IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5553-2019(O&M)
Date of decision:-18.1.2023

Oriental Insurance Company Ltd.

...Appellant

Versus

Munni Devi and others

...Respondents

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

Present: Mr.Ashwani Talwar, Advocate
for the appellant.

Mr.Varun Jain, Advocate
for respondents No.1 to 4.

Mr.Ravi Malhotra, Advocate
for respondent No.5.

****

H.S. MADAAN, J.

1. Smt.Munni Devi – widow, Raj Kumar – son, Aman – minor son and Pinki – minor daughter of Sh.Surinder Kumar, who lost his life in a motor vehicular accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Sanjeev Gogna – driver and owner and The Oriental Insurance Company Ltd. – insurer of Swift Dzire VDI car bearing registration No.PB-10ER-3940 (hereinafter referred to as the offending car) claiming compensation. In that claim petition, the claimants had arrayed Savitri Devi, mother of deceased as respondent No.3.

2. As per the case of the petitioners/claimants, Surinder Kumar

deceased aged about 42 years was working as a Finishing Incharge with M/s Eveline International, Dhandari Kalan, Ludhiana getting Rs.30,762.50 Ps. as salary per month; on 17.6.2016 after the working hours were over, Surinder Kumar left his factory for returning home located at Ashok Nagar-C, Ludhiana on motorcycle bearing registration No.PB10CV-6932 (hereinafter referred to as the ill-fated motorcycle); he was being followed by his nephew Pawan Kumar and brother-in-law Vinay Kumar on separate motorcycle bearing No. PB-10EW-5117; at about 8:30 p.m., when they had reached at over bridge near Gulati Dhaba, GT Road, Ludhiana, then the offending car being driven by respondent No.1 in a rash and negligent manner and at a high speed came from behind and struck the motorcycle of Surinder Kumar; resultantly, he fell down on the road along with the motorcycle and suffered injuries; he was taken to Civil Hospital, Ludhiana, where he was declared as dead.

An FIR No.138 dated 18.6.2016 for the offences under Sections 279, 304-A, 427 IPC was registered at Police Station Salem Tabri, Ludhiana. As such the claimants have brought the claim petition in question before Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as the Tribunal).

3. Notice of the claim petition was given to the respondents. Respondents No.1 to 3 put in appearance and filed separate written replies. In the written reply submitted on behalf of respondent No.1, he took various preliminary objections challenging the maintainability of the claim petition contending that the claimants had not approached the Court with clean hands and had suppressed true facts from the Court; no

accident had taken place with the offending car of answering respondent; he was having a legal and valid driving licence at the time of accident and the vehicle was insured with respondent No.2 – insurance company; a false FIR was registered against the answering respondent; as a matter of fact on 17.6.2016 at about 8:30 p.m. respondent No.1 along with his father Mohinderpal Gogna and driver Mani was going from their factory at Dhandari Kalan to their residence at Salem Tabri, Ludhiana via elevated Jagraon bridge; respondent No.1 saw one motorcycle rider lying on the road near Gulati bridge; on observing that respondent No.1 told his driver to stop the car; thereafter respondent No.1 on humanitarian grounds took the motorcycle rider to side of the road with the help of 3-4 passersby; keeping in view the serious condition of motorcycle rider, respondent No.1 along with other people took him to Civil Hospital, Ludhiana in an Auto Rickshaw; as father of answering respondent No.1 was suffering from kidney problem and a urine bag was attached to him, respondent No.1 send his father along with the driver to his residence; the motorcycle rider was got admitted in emergency ward of Civil Hospital, Ludhiana for treatment; after checking the doctors declared that the motorcycle rider had died; in the meanwhile respondent No.1 took out mobile phone from the pocket of motorcycle rider and informed his relatives and acquittance, who reached at the hospital and rather attacked the respondent No.1. Thereafter, the police registered a false FIR against respondent No.1. On merits, respondent No.1 denied the assertions in the claim petition and reiterated the stand taken in the preliminary objections. He prayed for dismissal of the claim petition.

4. In the written reply filed on behalf of respondent No.2 insurance company, it had also taken up various legal objections contending that respondent No.1 owner of the car in question was not having a valid and effective driving licence and the car was not having valid registration certificate, permit and fitness certificate at the time of alleged accident; the petition was bad for misjoinder and non-joinder of necessary parties. On merits, the assertions in the claim petition were refuted contending that the accident took place due to negligence of the deceased. It was admitted that the car in question was insured with respondent No.2 but liability to pay compensation was denied. Refuting the remaining allegations, such respondent also craved for dismissal of the petition.

5. Respondent No.3 in her written statement admitted the claim of the petitioners/claimants.

6. On the pleadings of the parties, following issues were framed:-

1. Whether Surinder Kumar died on account of injuries sustained by him in a motor vehicular accident, which was caused by respondent NO.1 while driving car No.PB-10ER-3940 in a rash and negligent manner in the area of P.S. Salem Tabri, Ludhiana, on 17.6.2016? OPP.
2. Whether the claim petition is not maintainable against the respondents? OPR.
3. Whether at the time of accident, the driver of offending vehicle was not holding valid and effective driving licence? If so, its effect?

OPR-2.

4. Whether at the time of accident, the offending vehicle was driven in violation of the terms and conditions of the insurance policy? If so, its effect?OPR-2
5. Whether the claim petition is bad for non joinder and misjoinder of necessary parties? If so its effect? OPR.
6. Whether the claimants are entitled to get any compensation? If so what extent and from whom? OPP.
7. Relief.

7. Both the parties led evidence in support of their respective claims.

In support of their case, the claimant No.1 had got her statement recorded as PW1 besides examining Pawan Kumar as PW2, Sunil Tripathi as PW3, Som Chand Goyal as PW4, HC Amrik Singh as PW5, Vinay Kumar as PW6 and Raman Shukla as PW7.

In rebuttal, respondent No.1 himself got his statement recorded as RW1 besides examining Mani as RW2 and Amanpreet Singh as RW3 and closed the evidence.

Respondent No.2 closed the evidence after tendering copy of insurance policy as Ex.R1, online verification of driving licence of Money as Ex.R2 and online verification of driving licence of Sanjeev Gogna as Ex.R3.

8. After hearing arguments, the Tribunal decided issue No.1 in favour of claimants and against the respondents No.1 and 2, issue No.2 was decided against the respondents No.1 and 2 and in favour of the

claimants, issues No.3 and 4 were decided in favour of respondent No.1 and against respondent No.2, issue No.5 was decided against the respondents No.1 and 2 and in favour of the claimants, issue No.6 was decided in favour of the claimants and respondent No.3 and against respondents No.1 and 2. Resultantly, while allowing the petition partly with costs in favour of claimants and respondent No.3 vide award dated 14.5.2019, the Tribunal granted compensation of Rs.40,57,900/- along with interest @ 7.5% per annum from the date of filing of the petition till award, payable by respondents No.1 and 2 jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

9. Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

10. Notice of the appeal was issued to the respondents. Respondents No.1 to 4 and 5 put in appearance through counsel.

11. I have heard learned counsel for the parties besides going through the record.

12. Learned counsel for the appellant insurance company has that as a matter of fact Swift Dzire VDI car bearing registration No.PB-10ER-3940 was not involved in the accident and it was wrongly planted by the claimants in collusion with the local police; PW2 Pawan Kumar and PW6 Vinay Kumar are both interested witnesses being nephew and brother-in-law of the deceased; as a matter of fact both these witnesses had not seen the accident because if they were present at the spot at the relevant time

then they would have taken injured Surinder Kumar to hospital, however, the very fact that injured had been taken to hospital by Sanjeev Gogna with the help of Constable Kuldeep Singh goes to show that Sanjeev Gogna had found injured Surinder Kumar lying on the road unattended but thereafter car in question was wrongly involved to get compensation. This plea is further fortified from the fact that respondent No.5 was not found guilty in causing of the accident and police had submitted a cancellation report in the matter.

According to learned counsel for the insurance company, the Tribunal has fallen in error in making the driver, owner and insurance company of Dzire car liable to pay compensation vide the impugned award, therefore by way of acceptance of the present appeal, the claim petition be dismissed.

13. Whereas, learned counsel for the claimants/respondents has vehemently refuted these contentions defending the impugned award to be legal and valid.

14. After considering the rival contentions and going through the record, I find little merit in the submissions made by learned counsel for the appellant insurance company.

15. Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there.

16. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

In judgment ***Anita Sharma and others Versus The New India Assurance Co. Ltd. and another, 2021 AIR (Supreme Court) 302*** it was held that standard of proof in motor accident matters is one of the preponderance of probabilities rather than beyond reasonable doubt.

17. Here FIR No.138 dated 18.6.2016 for the offences under Sections 279, 304-A, 427 IPC was registered at Police Station Salem Tabri, Ludhiana on the basis of statement of one Pawan Kumar. Although as a result of investigation conducted, the FIR in question is said to have been cancelled by the police but does it mean that for the said reason, the claim petition should also be rejected, the answer is in negative. Undoubtedly, the deposition of a witness on oath in a Court is at much higher pedestal than statement of a person made to a police officer during investigation. Here PW2 Pawan Kumar and PW6 Vinay Kumar had provided the eye-witness account of the accident categorically stating that respondent No.1 was author of the accident by his rash and negligent driving of the offending car. Both the witnesses were cross-examined at length on behalf of the respondent but they stuck to their guns and could not be shattered on any material point. I do not see any reason to discard

their testimonies. Even by preponderance of probabilities the version given by the claimants corroborated by depositions of PW2 Pawan Kumar and PW6 Vinay Kumar seems to be much more probable and plausible than version of respondent No.1. It has been noticed that people, who want to avoid criminal liability and pecuniary liability in claim petition usually come up with such type of stories otherwise if respondent No.1 had taken injured to hospital on humanitarian grounds informing his relatives and friends, they would have rather felt obliged towards him rather than giving him beatings and lodging a false FIR against him. The whole story set up by respondent No.1 seems to be improbable and unconvincing.

18. As regards the cancellation report having been prepared by the police and filed in the Court, the police of this region is not known for thorough and scientific investigation and instances are not rare when it succumbs to various type of pressures may be political, pecuniary or otherwise so as to file such type of reports. Even otherwise, the Tribunal is to reach its own conclusion in the matter and is not bound by the result arrived at by the investigating agency.

19. Learned counsel for the respondents has referred to judgment ***United India Insurance Company Ltd. Versus Surjit Kaur and Ors., 2015(9) RCR(Civil) 901*** by a Single Judge of this Court wherein in such like situation, it was observed that the mere fact that cancellation of FIR has been recommended and Senior Superintendent of Police agreed to it, is no ground to disbelieve the eye-witness because that deposition is substantial piece of evidence.

20. Learned counsel for the respondents further pointed out that before the Tribunal respondent No.2 insurance company had sought amendment of written reply to take plea that Mani driver of respondent No.1 was driving the car at the relevant time but that application was dismissed by the Tribunal vide order dated 2.3.2019.

21. As such, I conclude that the verdict given by the Tribunal that respondent No.1 was author of the accident by rash and negligent driving of the offending car is correct, based upon proper appraisal of evidence and correct interpretation of law and no ground is there to upset that finding. For such reason, respondent No.1 being driver and owner and respondent No.2 being insurer of the car at the relevant time were rightly held liable to pay the compensation.

22. The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

23. Finding no merit in the appeal, the same stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

18.1.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No