

FAO-871-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-871-2020 (O&M)

Date of decision: April 24, 2023

New India Assurance Co. Ltd.

....Appellant

versus

Jaswinder Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rahul Pathania, Advocate for
Mr. R.C. Kapoor, Advocate for appellant.

ARUN MONGA, J. (ORAL)

Appellant before this Court is Insurance Company seeking to modify impugned award dated 20.09.2019 rendered by learned Motor Accidents Claims Tribunal, Faridkot (for brevity, "Tribunal") for exonerating appellant-Insurance Company from liability to pay compensation.

2. Succinct facts, as noted by learned Tribunal, are as below:

"2. Shortly put, the facts, as disclosed in the claim petition, are that on the ill fated day of 27.11.2015 Sukhdev Singh (since deceased), was going to his house, for taking breakfast on his motorcycle bearing registration No.PB-30H/4336. At about 9.15 AM when he reached in front of Law College, Kotkapura road, Faridkot, at that time Rajbeer Singh son of Sukhdev Singh (since deceased) was standing in front of Law College, Faridkot. Sukhdev Singh (since deceased) was driving his motorcycle on left hand side of the road, at a very moderate speed, very carefully. At the time when Sukhdev Singh (since deceased) tried to take turn towards street of his house, at that time a Royal Enfield Motorcycle bearing registration No.PB-46E-9353, which was being driven by respondent No.1 very rashly, negligently, at a very high speed, came from his behind and hit the motorcycle of Sukhdev Singh (since deceased), from his behind. Rajbeer Singh and others had seen the occurrence. Due to this accident, Sukhdev Singh fell on the metaled road and suffered multiple and serious injuries, on various parts of his body. He was immediately taken to Civil Hospital, Faridkot, by Rajbeer Singh, where he died due to the injuries sustained by him in the accident. xx xxx xxxxx"

3. Upon notice, none appeared on behalf of respondents No.3 and 4 herein (Driver and owner of the alleged offending motorcycle), despite service through publication and they were proceeded against *ex parte*.

3.1. Appellant-Insurance Company filed its written statement raising preliminary objections that no information of accident was given and requisite documents of Motor Vehicle were not supplied to it and therefore, claim petition was liable to be dismissed; claim-petition was not maintainable as Sukhdev Singh (since deceased) never died in any road accident and therefore, liability of answering respondent was non-existing; claim-petition was vague, incomplete and did not disclose any cause of action against answering respondent; claimants had not submitted particulars of insurance, as such, insurance of vehicle involved in alleged accident, was specifically denied. Also averred that claimants were not entitled to any interest, and if it is so held, then only upto the extent of 5% per annum; respondent No.3-Navpreet Singh alias Lovepreet Singh was not holding a valid and legal driving licence at the time of alleged accident and respondent No.4 was well within the knowledge of this fact, but even then he allowed him to drive said vehicle at the time of alleged accident and thus violated the terms and conditions of insurance policy. Further averred that alleged FIR No.243 dated 27.11.2015 under Sections 304-A, 279 and 427 of IPC was not binding upon the appellant-insurance company.

3.2. On merits, factum of accident was denied. Other averments, *qua* avocation and income, as pleaded in the claim petition, were also denied. It was denied that deceased was employed as Assistant Sub Inspector in Punjab Police at Faridkot. It was further averred that a totally false, fabricated and exaggerated version had been given in the claim petition. All other averments of the claim petition were denied and prayed for dismissal of the claim petition.

4.

Learned Tribunal framed the following issues:

- “1. *Whether Sukhdev Singh died due to the Motor Vehicular accident, which took place on 27.11.2015, due to the rash and negligent driving of Motorcycle bearing registration No.PB46E-9353, by respondent No.1 Navpreet Singh @ Lovepreet Singh? OPA*
2. *If issue No.1 is proved, whether the claimants are entitled to seek compensation, if so, to what extent and from which of the respondents? OPA*
3. *Whether the present claim-petition is not maintainable in the present form? OPR*
4. *Whether respondent No.1, alleged driver of the Motorcycle bearing registration No.PB-46E-9353 was not having the valid and effective driving licence at the time of alleged accident? OPR*
5. *Relief.”*

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 to 4 in favour of claimants. Consequently, compensation to the tune of Rs.31,06,000/- along with interest at the rate of 7% per annum from the date of filing of claim petition till its realization was awarded in favour of claimant No.1- Jaswinder Kaur.

6. Learned counsel appearing on behalf of appellant-Insurance Company contends that learned Tribunal by not considering FIR in question, ignored the fact that offending vehicle was being driven by Harpreet Singh son of Krishan Singh who was later on substituted by one Navpreet Singh son of Gurmail Singh. Even, initially, claim petition was filed against Harpreet Singh, but later his name was substituted with above said Navpreet Singh because original driver was perhaps not having valid and effective driving licence.

7. I have heard learned counsel for appellant-Insurance Company and gone through the case file.

8. Long and short of the arguments canvassed to impugn the Award herein is that though computations of the compensation are not disputed, but liability has been fastened on appellant-Insurance Company by collusive act on the part of claimants and eye-witness by change of name of driver by substituting the name of Navpreet Singh for that of Harpreet Singh, who did not have valid driving

licence. Said stand is the repetition before this Court as the same argument was also raised by appellant-Insurance Company before the Tribunal below. From perusal of the Award, it is borne out that this contention was duly considered but rejected by the learned Tribunal on cogent and un-impeached testimony of eye-witnesses of the accident in question, namely Chamkaur Singh PW-5 and Rajbeer Singh PW-4, the latter being also star prosecution witness in the criminal proceedings registered vide FIR No.243 dated 27.11.2015, under Sections 279, 304-A and 427 IPC, at Police Station, City Faridkot.

8.1. What is to be seen is whether eye-witnesses at the time of accident had correctly noted particulars of the offending vehicle being a motor-cycle having registration No.PB-46E-9353 or there was some discrepancy *qua* the same leading to identity of the driver. It is not case of appellant-Insurance Company that there was any change in particulars of offending vehicle, but the contention is that original driver named by eye-witness was one Harpreet Singh and the Insurance Company claims that said Harpreet Singh did not have any valid driving licence and therefore, being an afterthought, his name was substituted by one Navpreet Singh, who is holding a valid driving licence.

8.2. The said argument seems to be a complete moonshine since other than making bald assertions in the pleadings, nothing whatsoever has been produced on record to substantiate the same at the time of adducing evidence by Insurance Company before learned Tribunal who, in my opinion, rightly rejected the same by relying upon the testimony of PW-5 Rajbir Singh and Chamkaur Singh, eye witnesses of the accident. Be that as it may, licence of driver Navpreet Singh alias Lovepreet Singh, who has been duly proved.

8.3. In the overall premise, since testimony of eye-witnesses remained un-impeached, Insurance Company failed to produce any material showing that in fact one Harpreet Singh was driving the offending vehicle at the time of accident. As

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such, I am unable to persuade myself to agree to the contention that there was any collusion on the part of eye-witness and claimants.

9. No other point has been urged or pressed during the course of arguments by learned counsel appearing on behalf of appellant.
10. In the premise, no grounds for interference are made out.
11. Dismissed.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 24, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No