

FAO-2527 of 2023 (O&M)

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

FAO-2527 of 2023 (O&M)
Date of decision:02.08.2023

Go Digit General Insurance Co. Ltd.

.....Appellant

Versus

Harvinder Kaur and others

.....Respondents

FAO-2917 of 2023 (O&M)

Go Digit General Insurance Co. Ltd.

.....Appellant

Versus

Harvinder Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Er. Sandeep Suri, Advocate,
for the appellant(s).

NAMIT KUMAR, J.

1. By way of this common order, aforesaid two appeals, filed by Go Digit General Insurance Co. Ltd. (hereinafter referred to as 'the Insurance Company') against the awards dated 03.02.2023 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), are being disposed of. FAO-2527 of 2023 has been filed by the Insurance company against the award passed by the Tribunal, whereby respondent-claimants have been awarded Rs.17,51,590/- along with interest at the rate of 6% per annum from the date of claim petition till the date of award on account of death of Avtar

FAO-2527 of 2023 (O&M)

Singh and FAO-2917 of 2023 has been filed against the award whereby injured-Harvinder Kaur has been granted compensation of Rs.51,400/- along with interest at the rate of 6% per annum from the date of claim petition till the date of award on account of injuries suffered by her. For the sake of brevity, facts are being taken from FAO-2527 of 2023.

2. For the sake of convenience, parties are being referred as per their status in the claim petition. The brief facts of the case are that on 29.11.2020, claimant no.1-Harvinder Kaur had gone to village Bahadurgarh to see her mother, on motor cycle no. PB11-CQ-9065. The motor cycle was driven by deceased-Avtar Singh and claimant no.1 was pillion rider. At about 6 p.m. the deceased and claimant no.1 reached near Gava Garden village Ghamrouda, then a car Maruti Suzuki was coming from Nabha side, which was driven by its driver in rash, negligent and zigzag manner, came on wrong side and struck against the motor cycle of deceased as a result of which the deceased and claimant no. 1 fell down on the road and suffered multiple and grievous injuries. After seeing the critical condition of the deceased, the driver of said car fled away from the spot alongwith car. Claimant no. 1 noted down the number of car as HR26-AL-6888. Many people had gathered at the spot. A vehicle was arranged for claimant no. 1 and her husband for admission to Rajindra Hospital, Patiala. The deceased was died on the way of Rajindra Hospital, Patiala. The post-mortem of the deceased was conducted by the doctors of Rajindra Hospital, Patiala and a case being FIR no. 259 dated 30.11.2020 U/s 279,304-A,427 of IPC was registered at Police Station Sadar, Nabha, against unknown

FAO-2527 of 2023 (O&M)

driver of Maruti Car No. HR26-AL-6888. It was pleaded that the accident took place on account of sole rash and negligent driving of respondent no.9 by driving his car no. HR-26-AL-6888. The deceased was 42 years of age and was hale and hearty. He was doing the work of mason and was earning Rs.30,000/- per month. It was further pleaded that all the claimants were dependent upon the income of deceased. Claimants have suffered loss of income, dependency, love and affection on account of untimely death. Claimant no. 1 also suffered loss of consortium and loss of companionship. The claimants have spent an amount of Rs. 1,50,000/- on account of transportation of dead body, funeral and last ritual etc of deceased. It was further pleaded that since the accident caused on account of sole rash and negligent driving of respondent no.9 and insured with the appellant, hence both were equally, jointly and severally liable to pay the amount of compensation alongwith 18% per annum. Amount of Rs 50,00,000/- as compensation was claimed by the claimants with interest @ 18% per annum from the date of accident till final realization.

3. Upon notice respondents no.9-Narinder Singh Chandel appeared and filed written statement taking preliminary objections regarding maintainability, respondent no.9 was having valid driving license and claim petition is false and vague. It was submitted that at the time of alleged accident vehicle in question was insured with Go Digital General Insurance Company. The petition is based on false and vague facts as such same is liable to be dismissed. On merits, the personal facts of deceased regarding his income, age and occupation

FAO-2527 of 2023 (O&M)

were denied for want of knowledge. Date, time and place of accident, registration of FIR was also denied. The receipt of injuries and death of deceased, his post-mortem, treatment and spending of more than Rs. 1,50,000/- as transportation and last rites of deceased was also denied. The story of the accident was also denied being totally wrong and concocted one. It was submitted that no accident took place with vehicle in question and answering respondent was not liable to pay any compensation amount to the claimants.

4. Respondent no. 2-Insurance Company also filed written statement taking preliminary objections that petitioners have no *locus standi*, the tribunal has no jurisdiction. It was submitted that as per Supardari order the vehicle in question was got released by Power of attorney holder namely Sagardeep Singh, who was also involved in other cases as owner of the offending vehicle i.e. a) MACP No. 2013 of 2015 titled as Promila Rani Vs. Naresh Kumar b) MACP No. 364 of 2019 titled as Sukhanjit Singh Vs. Jagrup Singh. Further the witness of power of attorney namely Amrik Singh son of Lajja Ram r/o village Sarangpur, Ambala City was also involved in another case titled as Varinder Kaur Vs. Amrik Singh i.e. MACP 67 of 2018. It was pleaded that the above conduct clearly proves that vehicle has been planted by respondents no.1. It was further submitted that the owner was not intimated about the happening of alleged accident as per terms and conditions of Insurance policy and as required under Section 134 (c) of Motor Vehicle Act, 1988 and answering respondent has no liability to indemnify the insured or to pay any compensation to the claimants. The

FAO-2527 of 2023 (O&M)

driver of vehicle No. HR26- AL-6888 was not holding a valid and effective driving license and RC at the time of accident. It was further submitted that claim petition was bad for non-joinder of necessary parties. It was submitted that in FIR vehicle number was mentioned as HR-6888 whereas insured vehicle number is HR26-AL-6888. It was further submitted that petitioners had not come to the court with clean hands. It was further submitted that as per Section 158 (6) of M.V.Act 1988 it is mandatory duty of the concerned police station to forward all the relevant documents to the concerned insurer within 30 days from the date of information but the same has not been complied with. On merits, all the facts as put forth by the claimants have been denied for want of knowledge and record. Prayer for dismissal of claim petition with costs was made.

5. From the pleadings of the parties, following issues were framed:-

- 1. Whether the deceased Avtar Singh son of Parkash Singh died in a roadside accident which took place on 29.11.2020 by the rash and negligent driving of Maruti Suzuki Car No. HR-26-AL6888, driven, owned by respondent no. 1 and insured with respondent no.2? OPA*
- 2. Whether the claimants are legal heirs of deceased?OPA*
- 3. If issues no.1 & 2 are proved, Whether the claimants are entitled to receive the compensation from the respondents, if so, how much amount and from whom? OPA*
- 4. Whether the claimants have no locus-standi and cause of action to file the present claim petition?OPR2*
- 5. Whether the claim petition is bad for non-joinder of necessary parties?OPR2*

6. Whether the claim petition is not maintainable?OPR

7. Whether the driver of offending vehicle was not holding a proper legal and valid driving license and other documents of the vehicle at the time of accident?OPR2

8. Relief.

6. Both the sides led their oral as well as documentary evidence. After hearing learned counsel for the parties and appreciating the evidence on record, the tribunal vide impugned awards granted compensation to the claimants as narrated above.

7. Learned counsel for the appellant-Insurance Company contended that the awards passed by the Tribunal are illegal and not sustainable in the eyes of law as they have been passed against the evidence on record. He further contended that claimants failed to prove that vehicle bearing registration No.HR-26-AL-6888 was involved in the accident as in the FIR, number of the offending vehicle was given as HR-6888. He further submitted that there is delay of one day in lodging the FIR as the alleged accident took place on 29.11.2020 and the FIR was got registered on 30.11.2020.

8. I have heard learned counsel for the appellant and perused the record.

9. Claimant No.1-Harvinder Kaur has gone through a lengthy cross-examination and nothing untoward was stated by her in the cross-examination. The contention of the learned counsel for the appellant that offending vehicle has been falsely implicated in the present case as in the FIR incomplete details of the offending vehicle have been given cannot be accepted keeping in view the statement of claimant No.1-

FAO-2527 of 2023 (O&M)

number of the vehicle was disclosed to her by one Rupinder Singh who was present at the spot. Therefore, it is possible that being illiterate the claimant might have remembered the number partly and got recorded the same at the time of registration of the FIR. Perusal of the record shows that accident took place on 29.11.2020 at about 6.00 p.m. and the FIR was got registered on the next day i.e. on 30.11.2020. Critical perusal of FIR shows that claimant No.1 had given the exact and vivid description of the accident and the injuries sustained by her and her deceased husband in the said accident. Claimant was seriously injured in the accident and her husband had died on the way to hospital. The chronological events narrated by the claimant inspire confidence and it does not smack of a concocted case which has been filed by her only with an intention to get compensation. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR, thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of

FAO-2527 of 2023 (O&M)

fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons. Keeping in view the mental agony through which the claimant/injured was passing, whose husband had died, contention of the learned counsel does not hold any water and the same is rejected. Moreover, Narinder Singh, driver and owner of the offending vehicle never stepped into witness box to deny serious allegations levelled against him nor any other alleged eye witness has been produced by him to rebut the claim of the claimant.

FAO-2527 of 2023 (O&M)

10. Learned counsel or the appellant-Insurance Company has failed to point out any illegality or perversity in the impugned awards.
11. Dismissed.

02.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned :

Whether Reportable :

Yes/No

Yes/No