

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

FAO-2820-2020 (O&M)

Reserved on: 08.05.2023

Date of pronouncement: 17.05.2023

ICICI Lombard General Insurance Company Ltd.

...Appellant

Versus

Balvir Khan and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

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

H.S. MADAAN, J.

Briefly stated facts of the case are that on account of death of one Mam Chand in a motor vehicular accident, which took place on 18.09.2018 at about 5.35 PM in the area near Govt. tube-well, village Basauli statedly on account of rash and negligent driving of scooty Hero Dute bearing registration No.PB70-D-7395 (for short 'the offending vehicle') by respondent No.1 Kamaljit Singh, LRs of such deceased i.e. his sons namely Balvir Khan, aged about 40 years and Khurshid Ali, aged about 50 years, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Kamaljit Singh driver, Labh Singh-owner and ICICI Lombard General Insurance Company Ltd. insurer of the offending vehicle. In the claim petition, the claimants had impleaded Smt. Sadho widow of the deceased as proforma respondent No.4.

2. The claim petition was contested by respondent No.3-insurance company only whereas respondents No.1, 2 and 4 did not appear and as such were proceeded against ex parte. On conclusion of proceedings, Motor Accidents Claims Tribunal, SAS Nagar, Mohali (for brevity 'the tribunal'), vide award dated 23.01.2020 allowed the claim petition and granted compensation of Rs.8,61,000/- to the claimants and proforma respondent No.4 with interest @ 8% per annum from the date of filing of claim petition till actual realization, payable by respondents No.1 to 3 jointly and severally.

3. Respondent No.3-insurance company felt aggrieved by the award and has challenged the same by way of filing an appeal, notice of which was given to the respondents who did not appear despite service.

4. I have heard learned counsel for the appellant besides going through the record.

5. The tribunal on analysis of the evidence brought before it in the form of eye witness account provided by PW1 Balvir Khan son of the deceased, who had supported the case of the claimants with regard to respondent No.1 Kamaljit Singh being author of the accident by rash and negligent driving of the offending vehicle in which Mam Chand suffered injuries to which he had succumbed. He was cross-examined at length on behalf of the respondents but he remained un-shattered. Furthermore, respondent No.1 had not appeared in the Court to depose on oath that he had not caused the accident by rash and negligent driving of the offending vehicle. Similarly, respondent No.2 did not summon courage to appear before the tribunal and to state that the vehicle belonging to him

was being driven by respondent No.1 had not caused any such accident. Though respondents No.1 and 2 had been proceeded ex parte but nothing prevented insurance company to summon respondent No.1 as a witness to state that the accident had not been caused by him by his rash and negligent driving of the offending vehicle. The FIR with regard to the accident had been registered, copy of which being Ex.P1. It was recorded on the basis of statement of Balvir Khan son of the deceased. The registration number of the offending vehicle is clearly mentioned therein so is name of respondent No.1 as its driver.

6. With regard to the plea of learned counsel for the appellant insurance company that there is a delay of two days in reporting the matter to the police, which causes a doubt over truthfulness of the version of the case given by the claimants. I do not find myself in agreement with learned counsel on this point. The delay in lodging of the FIR may be of some significance while dealing with a criminal case but it is not so while adjudicating a claim petition U/s 166 of the Motor Vehicle Act. For deciding such a petition, formal FIR with regard to the accident may or may not be recorded, therefore, the delay in reporting the matter to the police does not affect the merits of the case.

7. Another argument advanced by learned counsel for the appellant was that respondent No.1 has since been acquitted in the criminal case, since Balvir Khan who was author of the FIR, had not identified the driver of the offending vehicle before the criminal Court and had been declared a hostile witness and his statement on oath before the tribunal is contrary to his statement in the criminal proceedings.

Again I do not find any merit in this argument. The law is well settled that judgment of a criminal Court is not binding upon civil Court much less the tribunal adjudicating a claim petition which is to reach its own conclusion on the basis of evidence adduced before it without being influenced by any judgment by the criminal Court. Furthermore, statement of Balvir Khan before the tribunal was on oath and he was tested by way of cross-examination. There was no evidence adduced by respondent – insurance company in rebuttal, therefore, Balvir Khan not identifying the accused before the criminal Court does not affect the value of his testimony before the tribunal.

8. One more argument advanced was with regard to the age of deceased. According to learned counsel for the appellant, the age of deceased as per case of the claimants was 57 years whereas age of Khurshid Ali claimant, son of the deceased, is mentioned to be 50 years and it is highly unlikely that there is such a small difference between the ages of a father and the son. Though, this argument of learned counsel for the appellant make some sense but then there could be a number of reasons for that, may be age of Khurshid Ali is not mentioned properly in the claim petition or wrongly given due to illiteracy of claimants etc. If we see the record, then the claimants had placed on file, copy of Aadhaar card of the deceased showing his date of birth to be 01.01.1962 which fortifies the contention of claimants that on the date of accident i.e. 18.09.2018, he was aged about 57 years.

9. Learned counsel for the appellant has submitted that age of deceased should be taken to be more in view of anomaly between his age

and that of his son Khurshid Ali but I find that in view of the documentary evidence giving his date of birth as 01.01.1962, it would not be proper and appropriate to disbelieve an important document in the form of copy of Aadhaar card and take his age to be on higher side on the basis of assumption and guess work. Even otherwise, the compensation assessed by the tribunal on account of death of Mam Chand does not appear to be on higher side, rather it is found to be just and fair.

10. I do not see any reason to interfere with the impugned award in any manner. The appeal is found to be without merit and is dismissed accordingly.

17.05.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No