

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

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FAO-4287-2019 (O&M)
Date of Decision: 19.04.2023

United India Insurance Company Ltd.

...Appellant

Versus

Anita and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajesh K. Sharma, Advocate
for the appellant.

Mr. Rajbir Singh, Advocate
for respondents No.1 to 3.

ARUN MONGA, J. (Oral)

CM-13840-CII-2019

This is an application filed under Order 41 Rule 27 CPC for production of additional evidence by placing on record copies of judgments/ Awards as Annexures A-1 to A-5.

Since the main case is being decided vide order of even date, no separate order is required to be passed in the instant application,

CM stands disposed of, accordingly.

Main case

Aggrieved by the award dated 08.02.2019 rendered by Motor Accidents Claims Tribunal, Patiala (for brevity, 'Tribunal'), Insurance Company has preferred the instant appeal.

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

“On 18.11.2016 deceased Davinder Singh after availing casual leave was going from his house situated at Village Ullana, to join his duties at Patiala, on motorcycle bearing registration No. PB-11BU-1031. When he reached Bahadurgarh, then he remembered that his identity card had been left at home and he stopped his motorcycle. In the meantime, his brother Amrinder Singh came from Patiala side and both of them started their return journey from Bahadurgarh to Ullana on their separate motorcycles. Davinder Singh was driving his motorcycle at a moderate speed and his brother Amrinder Singh was following him on his own motorcycle. At about 7-30 pm after crossing Punjab State Electricity Board, Ghanaur, both of them had covered some distance towards village Ghanaur, in the meantime a truck bearing registration no. PB-11BU-9893 being driven by respondent No. 2 Sucha Singh rashly and negligently and at a very high speed came from the opposite side. The driver of the truck brought the truck on the extreme wrong side of the road on the katcha portion and hit the motorcycle of deceased with great force from front side. As a result of accident, deceased fell down on the road and received multiple simple and grievous injuries. Amrinder Singh stopped his motorcycle and started taking care of his injured brother. Respondent No. 2 Sucha Singh stopped his truck at some distance and alighted from the truck, but on seeing the serious condition of Davinder Singh, he ran away from the spot along with his truck towards Bahadurgarh. Many people converged at the scene of accident. The injured was shifted to Civil Hospital, Ghanaur by Amrinder Singh from where he was referred to Rajindra Hospital, Patiala. The injured was further referred to Amar Hospital, Patiala and he was taken to Fortis Hospital, Mohali and then to Command Hospital, Chandimandir where he died on 19.11.2016. The accident was caused due to rash and negligent driving of respondent No. 2. The matter was reported to the police and FIR No. 96 dated 20.11.2016 was registered under Sections 279, 304-A, 427 IPC at Police Station, Ghanaur. The claimants claimed that deceased was employed at Naik in Indian Army and getting Rs. 42,848/- per month. He was to get promotion in near future and his salary would have been increased. The claimant No. 1 has suffered loss of consortium. All the claimants were solely dependent upon the income of deceased and on account of his untimely death the claimants have suffered a great loss. They have been deprived of love and affection of deceased. The claimants spent Rs. One lac on funeral and last rites of deceased. They have claimed Rs. 95 lacs as compensation for the death of deceased. The claimants further alleged that respondent No. 1 is owner, respondent No. 2 is the driver and respondent No. 3 is insurer of offending vehicle and all of them are jointly and severally liable to pay the amount of compensation.”

3. Upon notice, respondent No. 4 and 5 (owner and driver of alleged offending vehicle) filed their joint written statement and denied the averments

made in the claim petition. It was stated therein that vehicle in question was insured with appellant herein at the relevant time.

4. Appellant being insurer of the offending vehicle also contested the claim petition and raised preliminary objections regarding maintainability, claim petition suffering from non-joinder and mis-joinder of necessary parties; cause of action etc.

4.1. On merits, it was denied that the accident took place due to rash and negligent driving of the offending vehicle. All the averments of the claim petition to that effect were also denied.

5. Based on rival pleadings, learned Tribunal framed the following issues:

- “ 1. *Whether Davinder son of Jai Parkash died in a roadside accident due to rash and negligent driving of respondent No. 1 on 18.11.2016? OPP*
2. *If issue no. 1 is proved whether the claimants are entitled for compensation, if yes from whom and to what amount? OPP*
3. *Whether the respondent no. 1 was not holding a valid driving licence, registration certificate, fitness certificate, route permit at the time of accident? OPR*
4. *Whether the present claim petition is not maintainable? OPR*
5. *Relief.*”

6. On appraisal of evidence, the learned Tribunal decided issues No. 1 and 2 in favour of claimants and issues No. 3 and 4 were decided against appellant-insurance company. Consequently, claim petition was allowed and claimants were awarded compensation to the tune of Rs.67,13,200/- on account of death of Davinder Singh in a motor vehicular accident.

7. Feeling aggrieved, Insurance Company, who was respondent No. 3 before learned Tribunal, has come up in appeal before this Court.

8. I have heard the learned counsel for parties and with their able assistance gone through the record.

9. Award assailed herein is premised, *inter alia*, on the following reasoning:

“ 18. So far as delay in registration of FIR is concerned, the CW 2 Amrinder Chand alias Amrinder Singh who is the real brother of the deceased made his statement to the police for registration of the FIR on 20.11.2016. Earlier he remained busy in connection with the treatment of deceased who at the first instance was shifted to Civil Hospital, Ghanaur from where he was referred to Rajindra Hospital, Patiala. The deceased was further referred to Amar Hospital, Patiala and he was taken to Fortis Hospital, Mohali and then to Command Hospital, Chandi Mandir where he died on 19.11.2016. In these circumstances, merely delay in registration of the FIR cannot create any doubt regarding the version of the claimants as the claimants and eye witness who is the real brother of the deceased were busy to save the life of the deceased. As stated above, it is well settled law that in order to get compensation under the Act, it is not necessary for the claimants to get the criminal case registered against the driver of the offending vehicle, but in this case not only the police has registered the FIR but also presented the challan against the respondent no. 2 after due investigation. In these circumstances, this Tribunal has no hesitation to hold that from the evidence on the file, it is proved that deceased Davinder Singh died in an accident which occurred due to rash and negligent driving of the truck in question by respondent no. 2.

19. No doubt, as per the verification reports Ex.R8 and R10, the licence of respondent No. 1 Raman Kumar was not genuine, but the said fact in itself is not sufficient to conclude that there is a collusion between the claimants and respondents No. 1 and 2 as sufficient evidence discussed above has come on record that respondent No. 2 Sucha Singh was the driver of the offending vehicle at the time of accident in question. Moreover, the Insurance Company has also not been able to produce any evidence to show the collusion between the claimants and respondents no. 1 and 2 or that the deceased has received injuries in some other manner due to which he died.”

10. In view of the above facts and having heard counsel for the parties, it is borne out that cruel hands of destiny took away the life of husband of the widow, who is seeking compensation on his death as victim of hit and run case when he was returning to rejoin duty after leave to meet his family. After he left the home to join the duties, he realized on the way that he had forgotten his I-card at home and was returning home to collect the same riding on motorcycle when he was hit by a truck which is the offending vehicle/truck insured with appellant-Insurance Company. The injuries suffered in the accident resulted in his death in the hospital.

11. It is contended that there is a delay of two days in registration of FIR and the driver of the offending vehicle has been planted by the widow of deceased, who has filed the claim petition. Second argument as regards the allegation that Sucha Singh was not driving the vehicle, learned Tribunal has given cogent reasons to return the findings that it was indeed Sucha Singh, who was driving the offending vehicle. In fact, originally claim petition was filed against owner of the offending vehicle thinking that he was the driver at the time of accident, since it was a case of hit and run, it was not possible for the widow or her family to ascertain the identity of the driver. Subsequently, the course of investigation of FIR, it transpired that owner was not the driver of the offending vehicle.

12. Based on the said information, the claim petition was amended and the driver was added as respondent No. 2 in addition to the owner of the offending vehicle.

13. There is ample evidence on record which has been discussed by learned Tribunal apart from the testimony of the investigating officer qua the identity of the driver, which remained unimpeached and unrebutted. Therefore, I find no reasons to differ with the view taken by the Ld. Tribunal that Sucha Singh was driving the truck at the time of accident.

14. Regarding delay in registration of FIR, there are certain judgments on the same that claimant can seek compensation once occurrence is even otherwise proved. In any case, so called delay in the present case to register the FIR is justifiable. Accident took place in the evening hours of 18.11.2016 and FIR was lodged 2 days later on 20.11.2016. The first and foremost priority was to save the life of accident victim, get him admitted in the hospital and give medical treatment instead of rushing to Police Station. The matter was later reported to police without undue delay, FIR was then registered and

investigation was carried out. What was important was thus to save the life of the victim. Ascertaining the identity and adding the name of the driver was secondary priority at that time.

15. In the premise, I am of the view that neither delay of two delays in registration of FIR is fatal to the claimant's case nor even otherwise, Insurance Company has been able to bring anything on record that offending vehicle was not being driven by Sucha Singh, as alleged.

16. In the appellate proceedings herein, first time a stand was taken by the Insurance Company that Sucha Singh is allegedly involved in as many as 7 other hit and run cases. In all those cases, he has purportedly been planted as a willing conspirator to raise fake claim of compensation, though he was actually not driving the offending vehicle. It is rather intriguing that such a sweeping and sensational allegation has been levelled but no steps, whatsoever, viz. registration of any FIR or any criminal complaint or otherwise, have been taken by the Insurance Company to prove that respondent Sucha Singh is involved in certain other hit and run cases wherein he was falsely planted as a willing conspirator. The appeal was filed in the year 2019 and in the course of hearing, learned counsel submits that since then, no action has been taken against the alleged conspirator/driver. Therefore, I am unable to accept the defence taken before this Court *qua* the alleged false involvement of Sucha Singh.

17. In view of the above, the appeal is dismissed.

18. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

19.04.2023
Harish Kumar

Whether speaking/reasoned : Yes/ No

Whether Reportable : Yes/ No