

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-918-2003
Date of Decision: 27.02.2023

Smt. Geeta Devi and others Appellants

Versus

Vijay Kumar Yadav and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Appeal qua appellants No.1 and 2
dismissed for non-prosecution on 09.04.2019.

Mr. P.R.Yadav, Advocate,
for appellants No.3 and 4.

Mr. Gulshan Nandwani, Advocate,
for respondent No.1.

Mr. Sanjiv Pabbi, Advocate,
for respondent No.2.

RAJBIR SEHRAWAT, J. (ORAL)

The present appeal has been filed by the claimants against the award dated 30.11.2002 passed by the Motor Accident Claims Tribunal, Rewari (in short, 'the Tribunal'), whereby the claim petition filed by the appellants was dismissed.

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

The brief facts, as involved in the present appeal, are that on 30.10.1998 at about 11:00 p.m. Ramautar was standing near Ghasi Ram Memorial, Village Balawas Tehsil Bawal, when a jeep being driven by respondent No.1 in a rash and negligent manner came there and hit against

Ramautar. Due to darkness, registration number of the speeding jeep could not be noticed. However, lateron, the number of the offending jeep was found to be RRD-4459. On account of the injuries suffered by Ramautar, he died after being taken to hospital. On account of this accident, an FIR No.274 dated 31.10.1998 was also registered under Section 279 and 304A of the Indian Penal Code at Police Station Bawal on the statement of eye-witness Dilbagh Singh, who is the brother of the deceased. Asserting these facts, the widow, the minor daughter and parents of deceased-Ramautar filed a claim petition. However, the said claim petition has been dismissed by the Tribunal. Hence, the present appeal has been filed.

As reply to the claim petition, respondent No.1-driver-cum-owner of the offending vehicle denied the accident altogether. Therefore, he denied his liability to make any payment of the compensation. However, it was asserted that the offending vehicle was duly insured with respondent No.2-Insurance Company. Respondent No.2-Insurance Company also filed a separate written statement taking the routine preliminary objections, as well as, denying the involvement of the offending vehicle in question altogether. Besides this, it was also asserted that the driver of the offending vehicle was not having any driving license at the time of accident.

Arguing the case, learned counsel for the appellants has submitted that the Tribunal has gone totally wrong in dismissing the claim petition. The eye-witness has been duly examined before the Tribunal in the claim petition to substantiate the assertions made in the claim petition. The said witness has elaborately deposed qua the factum of the accident and the manner in which the same had happened. The respondents had put him to cross-examination; as

well, however, nothing has come out to impeach the assertion made by the claimants. The Tribunal has gone totally wrong in law in relying upon the FIR and the proceedings therein to dismiss the claim petition in the present case. Learned counsel has relied upon judgment rendered by this Court on 06.01.2023 in **FAO No.5296 of 2022** titled as '**United India Insurance Company Limited Vs. Mamta and others**' to buttress his argument that any aspect of the criminal case is not relevant for the purpose of decision of the claim petition. The claim petition is to be decided on the basis of the evidence led before the Tribunal in claim petition. Still further the learned counsel has submitted that the Tribunal has not even assessed the other aspects, regarding quantum of compensation; involved in the matter. Therefore, after setting aside the findings recorded by Tribunal, the matter deserves to be remanded to the Tribunal for adjudication on the aspect of quantum of compensation.

On the other hand, learned counsel for respondent No.2-Insurance Company has submitted that the Tribunal has rightly dismissed the claim petition filed by the appellants/claimants. The statement made by the alleged eye-witness in the FIR mentioned a different vehicle then the one which has been mentioned in the claim petition. This makes it clear that the claim petition has been filed by the claimants in collusion with the driver and owner of the alleged offending vehicle. No accident had taken place with the alleged offending vehicle at all. It is also submitted that the owner of the alleged offending vehicle had not been impleaded by the claimants, therefore, respondent No.2-Insurance Company cannot be held liable at all.

Having heard learned counsel for the parties and perused the record, this Court finds substance in the arguments raised by the learned

counsel for the appellants. It is not even in dispute that the assertion of the claimants in the claim petition is mentioning the number of the offending jeep as RRD-4459. The number is stated to have been disclosed by the eye-witness Dilbagh Singh. The said eye-witness Dilbagh Singh has been duly examined before the Tribunal as PW2, who has deposed in no uncertain grounds that the jeep involved in the accident was bearing registration No.RRD-4459, though he came to know of the exact number of the vehicle only after visiting the place of the respondent No.1. Even the other witness, PW4-Lakhi Ram, has deposed in the case; and he has deposed before the Tribunal that he had witnessed the accident from a distance of about 5-7 feet. This witness also disclosed the number of offending vehicle to be RRD-4459. Therefore, there is the testimony of two witnesses, which corroborate the involvement of the vehicle bearing registration No.RRD-4459. The said testimony cannot be discarded lightly, as such. Despite the cross-examination of the said witnesses, nothing substantial have come out to impeach the credit of their version. The Tribunal has wrongly discarded the testimony of these witnesses either on the ground that PW4-Lakhi Ram should have disclosed the number earlier or that PW2-Dilbag Singh made a different statement before the police. It deserves mention here that the accident had happened at 11:00 p.m. in the night, therefore, some confusion regarding registration number of vehicle is quite natural. However, none of the reasons given by the Tribunal can be a valid ground to discard the testimony of the eye-witnesses. Although the Tribunal has pressed into service the criminal case to discard the testimony of the eye-witnesses and to dismiss the claim petition, and the factum of statements made in the criminal case by the alleged eye-witnesses have also been emphasized by the learned counsel for

the respondents, however, this Court has already held in the case of **Mamta** (supra) that the registration of the FIR itself is not a *sine qua non* for maintaining the claim petition. The criminal case, being only a collateral aspect, can be used for the limited purpose of corroborating the factum of the accident having taken place, as such. Any other aspect of the FIR, criminal case or proceedings in or the result of a criminal case; are totally irrelevant qua the decision of the claim petition. The claim petition has to be decided solely on the basis of material brought on record before the Tribunal during the evidence led by the parties. Accordingly this Court is of the considered opinion that the Tribunal has wrongly imported the aspect of criminal case and the statements made in the criminal case; into the decision of the claim petition.

Another aspect which deserves emphasis is that it is a positive case of respondent No.1, as well as, of the Insurance Company that the petition was collusive in nature and both these respondents have altogether denied the factum of the accident having taken place. However, neither respondent No.1 has appeared as a witness before the Tribunal nor has the Insurance Company produced any other witness or the driver or the owner of the offending vehicle as a witness to face cross-examination on the part of the claimants. This also shows the inherent conviction with the respondents that their assertion qua the non-involvement of the offending vehicle is not correct. Otherwise also, once the respondents had taken a plea, it was incumbent upon them to prove the said plea; by leading positive evidence. However, the respondents have not led any evidence whatsoever on the said aspect. Therefore, they cannot even raise the issue, as such.

Although, learned counsel for the respondent-Insurance Company

has emphasized the fact that the owner of the vehicle was not impleaded as party by the claimants, however, the said fact cannot be used to prejudice the claim of the claimants for the simple reason that the driver of the vehicle has been duly impleaded. It was for the driver also to disclose as to who is the owner of the said vehicle. Moreover, even the Insurance company is having right to contest the claim petition even on quantum, at par with the owner and driver. The insurance company was not precluded by anything to implead the said owner as party to the claim petition and or to produce him as a witness to substantiate their assertion qua non-involvement of the offending vehicle into the accident. However nothing of that kind has happened. Moreover, the owner can be impleaded as a party at any stage, if need be.

Accordingly, the present appeal is disposed of and the findings recorded by the Tribunal qua non-involvement of the offending vehicle in the accident in question is set aside. The matter is remanded to the Tribunal for assessing the quantum of compensation; in accordance with law.

(RAJBIR SEHRAWAT)
JUDGE

27.02.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No