105 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 1226 of 2023 (O&M)
Date of Decision :13.03.2023

United India Insurance Company Ltd. ... Appellant

Versus

Mamta Kaur and Ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. H.S. Dhandi,Advocate, for the appellant.

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SANJIV BERRY, J (ORAL).

CM- No. 4620-CII of 2023

This is an application seeking condonation of delay of 21 days in filing the appeal. For the reasons mentioned in the application which is supported by an affidavit, the same is allowed, as prayed for.

CM disposed of.

FAO No. 1226 of 2023

Heard.

2. Learned counsel for the appellant-Insurance Company has assailed the award dated 29.10.2022 passed by learned Motor Accident Claims Tribunal, Fatehabad whereby claim petition filed under Section 163-A of Motor Vehicle Act by respondents No.1 to 5 herein (claimants) has been allowed.

3. Learned counsel for the appellant has inter alia argued that the

vehicle in question has been involved in the present case in connivance with the police so as to procure compensation. He submitted that originally the FIR was registered against unknown persons and unknown vehicle and no eye witness had been cited. However, during investigation the police introduced the vehicle in question allegedly driven by Chamkor Singh (respondent No.6 herein) at the time of accident, which is stated to be owned by Balbir Singh (respondent No. 7 herein). He submitted that all this has been done in collusion with each other. He further submitted that even nothing is on record as to how the police came to know about the involvement of the vehicle in question and investigating officer very casually had introduced the alleged vehicle during the investigation on 12.07.2019, he as such submitted that impugned award is liable to be set aside and hence the appeal.

4. After considering the submissions made by learned counsel for the appellant and perusing the record, it transpires that the claim petition under Section 163-A of Motor Vehicle Act, was filed before the Motor Accident Claims Tribunal, Fatehabad which was contested by the insurance company as well as driver and owner of car in question. Brief facts of the case pleaded are that on 30.06.2019 at about 5.00 A.M. while Paramjeet Kaur was crossing road in front of Bala Ji hotel, Khara Kheri, Fatehabad then the offending vehicle i.e. Car PB-31-K-1488 came from Hisar side driven by respondent No.1 and struck into her, as a result she sustained multiple injuries. One Papi son of Sukhdev Singh, resident of village Budhlada, District Mansa took her to Civil Hospital Fatehabad where she

succumbed. On his statement the police registered FIR No. 251 dated 30.06.2019 at P.S. Sadar Fatehabad.

5. It is pleaded that the deceased was working as labourer at marriage parties and earning ₹3,300/- per month. The claimants being her legal heirs and dependants were left with no income, hence the petition.

6. Written statement was filed by respondent No.1 and 2 whereby they denied the averments made in the claim petition being wrong and incorrect and submitted that no accident had ever place with the vehicle in question and they have been falsely impleaded in the petition. They admitted that vehicle in question was insured with United India Insurance Company vide valid policy no. 2001023118P116291893 and prayed for dismissal of the petition.

7. Separate written statement was filed by respondent No. 3-Insurance Company denying the averments made in the claim petition being wrong and incorrect. It was submitted that the petitioners have no cause of action as no such accident took place due to the driver of car in question. It was submitted that the driver of the car was not holding valid and effective driving licence at the time of the accident and as such the insurance company is not liable.

8. To prove its case the petitioner Mamta Kaur appeared in witness box as PW1 and closed the evidence after tendering documents as Ex. P-1 to P-5. On the other hand the respondents did not lead any evidence except tendering the documents as Ex.R1 to R4.

9. After appreciating the evidence and considering the arguments advanced by the learned counsel for the parties the learned MACT, Fatehabad had passed the impugned award dated 29.10.2022.

10. The main emphasis of learned counsel for the appellant-Insurance Company in assailing the award is the fact that the car number and the name of the driver was not mentioned in the FIR and later on the police had introduced the vehicle in question in a causal manner without there being any basis. During the course of arguments, learned counsel for the appellant has referred to the report of surveyor/investigator who suggested vide report dated 09.02.2020 that the case seems like completely colluded between the petitioners and respondent No.1 and 2. However on the perusal of the said documents it also transpires that the same Insurance Company i.e. United India Insurance Company, had also at the same time sanctioned the "Own Damage claim" (OD Claim) of respondent No.2 pertaining to the same vehicle No.PB-31-K-1488 vide report dated 15.07.2019 of the surveyor and loss assessor, who after spot inspection and physical inspection of the damaged vehicle had observed that the damage sustained to the vehicle are identical with the nature of the accident. It is also on record that "Own Damage claim" had been paid of on 20.12.2019 by the branch office, Ferozpur of the same appellant Insurance Company.

11. The learned counsel for the appellant could not controvert the factum of the payment of "Own Damage claim" (OD Claim) to respondent No.2 by the same Insurance Company pertaining to same accident. Even otherwise, it is on record that although the original FIR was registered with

no mention as the name of the driver and particulars of vehicle but later on during investigation the police had nominated respondent No.1 to be driver of the vehicle No. PB-31-K-1488 involved in the accident. Moreover, the petitioners and respondent No.1 and 2 are not stated to be related to each other and are even resident of far away towns. Had the respondent No.3 (present appellant) suspected any collusion, it could have examined some witnesses or even called the respondent No.1 in the witness box to elicit the truth but seemingly no evidence has been adduced by the appellant Insurance Company before the learned Tribunal except for tendering documents. There is nothing on record which could suggest any collusion between petitioners and respondents No. 1 and 2 and for that matter on the part of police to have during course of investigation, introduced the aforesaid vehicle having caused the accident. Moreover, admittedly after completion of investigation the police had already presented the challan before the competent Court wherein respondent No.1 being the driver is facing the criminal trial.

12. In these circumstances, I find no merit in the appeal and the same is hereby dismissed.

(SANJIV BERRY)
JUDGE

13.03.2023
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i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No