

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

FAO 257/2023 (O&M)

Date of decision: 19.01.2023

Shri Ram General Insurance Company Limited.

.....Appellant

Vs.

Urmila Devi Mandal and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Rajbir Singh, Advocate for the appellant.

Nidhi Gupta, J.

Present appeal has been filed by the appellant-Insurance Company challenging the Award dated 9.11.2022 passed by Motor Accident Claims Tribunal, Yamuna Nagar (hereinafter referred to as 'the Tribunal'), in MACP 333/2018 whereby a total compensation of Rs.19,35,400/- was awarded to the claimants/respondents 1 and 2 herein. Claimants are the parents of the deceased Sanjip Kumar Mandal who was 21 years at the time of death.

The only ground on which the appellant Insurance Company has assailed the impugned Award is that in the FIR, initially the number of the vehicle in question was given as HR02AH-1469, whereas subsequently, the vehicle alleged to be involved in the accident in question was stated to bear registration No. HR-02W-5331 (hereinafter referred to as 'the offending vehicle'). It is submitted that it is therefore, evident that the offending vehicle which is insured with the appellant Insurance Company, was actually never involved in the accident in question and has been roped in just to procure

compensation. It is submitted that therefore, the appellant is not liable to pay the compensation as determined by the Tribunal. It is submitted that this is a material error on the face of the record which has not been properly or sufficiently explained by the respondents or the Tribunal, and therefore, the impugned Award deserves to be set aside. It is submitted that in fact, incorrect number of the offending vehicle was got recorded by the complainant in the FIR the same being HR02 AH-1469, which is actually the number of a vehicle owned by the father of the driver of the offending vehicle. It is submitted that such wrong number was subsequently replaced with the number of the alleged offending motorcycle bearing No. HR-02W-5531 by the claimants in collusion and connivance with the respondent nos. 3 and 4 herein who are driver and owner of the offending vehicle respectively.

Heard learned counsel for the appellant.

A perusal of the record of the case shows that accident had taken place on 13.3.2017 at about 7/7-30 pm in the evening. FIR No. 48 dated 13.3.2017 was registered at about 9.15/9.30 pm in respect of the accident in question on the basis of the statement of eyewitness Giasudin. The accident and the death have been admitted by the appellant Insurance Company. The only doubt sought to be created by the appellant Insurance Company is with regard to the involvement of the offending vehicle as, at the first instance, incorrect number was mentioned in the FIR. No doubt, initially in his complaint, PW3 Giasudin had given the wrong number of the vehicle as HR-02AH-1469. However, after visiting the site of accident and seeing the offending motorcycle lying there he gave the correct number of the offending vehicle as HR-02-W-5531 by way of supplementary statement which was duly supported by affidavit. Thus, in my view, there is no cause to doubt the evidence led by PW3 eyewitness.

Moreover, except a bald averment, no evidence has been led by the appellant to prove allegation of collusion, whereas, it has been categorically stated by PW3 Giasudin, that he did not know the deceased or the driver and owner of the offending vehicle. He has further categorically deposed that the offending vehicle being driven by respondent No. 3 along with pillion rider came from behind at a very high speed in a rash and negligent manner and struck the deceased from behind due to which he fell on the road and sustained fatal injuries. Admittedly, the driver respondent no.3 herein is facing trial, and even no evidence was led by him before the Tribunal to prove that he has been falsely implicated in the matter.

It is established position in law that in such like cases the claimants are required to establish their case on the touchstone of preponderance of probabilities, and standard of proof beyond reasonable doubt applied to criminal trials cannot be applied to claim petitions filed under the Motor Vehicles Act.

In my view in the present case there is enough material on record to show that the offending vehicle being driven by respondent no.3 herein was involved in the accident in question and the doubt sought to be raised by the appellant at this stage is spurious and flimsy.

Dismissed.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

19.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No