

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
229 **FAO-1941-2017 (O&M)**
Date of decision: 17.05.2023

Bharti AXA General Insurance Co. Ltd.

...Appellant(s)

Vs.

Raveena & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajbir Singh, Advocate for
Mr.Sanjeev Goyal, Advocate
for the appellant.

Mr. Ravi Kadian, Advocate for
respondents No.1 to 5.

Mr. Karan Inder Singh, Advocate for
Mr. Vikrant Hooda, Advocate for
respondent No.6.

NIDHI GUPTA, J.

Mr. Ravi Kadian, Advocate puts in appearance on behalf of respondents No.1 to 5 and files Power of Attorney which is taken on record.

2. Present appeal has been filed by the Insurance Company challenging Award dated 24.10.2016 passed by Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as "the learned Tribunal") in Claim Petition No.145 of 2015 filed by claimants/respondents No.1 to 5 herein under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Vide the impugned Award, learned Tribunal has awarded compensation of Rs.31,92,848/- to the claimants along with interest @ 7.5% per annum

from the date of institution of the claim petition till its actual realisation.

Learned Tribunal awarded compensation as above on account of death of Sandeep Kumar.

3. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the deceased-Sandeep Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 02.08.2015 at mid night due to rash and negligent driving of Santro car bearing registration No.HR-14J-4245 (hereinafter referred to as 'the offending vehicle') being driven by respondent No.6, owned by respondent No.7 and insured by the appellant herein. The claimants are the widow, two minor children and parents of deceased-Sandeep Kumar.

4. Learned counsel for the appellant assails the impugned Award on the grounds:

a) that the accident had occurred on 02.08.2015 at mid night. However, FIR No.784 was registered under Sections 279 and 304-A IPC on 04.08.2015 i.e. after a delay of 1½ days. It is submitted that furthermore, FIR was registered against unknown vehicle. It is submitted that learned Tribunal's conclusion is patently erroneous as it is an admitted case of the claimants that the alleged accident had taken place on the intervening night of 2 and 3 August, 2015 and in the FIR itself number and description of the vehicle is not mentioned, nor was the driver named. It is submitted that as per the claimants' story itself, the deceased along with his brother PW2-Pardeep who was pillion riding

behind the deceased at the time of accident, and who is the author of the FIR, has not disclosed particulars of the offending vehicle to the police even two days after the alleged accident and admittedly, he got the FIR registered against unknown driver and unknown vehicle. It is submitted that during cross-examination, even a suggestion was put to PW2 regarding correctness of the FIR to which PW2 has stated that FIR was correctly recorded. It is stated that therefore, the story put forth by the claimants is false as the accident, as well as involvement of the offending vehicle is doubtful;

b) that learned Tribunal has held driver of the alleged offending vehicle to be rash and negligent only on the basis of the statement of PW3-Anoop son of Rajender, and on basis of the pending criminal proceedings against the driver. However, learned Tribunal has ignored the fact that police has recorded statement of PW3 after 16 days of the accident;

c) that the claimants have planted the alleged offending vehicle in connivance with respondents No.6 and 7 as well as local police only in order to extract compensation;

d) that the evidence on record shows that the claimants had failed to connect the accident with the alleged offending vehicle. However, they have tried to connect the same by introducing PW3-Anoop Singh as the witness of the accident. It is submitted that thus, the finding of the learned Tribunal based totally upon the statement of PW-Anoop, alleged eyewitness, and the fact that

challan/report under Section 173 Cr.P.C. has been filed against respondent No.6, is unreliable and learned Tribunal was in error in awarding such exorbitant compensation only on the said basis.

5. In response, it is submitted by learned counsel for claimants that there is nothing whatsoever on record to doubt the testimony of PW3 eyewitness. It is submitted that perusal of record shows that statement of PW3-eyewitness was recorded by the police on 04.08.2015 itself. Statement of PW3 was even recorded under Section 161 Cr.P.C. It is submitted that therefore, there is no error in the impugned Award and the present appeal deserves to be summarily dismissed.

6. No other argument is raised on behalf of the parties.

7. I have heard learned counsel for the parties.

8. Perusal of record shows that it is the pleaded case of the claimants before the learned Tribunal that on the intervening night of 2 and 3 August, 2015, the deceased-Sandeep along with his brother Pardeep was on his way back from Delhi to village Girdharpur on motorcycle bearing registration No.HR-14L-7295. The said motorcycle was being driven by the deceased on which Pardeep was pillion riding. At about 12:30 midnight, when they reached near village Kasni, the offending vehicle which was being driven by respondent No.6 in a rash and negligent manner came from the opposite side and, by coming on the wrong side hit the motorcycle of the deceased as a result of which both, the deceased as well as Pardeep fell on the road. In the said

accident, deceased-Sandeep suffered multiple grievous injuries on his person whereas, Pardeep suffered minor injuries. As per the claimants, after causing the accident, respondent No.6 fled away from the spot with the offending car. The deceased was first taken to Oscar Hospital, Jhajjar, from where he was referred to Sunflag Hospital, Rohtak, where he ultimately died due to injuries suffered by him in the accident.

9. It is the case of the claimants that the accident in question had taken place due to rash and negligent driving of the offending vehicle by respondent No.6. In pursuance to the accident, FIR No.784 dated 04.08.2015 was registered under Sections 279 and 304-A IPC on the statement of PW2-Pardeep.

10. No doubt, FIR in the first instance was registered against an unknown vehicle and name of the driver was not mentioned in the FIR (Exhibit P3). However, PW3-Anoop Singh son of Rajender is also eyewitness of the accident. PW3 has tendered his affidavit (Exhibit PW3/A) and has fully corroborated the version of PW2-Pardeep Kumar. PW3 has also disclosed the number of offending vehicle as also name of the driver who was driving the offending vehicle. The record bears out that PW3-Anoop Singh had met the police on 04.08.2015 and his statement was recorded under Section 161 Cr.P.C. (Exhibit P4) wherein he had disclosed the registration number of the offending vehicle as also identity of respondent No.6. In this regard, cross-examination of PW3 Anoop is relevant and is reproduced hereinbelow:-

“..I am passed upto 10+2. Accident took place at about 12.30 A.M. at night. I did not know the deceased

Sandeep prior to this accident. Accident took at a distance of 20-25 feet from me. Both the vehicle was damaged in this alleged accident. It is wrong to suggest accident took place due to sole negligent driving of deceased Sandeep with unknown vehicle later on vehicle in question was falsely involving. I was having mobile No.98132-51332 at the time of accident. I arranged the private vehicle and shifted the deceased Sandeep, but I was not with them. Police recorded my statement on 04.08.2015 at about 6-7 p.m. at the place of alleged accident. It is wrong to suggest that I was not present at the spot. It is wrong to suggest that the contents of my affidavit false and fabricated. I am not summoned witness. It is wrong to suggest that I am planted eyewitness. It is wrong to suggest that I am deposing falsely at the instance of petitioner. (Emphasis added)

RO&AC
Sd/ Anoop Singh

Sd/-
L.C.
K.B. Bhardwaj, Adv.
18.07.16"

11. Even the cross examination of PW2 is clear and is reproduced hereinbelow:-

"...Xxx by Sh. Devener Rohilla Adv for respondent

No.3.

I am working in D.H.B.V.N.L. Kosli as ALM Sandeep was my real brother. Deceased Sandeep was driving the motorcycle at the time of alleged accident. I was the pillion rider on that motorcycle. It is wrong to suggest that we were not wearing the helmet at the time of alleged accident. Both the vehicle were damaged. It is wrong to suggest that it was head on collusion between both the vehicles. It is wrong to suggest that the accident took place due to the sole negligent driving of deceased Sandeep with unknown vehicle. Later on vehicle

in question was falsely implicated in collusion with local police. I shifted the Sandeep to the Oscar Hospital, Jhajjar. I did not medically examined. Vol. I sustained minor injury. It is wrong to suggest that I have lodged false FIR. It is wrong to suggest that I did not the witness of alleged accident. We were going from Jhajjar toward Subana and offending vehicle came from opposite side. It is wrong to suggest that the contents of my affidavits are false. It is wrong to suggest that Anoop was not present at the time of alleged accident. It is wrong to suggest that deceased Sandeep was not employed as Lab Technician or that was not earning Rs.25,000/- per month. I have no documentary proof regarding income and occupation of deceased Sandeep. It is wrong to suggest that being a brother I am deposing falsely.

RO & AC
Sd/- Pardeep

Sd/-
L.C.
K.B.Bhardwaj, Adv.
18.07.16"

12. From perusal of the above, it is clear that case of the claimants has been consistent and unambiguous. It has been categorically stated by PW3 that he did not know the deceased prior to the accident. PW3 has also stated that he had arranged private vehicle and shifted the deceased from which it becomes clear that PW3 Anoop was present at the spot at time of accident. PW3 has also stated that police had recorded his statement on 04.08.2015 at about 6-7 pm at the place of accident.

13. In my view, there is no reason whatsoever to doubt the above unequivocal evidence of PW2 and PW3. It is clear that statement of PW3 was recorded within a few hours of the accident. There is

nothing whatsoever on record to suggest that police had recorded statement of PW3, 16 days after the accident. It is not clear on what basis such a statement is being made by learned counsel for the appellant/Insurance Company. Pursuant to the FIR, even challan (Exhibit P10) and charge-sheet (Exhibit P11) have been filed against respondent No.6/driver of the offending vehicle. Even respondent No.6/driver of the offending vehicle has not appeared as a witness before the learned Tribunal to deny the accident or his negligence in the same. Even no such complaint has been filed by respondent No.6.

14. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly, stands **dismissed**.

15. Pending application(s) if any also stand(s) disposed of.

17.05.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No