to show the involvement of the offending vehicle in the accident in question. After the occurrence in question an FIR was registered against unknown vehicle on the next day of the accident i.e. on 04.03.2013. It was submitted that a highly unbelievable version had been brought forth that one Uma Kant, who admittedly was not acquainted with the deceased much less related to him, on the fateful day and time had witnessed the accident in question and also noted down the registration number of the offending vehicle, however, since he had to travel to Delhi soon thereafter, he was unable to give the details of the offending vehicle to police which were given by him after a delay of 6 days on his return from Delhi. While inviting the attention of this Court to the deposition of Uma Kant, learned counsel submitted that a perusal of the same left no manner of doubt that the said witness was not present at the spot as it was his admitted case that he did not note down the registration number of the offending vehicle at the spot. Learned counsel submitted that the offending vehicle not being involved in the accident in question further found support from the fact that during investigation the police did not find the driver of the offending vehicle involved in the accident. Thus, it was abundantly clear that in order to grab compensation from the insurance company a false claim petition

had been preferred against the offending vehicle. He submitted that the claimants had implicated the offending vehicle after taking the registration number from a nearby toll barrier through which it had passed on the fateful day around the time when the accident in question had taken place. It was also submitted that as per the mechanical test report of the offending vehicle (Ex.R7) it stood clearly established that the offending vehicle was not involved in the accident in question. In support of his submissions, learned counsel has placed reliance upon ***Reliance General Insurance Company Limited Vs. Munshi Singh and others (PHHC) : 2015(9) RCR (Civil) 190.***

Per contra, learned counsel appearing for respondents No.1 to 3-claimants vehemently disputed and controverted the submissions made by the counsel opposite by urging that since it was the admitted case of the insurance company itself that Uma Kant was not related much less acquainted with the deceased or his family, the question of he colluding with the claimants did not arise. It was submitted that when Uma Kant got recorded his statement Ex.PW2/A, he specifically mentioned the number of the offending vehicle i.e. HP-20B-5758. It was also submitted that the occurrence in question took place at about 08:00 P.M. on 03.03.2013 and the offending vehicle had crossed the toll barrier, which was in close vicinity, at about the same time which stood corroborated from the cross examination of RW1. It was also submitted that it was not denied by the driver of the offending vehicle that when he crossed the toll barrier one headlight of his vehicle was not working. Learned counsel submitted that one of the headlights not working had to be appreciated in the light of the deceased having been

hit by the offending vehicle from the same side and thus it was evident that it was on account of the accident that the headlight of the offending vehicle had been damaged.

I have heard learned counsel for the parties and perused the relevant material on record including the deposition of the eye witness Uma Kant before the Tribunal.

The only question which requires consideration of this Court is whether the offending vehicle was involved in the accident and if the deceased died on account of the rash and negligent driving of the driver of the offending vehicle on 03.03.2013.

No doubt, learned counsel for the appellant insurance company while drawing the attention of this Court to the deposition of eye witness vehemently argued that he was a planted witness and thus could not be believed more so, in the light of some glaring discrepancies made by him during the course of his deposition, however, it needs to be reiterated that standard of proof in claim petitions filed under the Motor Vehicles Act, 1988 cannot be kept at par with that of criminal cases where the prosecution has to prove its case beyond reasonable doubt. The MACT cases stand on a different footing since therein claimants are only required to prove their case on the touchstone of preponderance of probabilities, as has also been held by the Hon'ble Supreme Court in a plethora of cases.

It cannot be disputed that the deceased indeed died in a motor vehicular accident which finds due corroboration from the medical evidence as well. In the circumstances, just because there was a delay on the part of Uma Kant in getting his statement (PW2/A)

recorded before the police, would not in any way raise a question mark about the authenticity of his version much less the involvement of the offending vehicle in the accident in question since Uma Kant categorically deposed that he had left for Delhi after the accident in question and came back on 09.03.2013. The delay in making the statement is, therefore, satisfactorily explained. This Court also concurs with the submissions made by the learned counsel for respondents No.1 to 3-claimants that since Uma Kant was not acquainted with much less related to them, he could not be attributed any motive to collude with the claimants. It is not even the case of the insurance company that Uma Kant was to be a beneficiary of the compensation so awarded. The contention of the learned counsel for the appellant insurance company that the mechanical test report (Ex.R7) of the offending vehicle clearly established that it was not involved in the accident in question also deserves to be discarded. Admittedly, the vehicle in question was taken into custody by the police after the statement of Uma Kant and much after the accident in question. Hence, the possibility of the offending vehicle having been sent to the workshop for repairs in the intervening period cannot be ruled out.

As a sequel to the above, the instant petition being devoid of merit is dismissed.

26.04.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No