IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2896-2013 (O&M)
Reserved on:- 13.07.2023
Pronounced on:- 17.07.2023

The Oriental Insurance Company Ltd.

....Appellant

Versus

Paramjit Kaur and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Lalit Garg, Advocate
for the appellant.

Mr. J.S. Cooner, Advocate
for respondents No. 1 to 3.

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AMARJOT BHATTI, J.

1. The appellant – The Oriental Insurance Company Ltd. filed present appeal against impugned award dated 30.11.2012 passed by learned Motor Accident Claims Tribunal, Gurdaspur vide which the respondents No. 1 to 3/claimants have been awarded compensation of Rs.25,30,000/- along with interest at the rate of 9% per annum from the date of the filing of petition till realization of the award, as detailed therein.

2. The facts of the case are that the claimants Paramjit Kaur, her minor son Ajay Pal Singh through his mother being natural guardian and Jagir Singh filed the claim petition under Section 166 of Motor Vehicles Act for grant of compensation on account of death of Daljit Singh in a motor vehicular accident on 12.10.2009. Late Daljit Singh was about 38 years old at the time of accident. He was working as Head Constable with Punjab Police and was getting salary of Rs. 26,000/- per month. The

claimant No. 1 is the widow, claimant No. 2 is the minor son and claimant No. 3 is the old father of late Daljit Singh. As per the facts of the case, on 12.10.2009, late Daljit Singh was going from Dera Baba Nanak to Fatehgarh Churiya on his motorcycle Passion bearing No. PB-02-AG-9098. He was followed by LC Sukhdev Singh and HC Ravinder Singh and various other persons on their separate vehicles. At about 06:30 P.M., when they reached in the area of Village Mallewal on Dera Baba Nanak to Fatehgarh Churiya road, the offending truck bearing No. HR-38-D-3880 being driven by respondent No. 1 Kashmir Singh came from the opposite side and hit the motorcycle of Daljit Singh by going on the extreme wrong side of the road i.e. the kacha berm. The respondent No. 1 after causing accident was stopped and apprehended by Rupinderjeet Singh. However, respondent No. 1 managed to fled away from the spot alongwith the offending vehicle. The injured Daljit Singh was taken to New Mahajan Hospital, Batala Road, Fatehgarh Churiya where he died within few hours on account of injuries suffered by him in the accident. Regarding this accident, FIR No. 63 dated 12.10.2009 was registered under Section 304-A, 427, 279 I.P.C. Police Station Fatehgarh Churiya. The claimants have filed this claim petition claiming compensation to the tune of Rs.50,00,000/- on account of death of late Daljit Singh alongwith the claim under various heads with interest @18% per annum from the date of accident till final realization of the amount with cost, as detailed in the claim petition.

3. Notice of claim petition was given to the respondents. The respondents No. 1 and 2 appeared and filed their joint written statement taking preliminary objections that claim petition is not maintainable. The Truck bearing No. HR-38-D-3880 was insured with Oriental Insurance

Company Ltd. at the time of said occurrence, therefore, the liability for grant of any compensation should be fixed upon the insurance company. On the merits of the case, the facts were denied for want of knowledge. The respondents No. 1 and 2 took the stand that on the fateful day, the respondent No. 1 was driving his truck on the correct left side of the road at a normal speed. When they reached Mallewal at Dera Baba Nanak to Fatehgarh Churiya road, a motorcyclist came on motorcycle bearing No. PB-02-AG-9098 from the opposite side in a rash and negligent manner and hit the truck. The accident had taken place due to rash and negligent driving of the deceased himself and there was no fault on the part of respondent No. 1. The contesting respondents admitted that the said truck was owned by respondent No. 2 and duly insured with respondent no. 3. However, the income of deceased has been denied. It is prayed that claim petition qua the present respondents may be dismissed. In case the Tribunal comes to the conclusion that the claimants are entitled to compensation, in that event, the liability should be fixed upon the insurance company.

4. The Insurance Company also filed written statement taking preliminary objection that the driver of the truck – respondent No. 1 was not holding any Driving License at the time of said accident and in case the license is produced, the same is fake, invalid, bogus, ineffective and not issued by any competent authority. The owner of the truck was plying the vehicle in contravention of the terms and conditions of the Insurance Policy. The insurance company took the stand that it seems that the claim petition is filed in collusion of claimants with respondents No. 1 and 2. The insurance company has every right to contest the petition on all the defences which are available to the driver and the owner of the vehicle.

The quantum of compensation and the rate of interest claimed by the claimants are also denied by the insurance company. On merits, the facts are denied for want of knowledge. The claimants may be directed to give strict proof regarding the facts mentioned in the claim petition. The existence of Insurance Policy was also disputed as the respondents No. 1 and 2 did not supply copy of the same. The amount of compensation claimed by the claimants is highly excessive and exorbitant. The claimants are not entitled to any compensation from the answering respondent.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 11.01.2012 :-

(1) Whether Daljit Singh son of Jagir Singh died on 12.10.2009 at about 06:30 p.m. in the area of near Village Mallewal on Dera Baba Nank Fatehgarh Churiya, due to accident caused by respondent No. 1 by driving truck No. HR-38-D-3880 rashly and negligently? OPA

(2) Whether the claimants are entitled to the compensation if so to what extent and from whom? OPA

(3) Whether the claim petition is not maintainable in the present form? OPR

(4) Whether the driver of offending vehicle was not holding any driving license at the time of alleged accident? OPR

(5) Relief.

6. In order to prove the claim petition, the learned counsel for claimants examined Rupinderjeet Singh as PW-1, Paramjit Kaur, widow of deceased Daljit Singh as PW-2, ASI Rajinder Kumar as PW-3 and Sharanjit Singh, Ahlmad Criminal as PW-4. The said witnesses proved on record salary certificate and photocopy of service book of Constable Daljit Singh as Ex.P-1 and Ex.P-2, Recovery Memo as Ex.P-3, verification report as Ex.P-4 and Ex.P-5, photocopy of statement of witness Rupinderjeet Singh as Ex.P-6 and photocopy of FIR No. 63 dated 12.10.2009 as Ex.P-7.

On 09.05.2012, learned counsel for the claimants tendered into evidence attested copy of post mortem report as Ex.P-8 and attested copy of charge sheet as Ex.P-9 and closed the evidence.

7. In order to rebut the case of the claimants, the learned counsel for respondents No. 1 and 2 tendered photocopy of Driving License of Kashmir Singh as Mark-A and learned counsel for respondent No. 3 tendered verification report of Driving License as Ex.R-1 and closed the evidence.

8. After hearing the arguments advanced by learned counsel for all the parties, the claim petition filed by the claimants was allowed by passing award dated 30.11.2012 as referred above by holding the liability of respondents as joint and several. Feeling aggrieved of this award, the present appeal has been preferred by Oriental Insurance Company Ltd.

9. In this case, this Court has passed an order dated 03.07.2023 in Civil Miscellaneous bearing No. 6286-CII of 2019, whereby the application for leading additional evidence filed under Order 41 Rule 27 read with Section 151 of CPC for placing on record copies of statement of Rupinderjeet Singh recorded in criminal case as Annexure A-1 and judgment of acquittal as Annexure A-2 has been allowed.

10. The learned counsel for the appellant – Insurance Company argued that the facts, law and the evidence on record were not rightly appreciated by the learned Tribunal. The material facts have been ignored. The liability of insurance company has been wrongly fixed by the learned Motor Accident Claims Tribunal, Gurdaspur. The learned Tribunal has committed grave error by over-looking the fact that in the FIR No. 63 dated 12.10.2009 Ex.P-7 neither the number of the vehicle nor the name of driver of the said offending vehicle has been mentioned. In fact, the truck

in question bearing No. HR-38-D-3880 has been falsely planted in the accident in collusion with respondents No. 1 and 2. The learned Motor Accident Claims Tribunal, Gurdaspur has put reliance on the sole statement of Rupinderjeet Singh PW-1 and has failed to notice the presence of LC Sukhdev Singh and HC Ravinder Singh who were following the motorcycle of late Daljit Singh. The aforesaid witnesses never stepped into the witness box to prove the accident. The version put forward by Rupinderjeet Singh as PW-1 is not trustworthy. It has come in his cross-examination that he did not give any information to the police regarding the accident. He claimed that he was called in the police station after three days. He never approached the police to lodge the FIR on the same day. He neither disclosed the name of the driver of offending truck nor disclosed its registration number. Therefore, the testimony of Rupinderjeet Singh PW-1 is not trustworthy to prove the accident or rash and negligent driving on the part of respondent No. 1 Kashmir Singh in the main case. The learned counsel representing the insurance company further referred to the statement of Rupinderjeet Singh PW-1 recorded before the learned Judicial Magistrate First Class on 11.08.2011 (Annexure A-1), where he changed his version altogether. He claimed that the truck was being driven by unknown person who ran away alongwith the truck. He further stated that he did not note down the number of the truck. He categorically stated that the accused person in the Court was not driving the truck. The said Kashmir Singh, driver of the said offending truck was acquitted by learned Judicial Magistrate First Class, Batala in Criminal Case No. 05 of 08.01.2010 vide judgment dated 21.10.2015, which is Annexure A-2. Therefore, Rupinderjeet Singh PW-1 has given contradictory statement before the different Courts and his testimony cannot be relied upon. To support his argument, the learned counsel for the appellant - insurance company has relied upon the authority cited in **2016(1) Local Acts Reporter 635** of the Coordinate Bench, in case titled "***The Oriental Insurance Co. Ltd. Versus Kamla and others***", where in a similar case, "*the deceased in that case slipped from the motorcycle and it was consistent stand of the relatives that there was no criminal intent. However, after two days, when the patient died, the theory of involvement of offending vehicle being driven by Parveen Kumar was coined and the same has been proved before the Tribunal. Even in that case, the same very eye witness turned hostile before the Criminal Court, so that the accused driver is not put to any harm and thus cleverly the insurer of the offending vehicle was made liable to pay compensation on the death of Jagdish Chander in that case. The appeal preferred by the insurance company was allowed and the claim petition filed by the claimants was dismissed in that case.*"

The learned counsel for insurance company has further put reliance on another authority cited in **VOL.CLX-(2010-4) THE PUNJAB LAW REPORTER 235** of the Coordinate Bench, in case titled ***"United India Insurance Company Limited Versus Kamla Devi and others"***, where it was held that "*the statement given in a criminal court case by a witness is a statement on oath and in case he was uttering falsehood then he was liable for perjury.* It was further concluded that *in case there was contradiction between the version given before the Tribunal to the statement made before the criminal court then such a witness will be unworthy of acceptance and the entire evidence could have been simply rejected.*"

By relying upon aforementioned judgments, the learned counsel for the appellant argued that the statement of Rupinderjeet Singh PW-1 cannot be relied upon to prove the accident as well as rash and negligent driving on the part of Kashmir Singh. A false FIR has been registered against respondent No. 1 Kashmir Singh (respondent No. 4 in present appeal) in order to get compensation. Since the said offending truck bearing No. HR-38-D-3880 was insured with the appellant - insurance company, the entire liability has been fastened on the present appellant. It is argued that the learned Motor Accident Claims Tribunal, Gurdaspur has failed to appreciate this fact and the findings given by the Tribunal regarding issue No. 1 is liable to be reversed.

11. The learned counsel for the appellant – insurance company further raised the issue regarding the quantum of compensation awarded in favour of the claimants. The learned counsel for the appellant referred to the statement of Paramjit Kaur PW-2 where she admitted that after the death of her husband Daljit Singh, she is getting family pension to the tune of Rs. 6,945/-. She further admitted that she has been granted job in the police department on compassionate ground and now she is drawing salary of Rs. 20,000/- per month. Apart from this, she has received gratuity, leave encashment etc. on the death of her husband. The learned Motor Accident Claims Tribunal, Gurdaspur has failed to consider the aforesaid facts while granting the quantum of compensation in favour of the claimants. Therefore, the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Gurdaspur is also unjustified and excessive. Apart from this, no other point is raised by learned counsel for the appellant – insurance company. It is argued that appeal preferred by the appellant – insurance company may be accepted and the award passed by

learned Motor Accident Claims Tribunal, Gurdaspur may be set aside.

12. On the other hand, the learned counsel for the respondents No. 1 to 3/claimants argued that the claimants had led convincing evidence on record to prove the accident as well as rash and negligent driving on the part of Kashmir Singh – respondent No. 1 (respondent No. 4 in the present appeal). In order to prove the accident, the claimants examined Rupinderjeet Singh PW-1 who filed his detailed affidavit Ex.PW1/A and fully explained the manner in which the accident had taken place. He categorically stated that the accident had taken place due to rash and negligent driving of truck bearing No. HR-38-D-3880 being driven by Kashmir Singh – respondent No. 1. During cross-examination, he confirmed that he had read the number of the truck and had also inquired about the name of the driver of the said offending truck. The fact regarding accident and registration of FIR is also proved on record by examining Sharanjit Singh, Ahlmad Criminal as PW-4 who produced the criminal case file titled "State Vs. Kashmir Singh" in FIR No. 63 dated 12.10.2009 registered under Section 304-A, 279 and 427 of IPC, Police Station Fatehgarh Churiya. The statement of Rupinderjeet Singh recorded by the police is Ex.P-6 and the copy of FIR is Ex.P-7. Therefore, the claimants had led sufficient evidence on record to prove the accident as well as rash and negligent driving of Kashmir Singh. It is pointed out that the statement of Rupinderjeet Singh recorded in the criminal case (Annexure A-1) as well as judgment of acquittal dated 21.10.2015 (Annexure A-2) pertaining to Kashmir Singh is not relevant for the decision of the present case. The criteria for the decision of criminal case is different from the criteria for the decision of claim case/civil case. In the criminal case, the prosecution is to prove the guilt of accused beyond the shadows of reasonable doubt,

whereas, in a civil case, the findings are recorded on the principle of preponderance of probabilities. To support his argument, the learned counsel for the respondents No. 1 to 3/claimants has relied upon the authority cited in **2016(3) R.C.R.(Civil) 980** of our own High Court in case titled **"Suman and others Versus Somveer and others"**, where it was concluded that "*acquittal of driver in a criminal case is of no consequence and has no effect on the merits of the claim case.*" The learned counsel for the respondents No. 1 to 3/claimants has also put reliance upon another authority of Coordinate Bench cited in **2012(12) R.C.R(Civil) 558**, case titled **"Commandant and another Versus Saroj Rani and ors."**, where in that case *"the Author of the First Information Report Didar Singh RW-4 turned hostile before the Criminal Court. It was observed that he might have also turned out with different version before the inquiry officer but the evidence given before the Tribunal is found to be quite reliable, in the sense he has completely corroborated his version in the First Information Report. Therefore, his statement cannot be doubted by the Court of law."*

It is argued that in the case in hand, the accident, rash and negligent driving by Kashmir Singh driver is duly proved on record from the testimony of Rupinderjit Singh who is examined as PW-1 and the statement of this witness cannot be ignored. Therefore, the learned Motor Accident Claims Tribunal, Gurdaspur came to the conclusion that accident as well as rash and negligent driving on the part of respondent No. 1 Kashmir Singh is duly proved on record and the findings given in issue No. 1 does not require any interference.

The learned counsel for the respondents No. 1 to 3/claimants further pointed out that the quantum of family pension received by

Paramjit Kaur/claimant cannot be deducted while assessing the quantum of compensation as per the salary of late Daljit Singh. No doubt Paramjit Kaur has been given job on compassionate ground and for that she is serving in the department. The claimants have received gratuity, leave encashment etc. on the untimely death of late Daljit Singh and the same cannot be considered while assessing the quantum of compensation. The arguments advanced by learned counsel for the insurance company does not hold any ground. It is prayed that the appeal preferred by the appellant - insurance company deserves dismissal.

13. I have considered the arguments advanced by learned counsel for the appellant – insurance company as well as the arguments advanced by learned counsel for the respondents No. 1 to 3/claimants. It is the case of insurance company that a false FIR has been registered against Kashmir Singh in collusion with the claimants in order to get compensation. In the case in hand, the accident took place on 12.10.2009 and on the same day FIR was registered on the statement of LC Sukhdev Singh. It is matter of record that in FIR No. 63 dated 12.10.2009 under Section 304-A, 279, 427 of IPC, Police Station Fatehgarh Churiya Ex.P-7, the number of the vehicle as well as name of the driver of the said offending vehicle is mentioned as unknown. It is the case of claimants that Rupinderjeet Singh followed the truck and stopped it. He disclosed the name of the driver as Kashmir Singh as well as number of the offending truck as HR-38-D-3880. In order to prove this accident, Rupinderjeet Singh stepped into the witness box as PW-1 and in his affidavit Ex.PW1/A, he has fully corroborated the version regarding accident as detailed in the aforesaid FIR Ex.P-7. He categorically stated that he was following the motorcycle of late Daljit Singh and at about 06:30 pm, when they were in the area of

Village Mallewal on Dera Baba Nanak to Fatehgarh Churiya road, the offending truck came from the opposite side and hit the motorcycle of Daljit Singh by coming on the wrong side of the road and thereafter, the driver of the truck was stopped by him. He had inquired about the name of the driver and people started gathering there. During this period, the driver of the truck manged to escape from there. Rupinderjeet Singh PW-1 conceded during his cross-examination that he did not go to the police station to lodge the FIR. In fact, he was called by the police after three days. The counsel for claimants examined Sharanjit Singh, Ahlmad Criminal as PW-4 who produced the record of criminal case titled “State Versus Kashmir Singh” in the aforesaid FIR and proved the statement of Rupinderjeet Singh recorded during investigation Ex.P-6 dated 15.10.2009, confirming the facts as stated before the learned Motor Accident Claims Tribunal, Gurdaspur. This witness also proved the recovery memo dated 18.10.2009 Ex.P-3 vide which the offending truck bearing No. HR-38-D-3880 was taken into police possession.

14. The learned counsel for the appellant – insurance company laid emphasis on the fact that Rupinderjeet Singh was examined in the aforesaid criminal case where he turned hostile and did not support the prosecution case. The said statement is Annexure A-1. On the basis of his testimony, Kashmir Singh the driver of the said offending truck was acquitted vide judgment dated 21.10.2015, which is Annexure A-2.

I have also considered this aspect of the present case. It is matter of record that statement of Rupinderjeet Singh was recorded in the criminal case on 11.08.2011 (Annexure A-1). However, when the statement of Rupinderjeet Singh PW-1 was recorded in this claim petition on 15.02.2012, he was not confronted with the said statement Annexure

A1 given before the Court of Magistrate. The aforesaid statement dated 11.08.2011 (Annexure A-1) is merely placed on record. There was no request to recall the witness Rupinderjeet Singh PW1 to confront him with the aforesaid statement. In the written statement filed by respondents No. 1 and 2, it was alleged that the FIR registered against Kashmir Singh is false but the at the same time the accident, involvement of truck bearing No. HR-38-D-3880 and the identity of Kashmir Singh as driver of the said truck was not disputed. The respondents No. 1 and 2 admitted the accident but claimed that it took place due to rash and negligent driving of motorcyclist Daljit Singh. In order to prove this stand neither Kashmir Singh has stepped into the witness box nor any other witness has been examined. The insurance company in the written statement claimed that a false FIR has been registered by the claimants in collusion with respondents No. 1 and 2. Therefore, the onus was on the insurance company to prove the said collusion between the claimants and respondents No. 1 and 2. The perusal of file further shows that no such evidence was led by the insurance company. Even Rupinderjeet Singh – eye witness examined as PW-1 was not confronted with the statement dated 11.08.2011 given before the Magistrate, which is Annexure A-1. I have also carefully gone through the judgment of acquittal dated 21.10.2015, Annexure A-2. The learned Magistrate examined three witnesses i.e. Rupinderjeet Singh PW-1 who did not support the prosecution case and two other witnesses namely HC Gurmeet Singh PW2 and ASI Palwinder Singh PW-3 who were not eye witnesses to the said accident. The FIR No. 63 dated 12.10.2009 was registered on the statement of LC Sukhdev Singh who has not been examined in the aforesaid criminal case. It is rightly pointed out by learned counsel for respondents No. 1 to

3/claimants that the criteria for proving the guilt in a criminal case is beyond the shadows of reasonable doubt, whereas, the proceedings before learned Motor Accident Claims Tribunal, Gurdaspur are summary proceedings. Therefore, the statement of Rupinderjeet Singh PW-1 – eye witness to the accident confirming the facts as detailed in the FIR No. 63 dated 12.10.2009 Ex.P-7 as well as supporting his own version given before the police during investigation which is Ex.P-6 cannot be ignored. Above all, the respondents No. 1 and 2 admitted the accident and failed to establish the stand taken by them in the written statement that the accident took place due to rash and negligent driving of the deceased himself. The insurance company also failed to lead convincing evidence on record to prove the collusion between the claimants and respondents No. 1 and 2 in order to establish the stand taken by them in the written statement. Considering the aforesaid facts, I do not find any reason to interfere in the findings given by the Tribunal on issue No. 1 and the same is accordingly confirmed.

15. The learned counsel for the appellant – insurance company also raised issue regarding the quantum of compensation awarded in favour of the claimants. Paramjit Kaur, the claimant is examined as PW-2. She confirmed that she is drawing family pension of Rs. 6,945/-. She also confirmed that after the death of her husband who was serving in police department as Head Constable, was given job on compassionate ground and she is drawing salary of Rs. 20,000/- per month. She also confirmed the receipt of gratuity, leave encashment and other benefits on the untimely death of her husband. ASI Rajinder Kumar PW-3 has proved the salary certificate of HC Daljit Singh, which is Ex.P-1 and photocopy of the first page of his service book is Ex.P-2. It is settled proposition that the

aforesaid benefits, family pension or the job provided to her on compassionate ground cannot be considered to assess the quantum of compensation awarded to the claimants on the untimely death of the victim. I have gone through the contents of the award. The learned Motor Accident Claims Tribunal, Gurdaspur while granting compensation has taken the salary of late Daljit Singh as Rs. 21,087/-. Considering the number of family members depending on late Daljit Singh, 1/3rd income was deducted towards personal expenditure and considering the age of deceased as 37-38 years, multiplier of 15 was applied. Therefore, it cannot be said that the quantum of compensation awarded in favour of the respondents No. 1 to 3/claimants is excessive or without justification. On the other hand, the respondents No. 1 to 3/claimants have not challenged the quantum of compensation awarded in their favour vide award dated 30.11.2012 passed by learned Motor Accident Claims Tribunal, Gurdaspur.

Therefore, in view of my above discussion, no interference is called for in the findings given by the learned Motor Accident Claims Tribunal, Gurdaspur and the award dated 30.11.2012 is accordingly, confirmed and the appeal preferred by the appellant – The Oriental Insurance Company Limited is accordingly, dismissed. The original record received from the Tribunal be sent back to the concerned quarter.

Pending application(s) if any, also stands disposed of.

17.07.2023 **(AMARJOT BHATTI)**
lalit **JUDGE**

Whether speaking/reasoned: Yes
Whether reportable: Yes/No