

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

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**CM-17662-CII-2022 in/and
FAO No.5296 of 2022 (O&M)
DATE OF DECISION : 06th JANUARY, 2023**

United India Insurance Company Limited, Panipat

.... Appellant

Versus

Mamta and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Raj Kumar Bashamboo, Advocate
for the appellant.

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RAJBIR SEHRAWAT, J. (Oral)

CM-17662-CII-2022

This is an application for condonation of delay of 22 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay in re-filing the appeal is condoned.

Main Appeal

The present appeal has been filed by the appellant-Insurance Company against the award dated 01.08.2021 passed by the Motor Accident Claims Tribunal, Panipat (for short, the Tribunal), whereby the claimants, who are the wife, children and the parents of the deceased Dalbir @ Dalvir has been awarded an amount of Rs.21,76,704/- along with interest @ 9% per annum as compensation.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts giving rise to the present appeal are that on 07.12.2020, Dalbir @ Dalvir along with his friend, namely, Gajender was travelling to Mathura in his car bearing registration No.HR-06AR-0466. When they reached near village Bada Gaon, District Baghpat, UP, the tyre of their car got punctured. The passengers travelling in the said car got out of the car and when they were standing on the side of the road, at that time, the offending car bearing registration No.HR-60B-8321, being driven by respondent No.1 at a very high speed and in a rash and negligent manner came and hit Dalbir @ Dalvir. After hitting Dalbir @ Dalvir, the offending car fled away from the spot. Due to the said accident, Dalbir @ Dalvir succumbed to death due to injuries. Regarding that, an FIR No.465 dated 08.12.2020, under Sections 279 and 304-A IPC was also got registered at Police Station, Khekra, District Baghpat, UP at the instance of the father of the deceased Dalbir @ Dalvir. Accordingly, on account of death of Dalbir @ Dalvir, the claim petition was filed.

In the proceedings of claim petition, the claimants examined the eye witness Gajender, who was travelling with the deceased in the car to prove the facts pleaded in the claim petition. On the other hand, respondent Nos.1 and 2 filed their joint written statement denying the accident altogether; and alleging that the claim petition had been filed in collusion with the police. However, it was pleaded that the driver of the offending vehicle was having a valid driving licence. They tendered the

documents i.e. copy of RC of offending vehicle as Ex.R1, copy of driving licence as Ex.R2 and copy of insurance policy as Ex.R3. Respondent No.3 i.e. the present appellant/insurance company had also filed separate written statement and took the same stand of collusion of the claimants with the police. Still further, it was pleaded by the insurance company that the driver of the offending car was not holding the valid driving licence. However, no other evidence was led either by the driver & owner or by the insurance company. None appeared as witness on behalf of the respondents.

After appreciating the entire evidence and the documents on record, the Tribunal has allowed the claim petition and has awarded a total amount of Rs.21,76,704/- along with interest @ 9% per annum as compensation. Challenging the said award passed by the Tribunal, the present appeal has been filed by the appellant/insurance company.

Arguing the case, learned counsel for the appellant/insurance company has submitted that the accident in question had not taken place with the offending car at all. The claim petition was filed in collusion with the police. To buttress his arguments qua the collusion, it has been argued by the counsel for the appellant that the FIR was got registered by the father of the deceased Dalbir @ Dalvir, wherein, he has not even said that he was also travelling in the said car. Rather, he has named only the deceased and the alleged eye witness as the persons who were travelling in the car. Even in the claim petition, the assertion of the claimants has been that Dalbir @ Dalvir and Gajender were travelling in the car. Hence, it is submitted that only two persons were travelling in the car, whereas, the FIR was registered by the third

person, i.e. father of the deceased. Therefore, the FIR was registered by a person, who was not present at the spot. The counsel for the appellant has further submitted that the FIR says that only two persons were travelling in the car, whereas in evidence, the alleged eye-witness has deposed that even father of the deceased was travelling in the car. Therefore, the version of the claimants is doubtful.

Having heard the counsel for the appellant and having perused the case file, this Court does not find any substance in the arguments raised by the counsel for the appellant. In evidence in the claim petition, the claimants have duly examined the eye witness, who has deposed in categorical terms that he was travelling in the car with the deceased and that the offending, car insured by the appellant, had hit the deceased Dalbir @ Dalvir, when he was standing on the side of the road after the tyre of their car had got punctured. The said witness was even cross-examined by the appellant/insurance company, however, nothing substantial could be extracted in the cross-examination to impeach his credit, at least, to the extent that the accident had taken place with the offending car.

There is another aspect in the matter. The driver and owner of the offending car, as well as, the present appellant/insurance company had taken a plea in the written statement that the accident had not taken place with the offending car and that the FIR was got registered in collusion with the police. However, neither the driver of the offending car has shown the courage to appear in the witness box; so as to face the cross-examination on the said aspect, nor the appellant/insurance company has led any other evidence to show that the accident had, in

fact, not taken place with the offending car. Therefore, this Court does not find any fault with the findings recorded by the Tribunal that the offending vehicle was, in fact, involved in the accident in this case.

Although the counsel for the appellant has tried to rake up the issue on the FIR having been registered by the father of the deceased, who, statedly, was not present at the place of accident, however, the registration of the FIR itself is not a *sine qua non* for maintaining the claim petition for compensation on account of motor vehicle accident. The evidence relevant for decision of the claim petition is only that evidence which is led on file of the claim petition before the Tribunal. The FIR is altogether an irrelevant fact. Even if, the FIR is brought into picture; that can be relied only as a collateral aspect to the extent of showing the factum of the accident having taken place, and nothing more. In the present case, the counsel for the appellant has not been able to dispute that the driver of the offending car was even challaned by the police in the said FIR. Therefore, this argument is also totally without any force.

Furthermore, though the counsel for the appellant has asserted that the FIR speaks of only two persons travelling in the car, however, a perusal of the FIR shows that the word 'only' has not been used anywhere in the FIR. There can be umpteen numbers of situations where a person who, otherwise happened to be present on the spot though he might not be travelling in the said car. Therefore, the version given by such a person cannot be discarded on the face of it. Moreover, when the FIR itself is not relevant for the claim petition, then its content cannot be used to defeat the claim petition.

No other argument was raised.

In view of the above, finding no merit in the pleas raised by the appellant in the present appeal, the same is dismissed.

06th JANUARY, 2023
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*