IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4422-2018(O&M)
Date of decision:-21.12.2022

Reliance General Insurance Company Ltd.
...Appellant

Versus

Smt.Anshu and others
...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjeev Kodan, Advocate
for the appellant.

Mr.Anshul Mangla, Advocate
for respondents No.1 to 3.

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H.S. MADAAN, J.

1. Briefly stated, the facts of the case are that on 24.3.2014 Dilbag Singh deceased along with his uncle, namely, Waryam Singh was proceeding towards village Fatehpur, Police Station Nakur, District Saharanpur on a motorcycle bearing registration No.HR-75-A-6839; the motorcycle was being driven by Dilbag Singh on which Waryam Singh was a pillion rider; it was being driven at a moderate speed; at about 6:45 p.m., when the said motorcycle reached in front of Jagdamba Filling Station on Yamunanagar – Saharanpur road at village Dussani within the jurisdiction of Police Station Sadar, Yamunanagar, then a Swift car bearing registration No.HR-02-AA-0026 (hereinafter referred to as the offending car) being driven by respondent No.1 Gulab Singh at a fast

speed came from Saharanpur side and in violation of traffic rules while going on wrong side of the road hit the motorcycle; resultantly both the riders fell down on the road and suffered multiple and grievous injuries; Dilbag Singh injured was firstly taken to Civil Hospital, Yamunanagar from where keeping in view his serious condition, he was referred to PGI, Chandigarh but he was taken to Gaba Hospital, Yamunanagar, where he underwent medical treatment up to 28.3.2014, then he was referred to PGI, Chandigarh but he was taken to Government Medical College & Hospital, Sector 32, Chandigarh where he succumbed to the injuries on 20.4.2014; the postmortem examination on the dead body of deceased was performed on 20.4.2014.

FIR No.60 dated 24.3.2014 for the offences under Sections 279, 304-A, 337, 338 IPC was registered with regard to the accident with Police Station Sadar, Yamunanagar on the statement of other injured Waryam Singh.

2. As per the case of the claimants, deceased a young man of aged about 24 years engaged in the avocation of agriculture as well as dairy farming, was earning Rs.20,000/- per month and claimants i.e. Smt.Anshu – wife, Smt.Santro Devi – mother and Joginder Singh – father of the deceased were dependent upon his earnings. Such claimants had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against Gulab Singh – driver, Rajeev Mayar – owner and Reliance General Insurance Company, Ambala – insurer of the Swift Car bearing registration No.HR-02-AA-0026 in question before Motor Accident Claims Tribunal, Yamunanagar at Jagadhri (hereinafter referred to as the

Tribunal).

3. On being put to notice, all the three respondents appeared and filed written statements. Respondents No.1 and 2 submitted a joint written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed on behalf of respondents No.1 and 2, they raised various preliminary objections, to wit; that petition was not maintainable; the petitioners had not approached the Court with clean hands etc. On merits, such respondents denied involvement of Swift car in question in the accident, rather contended that a false FIR involving that car and respondent No.1 had been registered. Such respondents disputed their liability to pay any compensation to the claimants.

In the written statement filed on behalf of respondent No.3 – insurance company, it also challenged the maintainability of the claim petition further contending that it was bad on account of non-joinder or misjoinder of necessary parties and petitioners/claimants had not approached the Tribunal with clean hands and rather had suppressed the material facts. On merits, such respondent also denied the involvement of the Swift car in question in the mishap contending that such car had been planted in this case and a false FIR had been registered against respondent No.1 Gulab Singh involving the car in question wrongly. The insurance company took up an alternative plea that though the accident was not admitted however if any such accident had taken place, the same was outcome of rashness and negligence on the part of the deceased himself, who was driving the motorcycle at the time of accident and further respondent No.1 was not holding any valid or effective driving licence at the time of accident and the Swift car in question was being driven in violation of provisions of Motor Vehicles Act and terms and conditions of the insurance policy. All the three respondents prayed for dismissal of the claim petition.

4. On the pleadings of the parties, following issues were framed:

1. Whether the accident resulting in death of Dilbag Singh took place on account of rash and negligent driving of respondent no. 1 while driving car bearing registration no. HR-02-AA-0026? OPP.
2. If issue no.1 is proved, to what amount of compensation petitioners are entitled to and from whom? OPP.
3. Whether the petition is not maintainable? OPR.
4. Whether the respondent no. 2 has violated the terms and conditions of insurance policy as respondent no. 1 was not holding a valid and effective driving licence. If so, to what effect? OPR.
5. Relief

5. Both the parties led evidence in support of their respective claims.

6. During the course of evidence of claimants, they examined nine witnesses as detailed below:

PW1 Satwant Singh, Accountant, Fair Price Medical Store, inside Gaba Hospital, Yamunanagar has proved bills Ex.P1 to Ex.P4 vide which the medicines had been sold for treatment of patient Dilbag Singh.

PW2 Dr.Vandana from Gaba Hospital, Yamunanagar produced the record with regard to treatment given to patient Dilbag Singh, admitted in their hospital on 24.3.2014 with alleged history of road side accident. According to this witness, the injured was in gasping condition and was immediate intubate and put on ventilator; he was transfused blood; the patient was having head injury and he was referred to PGI, Chandigarh on 28.3.2014 vide referral summary Ex.P5. She further stated that the hospital had charged a sum of Rs.19,600/- vide bill Ex.P6, however a discount of Rs.640/- was given. This witness proved bill Ex.P7 pertaining to investigation. She added that on the same day, one more patient namely Waryam Singh having suffered injuries in the same road side accident was also admitted in their hospital.

PW3 Jaswant Singh, Ahlmad in the Court of JMIC, Yamunanagar had brought the summoned record i.e. file of criminal case titled 'State Versus Gulab Singh' bearing FIR No.60 dated 24.3.2014 under Sections 279, 304-A, 337 IPC, Police Station Sadar, Yamuna Nagar proving various documents i.e. copy of report under Section 173 Cr.P.C. as Ex.P8, charge-sheet as Ex.P9, site plan as Ex.P10, recovery memo of car as Ex.P11, mechanical report of the motorcycle as Ex.P12, mechanical report of the car as Ex.P13, MLR of Dilbag Singh as Ex.P14. In his cross examination, this witness proved copy of driving licence of Gulab Singh as Ex.R1 and copy of registration certificate of car as Ex.R2. .

PW4 Anil Kumar through his affidavit Ex.PW4/A provided the ocular version of the accident and deposed in tune with the case of claimants stating that accident in question was caused by respondent No.1

Gulab Singh while driving the offending car in a rash and negligent manner.

PW5 Waryam Singh, injured eye witness also gave eye witness account of the accident through his affidavit Ex.PW5/A stating that the accident had taken place due to rash and negligent driving of the offending car.

PW6 Anshu claimant in her affidavit Ex.PW6/A repeated on oath case of the claimants as given in the claim petition. She proved various documents i.e. copy of matriculation certificate of deceased as Ex.P15 and copy of registration certificate of the motorcycle as Ex.P16.

PW7 Harjinder Singh, Record Keeper, GMCH, Sector 32, Chandigarh produced the summoned record with regard to the treatment given to patient Dilbag Singh stating that as per record, the patient was admitted in their hospital on 28.3.2014 with head injury in the road side accident and the said patient had expired on 20.4.2014. He proved the death report of Dilbag Singh as Ex.P17.

PW8 Netar Pal Singh, Clerk, National Blood Bank, Civil Hospital, Yamunanagar proved bill/receipt as Ex.P19.

PW9 Rajinder Kumar, Proprietor Rajinder Medical Store, Sector 32-D, Chandigarh proved bills Ex.P20 to Ex.P41 regarding sale of medicines to the claimants.

Counsel for the claimants tendered in evidence bills Ex.P42 to Ex.P59 and closed his evidence.

7. In rebuttal, the respondents No.1 and 2 did not adduce any evidence. Whereas counsel for respondent No.3 tendered in evidence copy

of insurance policy as Ex.R3 and closed the evidence of the insurance company. However, subsequently, the insurance company sought permission to lead additional evidence, which was allowed and it tendered in evidence certified copy of judgment passed by JMIC, Yamunanagar at Jagadhri as Ex.R4, certified copy of statement of Waryam Singh in criminal case as Ex.R5.

8. After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioners. With regard to issues No.2 and 4, those were decided finding the claimants entitled to get compensation of Rs.13,68,000/-, payable by all the three respondents jointly and severally as detailed below:

Occupation: **Agricultural work & milk dairy**

Sr.No.	Heads	Calculation (In Rs.)
(i)	Income	7840/- per month
(ii)	1/3rd of the (i) deducted as personal expenses of the deceased	7840-2613 = 5227/- (say Rs. 5300/-) per month.
(iii)	Compensation after multiplier of 18 is applied	5300 x 12 x 18 = 11,44,800/-
(iv)	Loss of Estate	15,000/-
(v)	Loss of consortium payable to the widow only i.e. petitioner no. 1	40,000/-
(vi)	Funeral expenses	15,000/-
(vii)	Medical expenses (before death)	1,53,000/-

Total Compensation awarded - (Rs. 13,67,800/-) (say Rs. 13,68,000/-) .

Issue No.3 was decided against the respondents. Resultantly, the claim petition had been allowed vide award dated 9.5.2018.

9. This award left the respondent No.3 - insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimant.

10. Notice of the appeal was given to respondents. Initially all the respondents put in appearance through counsel but later on there was no representation on behalf of respondents No.4 and 5.

11. I have heard learned counsel for the appellant – insurance company and counsel appearing for respondents No.1 to 3 besides going through the record.

12. The first and foremost argument by learned counsel for the insurance company was that the Swift Car bearing registration No.HR-02-AA-0026 was not involved in the accident and it was planted subsequently with ulterior motive of getting compensation, which is evident from the fact that as per case of claimants at the time of accident, the motorcycle was being driven by Dilbag Singh on which Waryam Singh was a pillion rider, although Waryam Singh had set the criminal machinery in motion by reporting the mater to the police but that was against some unknown vehicle and neither particulars of the Swift car were given nor name of its driver was mentioned; furthermore during the course of the criminal trial Waryam Singh had got his statement recorded in the Court of JMIC, Yamunanagar at Jagadhri and he failed to identify

the driver of the car; PW4 Anil Kumar was an introduced witness, who had not seen the accident.

13. On the other hand, learned counsel appearing for the respondents/claimants submitted that the claimants had successfully proved that respondent No.1 Gulab Singh had caused the accident by rash and negligent driving of the offending car in question. There was no question of planting the car in this case, rather its involvement in the accident stood clearly proved on record, therefore, no fault can be found with the findings recorded by the Tribunal.

14. After hearing the rival contentions, I am of the considered view that the Tribunal was justified in returning the finding that the accident in which Dilbag Singh suffered injuries to which he succumbed and Waryam Singh had also sustained injuries, was caused due to rash and negligent driving of the offending car by Gulab Singh – respondent No.1. The claimants had led enough oral as well as documentary evidence to prove such facts. From the statements of eye-witnesses PW4 Anil Kumar and PW5 Waryam Singh such version of the claimants stood adequately proved. Both of them have deposed in no uncertain terms that respondent No.1 was author of the accident by his rash and negligent driving of the offending car. Though both these Pws were cross-examined at length but they stuck to their guns and could not be shattered on any material point. No reason has been suggested or proved prompted by which they might have deposed against the respondents. I find presence at the spot of both the witnesses to be likely and probable and account given by both of them to be worthy of reliance and I do not see any reason to discard their

depositions. As far as PW5 Waryam Singh is concerned as deposed by PW2 Dr.Vandana from Gaba Hospital, Yamunanagar, who had brought the hospital record stated that Dilbagh Singh was admitted in their hospital on 24.3.2014 with alleged history of road side accident and on that very day, one more patient namely Waryam Singh having sustained injuries in the same road side accident was also admitted in their hospital, I do not see any reason to discard this cogent and convincing oral as well as documentary evidence. Waryam Singh having suffered injuries in the same accident is a stamped witness and his present at the spot cannot be doubted. It was he who had set the criminal machinery into motion by making statement to the police. Respondent No.1 was found to be culprit by the police during investigation of the case and had been sent up to face trial. As against that Gulab Singh – respondent No.1 could not summon courage to step into the witness-box and to depose that he had not caused the accident by rash and negligent driving of the offending car. Respondent No.3 – insurance company did not examine Gulab Singh – driver or Rajeev Mayar owner of the offending car as witnesses to show that car in question being driven by Gulab Singh was not involved in the accident. The tenor of the written statement filed by respondents No.1 and 2, no where suggests that the claim petition had been filed by the claimants in collusion with respondents No.1 and 2 and it was friendly match between them.

15. Learned counsel for the appellant insurance company has tried to build up a case that since respondent No.1 Gulab Singh has been acquitted in the criminal case that creates a dent in the case of the

claimants and strengthens the case of the insurance company that vehicle was not involved in the accident. However, I am not impressed by this contention. The Tribunal has dealt with such aspect in detail in para No.15 to 19 of the award.

16. Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions.

17. The proceedings before the Tribunal are of summary in nature where the rules of evidence and procedure are not strictly applicable. The standard of proof is also not that high as it is in cases of civil and criminal nature. The cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt. Such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is not expected to prove his defence with some exactness and rigor, with which the prosecution is required to prove guilt of the accused. The accused is required to render only a reasonable and plausible explanation, which may cast a doubt in the mind about the truthfulness of the prosecution story. Furthermore, as per our jurisprudence, hundreds of guilty persons may go scot-free but even one innocent should not be punished. This is for the reason that the guilt of the accused should be established beyond a shadow of reasonable doubt because that entails

sentence of imprisonment affecting the life and liberty of a person. Whereas the standard of proof in proceedings before the Tribunal is not that strict.

18. Nevertheless the judgment of a criminal Court is not binding upon the Civil Court or Tribunal under motor vehicular accident. Even though respondent No.1 had managed to earn acquittal in the criminal case but the fact remains that he was arrested on the allegations of having caused the accident by his rash and negligent driving resulting in causing injuries to Dilbag Singh to which he had succumbed. When the police carried out investigation, his involvement in the accident was found to be there, for that reason he was sent up to face trial. The Court conducting trial found a prima facie case against him. As such, he was charge-sheeted accordingly. Though on analysis of the evidence and other facts and circumstances, the trial Court came to the conclusion that the guilt of the accused was not established as per requisite standard, therefore, he was granted acquittal. But that does not go to show that the entire case set up by the prosecution against the accused, which is on the similar lines as pleaded by the claimants in the claim petition was false.

19. Learned counsel for the insurance company had referred to various judgments in support of his contention that the claimants have been unable to show the involvement of the vehicle in question in the accident or that the accident had taken place on account of rash and negligent driving of such vehicle by respondent No.1 – Gulab Singh. The first judgment relied upon by him was ***United India Insurance Company Ltd. Versus Kamla Devi and others, 2010(53)RCR(Civil) 651*** by a Single

Judge of this Court. But that judgment does not help the appellant insurance company because in para No.5 itself, it is mentioned that it should still have been possible for the Tribunal to take a decision uninfluenced by any decision that may have come before the criminal Court and that several decisions have come on the issue to the effect that a judgment in a criminal Court is not binding on the Tribunal and non-filing of the FIR is not material and further even the fact of involvement of the vehicle as found by the criminal court is not binding. This judgment as a matter of fact does not help the appellant in advancing its case.

20. Regarding other judgment ***The Oriental Insurance Co. Ltd. Versus Kamla and others, 2016(1) LAR 635***, the facts of that case were also different where the deceased had slipped/skidded from the motorcycle and after two days of death of the victim theory of involving of offending vehicle had been concocted but the witness had turned hostile; the driver was acquitted but insurance company was held liable to pay compensation. In this case no such collusion between the claimants on one side and owner and driver of the offending car on the other side comes out to be there. Though in the FIR, name of the driver and details of the vehicle causing the accident are not there but that does not make much difference since FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had

committed the crime. It is sufficient to inform the police that an accident had taken place due to rash and negligent driving of a vehicle in which some person had suffered injuries or lost his life. Giving the details of the accident including registration number of the vehicle causing the accident and name of its driver and other particulars is not necessary because the lodger of the FIR may not have seen the accident himself or even if he had seen the accident might not be in a position to note down the registration number of the vehicle and particulars of the person driving such vehicle. It is only during the investigation of the case that the necessary details are found. Therefore, an FIR cannot be rejected for the reason that details of the accident including registration number of the vehicle causing the accident, its make, colour design etc. are not mentioned and description of the driver as well as name and address are not there. Similarly even if there is some delay in reporting the matter to the police, that is not fatal in every case because if some reasonable explanation is given for the delay then it is not taken adversely. Delay may be a relevant factor in a criminal case but it does not have much significance in proceedings before the Tribunal.

21. On the other hand, learned counsel for the claimants has also placed reliance upon judgment by the Apex Court in case titled ***Rajwati @ Rajjo & Ors. Versus United India Insurance Company Ltd. and other***s, Civil Appeal No.8179 of 2022 arising out of SLP(C) No.30754 of 2019, wherein the Apex Court in para No.19 had observed as under:

> *19. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with*

compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e. , to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases".

22. PW5 Waryam Singh had supported the case of the claimants when his statement was recorded in proceedings before the Tribunal. Though he is shown to have resiled in the criminal case but that by itself does not affect his deposition recorded before the Tribunal. It is quite possible that he had concealed facts within his knowledge when his statement was recorded before the criminal Court while he had given correct version of the accident seen by him when his statement was recorded before the Tribunal. The Insurance Company cannot take advantage of such fact in creating dent in the case of the claimants to recover compensation.

23. Therefore, the argument put forward by learned counsel for the appellant – insurance company in that regard is rejected.

24. No other argument was advanced.

25. Thus, the appeal is found to be without any merit and is dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

21.12.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No