

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

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IN VIRTUAL COURT

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1. FAO No. 466 of 2022 (O & M)
Date of decision : 9.2.2022

Universal Sompo General Insurance Company Limited Appellant

Vs.

Lakhwinder Kaur and others Respondents

2. FAO No.469 of 2022 (O & M)

Universal Sompo General Insurance Company Limited Appellant

Vs.

Lakhwinder Kaur and others Respondents

3. FAO No. 470 of 2022 (O & M)

Universal Sompo General Insurance Company Limited Appellant

Vs.

Lakhwinder Kaur and others Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Rajneesh Malhotra, Advocate and
 Ms. Vandana Malhotra, Advocate, for the appellant(s)

Rajbir Sehrawat, J. (Oral)

This order shall dispose of the above mentioned three appeals filed by the Insurance company since the same are arising from three different Awards, having common facts and legal prepositions, although passed in separate claim petitions filed by different claimants on account of death or

personal injuries. The facts are being taken from FAO No. 470 of 2022.

The parties herein are referred to as they are referred in the original claim petitions.

The brief facts giving rise to the present appeals are; that on 28.12.2019, Gurbhag Singh along with his wife Lakhwinder Kaur was travelling in Maruti Swift car bearing No. PB-08-CN-4643 and the same was being driven by Gurbhag Singh. It was at about 5:00 p.m. when the car was descending from a fly-over near Gurudwara Manji Sahib, Kota on Khanna-Ludhiana G.T. Road, then one Ertiga car bearing No. PB-23-R-5837 came from rear side, which was being driven by respondent No.1 rashly and negligently and at a very high speed without blowing any horn. Since the said car was being driven without caring for the traffic rules, therefore, that car struck against the car being driven by Gurbhag Singh. As a result of accident, the occupants of the Maruti Swift Car received multiple injuries on head and other parts of the body. The occupants of the car were taken to Sidhu Hospital, Doraha, where the doctor referred them to SPS Hospital, Ludhiana. However, the driver of the Maruti Swift car namely; Gurbhag Singh succumbed to the injuries. The driver of the offending car had slipped away with vehicle. With these facts, the widow, children and parents of deceased Gurbhag Singh filed compensation claim petitions qua death, injuries and damage to their car, ascertaining therein that the deceased was 48 years of age and was working as Assistant Sub Inspector in Punjab Police. He was earning Rs.71,215/-per month. Due to death of Gurbhag Singh, claimants have lost financially, as well as, emotionally. Accordingly, claim to the tune of Rs.1.5 crore was made in the claim petitions for death of Gurbhag Singh, besides claims for injuries to

Lakhwinder Kaur and qua the damage to the Swift car. An FIR was also registered regarding this accident against respondent No.1.

Having been put to notice, the respondents denied the assertions made in the petitions; and the accident, as such, with their vehicle. They also asserted that the claimants have not complied with the statutory provisions in filing the claim petitions. Beside this, the Insurance company also denied the contents of the claim petitions on merits and had taken routine plea regarding the valid driving licence etc.

The claimants led their evidence. Injured claimant Lakhwinder Kaur herself stepped into the witness box. Beside this, the eye witness Paramjit Kaur was examined as CW-2, who proved the factum and the details of the accident. The police officials dealing with the FIR, as well as, the Record Keeper of the SPS Hospital, Ludhiana, were also examined as witnesses. On the other hand, respondents No.1 and 2 also examined two police officials, who were connected with the FIR and tendered into evidence the copy of driving licence and insurance policy, as well as, the verification report. Thereafter, evidence was closed. No evidence has been led by the appellant/Insurance company. Even the driver of the offending vehicle and the owner of the same have not been examined as witnesses.

After appreciation of evidence of the respective parties, the Tribunal awarded amount of Rs. 3,60,565/- in MACP No. 35 of 2020 (FAO No. 466 of 2022), Rs.2,26,923/- in MACP No. 34 of 2020 (FAO No.469 of 2022) and Rs.1,10,60,347/- in MACP No. 25 of 2020 (FAO No. 470 of 2022) in case of personal injuries and death of Gurbhag Singh. Challenging the said awards, the present appeals have been preferred.

While arguing the case, counsel for the appellant(s) has submitted that the alleged offending vehicle has been falsely implicated. The FIR was got registered by injured Lakhwinder Kaur, however, she has not mentioned the registration number of the vehicle while registering the FIR. The alleged eye witness is only a made up witness. The alleged eye witness has admitted that she did not call anybody after the accident nor she went to the hospital. Hence, in all probabilities, she was not present at the scene of accident.

Having heard counsel for the appellant and having perused the record, this Court does not find any substance in the argument of counsel for the appellant. The counsel for the appellant has laid much emphasis upon the proceedings of the criminal case to impeach the evidence led by the claimants in the claim petitions. However, the criminal case itself is hardly relevant for the purpose of claim petition. Even if no FIR is registered, the claim petition cannot be thrown away only for the reason that FIR was not registered. Even if the FIR is registered, that has a limited relevance qua the claim petition to the extent that Court may take it as a collateral assistance while assessing whether there was possibility of the vehicle being involved or not, in case the challan is filed against the driver of the offending vehicle. Beyond that, there is no relevance of the criminal proceedings as such.

As far as the evidence on record of the claim petition is concerned, the injured claimant herself has appeared in witness box. She has duly deposed about the accident in question. Moreover, independent eye witness has also been examined by the claimants, who has categorically deposed as to the factum of accident and the manner thereof, as well as, qua the negligence of the offending vehicle. Despite lengthy cross examination, nothing substantial

could be extracted which could have impeached the testimony of this witness. Merely because the eye witness did not call any person from the family of the deceased or she did not accompany the injured to the hospital, is not sufficient to discard the testimony of the witness. This could happen for various valid reasons. So far as the testimony of CW-1 Lakhwinder Kaur is concerned, she cannot be blamed for not having disclosed the number of the offending vehicle while getting the FIR registered; because she was sitting in the car which had suffered the accident. It is obvious that when she had suffered the accident, her emphasis would be on getting the treatment at the earliest possible for herself and for her husband and not to go into the details of the offending vehicle. Needless to say, that on the next day itself, the eye witness had made the statement before the police giving even the number of the offending vehicle. Therefore, there is no doubt left in the fact that the offending vehicle was involved in the accident.

Although the claimants have made assertions in their claim petitions and have proved their cases as per the requirement of law, however, the respondent/appellant had raised assertions in the reply filed to the claim petitions that the vehicle in question was not involved in the accident. This was a categorical assertion on behalf of the appellant Insurance company. Therefore, to prove the said assertion, the Insurance company was required to lead the requisite evidence. However, undisputedly, the Insurance company has not led any evidence whatsoever. Not only this, even the owner and driver of the vehicle have not dared appear in witness box so as to face the cross examination by the claimants. This also gives rise to the adverse inference against the driver of the offending vehicle and, therefore, supports the case of

the claimants that the offending vehicle was duly involved in the accident in question.

Although counsel for the appellant has also raised objections qua the quantum of the compensation awarded in the respective claim petitions, however, no substantial argument could be addressed by him qua any fact on record relating to assessment of the amount to find fault with the amount awarded by the Tribunal.

No other argument was addressed.

In view of the above, finding no merit in the present appeals qua the pleas raised by the appellant(s)-Insurance company, the same are dismissed.

(RAJBIR SEHRAWAT)
JUDGE

9.2.2022
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No