

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

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**CM-1710-CII-2023 in/and
FAO No.526 of 2023 (O&M)
DATE OF DECISION : 27th JANUARY, 2023**

Iffco Tokio General Insurance Company Limited

.... Appellant

Versus

Desh Raj and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sachin Ohri, Advocate
for the appellant.

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RAJBIR SEHRAWAT, J. (Oral)

CM-1710-CII-2023

This is an application for condonation of delay of 33 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 08.08.2022 passed by the Motor Accident Claims Tribunal, Narnaul (for short, the Tribunal), whereby an amount of ₹5,47,000/- has been awarded to the injured/respondent No.1 on account of injuries suffered by him in the motor vehicle accident.

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 04.01.2019 the claimant Desh Raj along with Krishan was going from village Nangal Mohanpur to Village Khorl on a motorcycle bearing registration No.HR-36M-2322, being driven by respondent No.1 Krishan and on which the claimant was travelling as a pillion rider. At about 6/6.30 PM, when they reached between villages Mundi and Pranpura, an animal suddenly came on the road and to save the said animal, the motorcycle became imbalanced and stuck against a tree. In this accident, the claimant suffered injuries for which he was taken to the hospital; by none other than respondent No.1 himself. On account of the said accident, the claim petition was filed by the claimant/injured.

While assailing the award, the arguments raised by the counsel for the appellant are that the injured/claimant has not led in evidence any document to show that the above said motorcycle was involved in accident. Rather, it is a case of collusive petition just to extract money from the insurance company. This fact is also established from the very fact that even the DDR was lodged after about 80 days of the accident. The counsel has further submitted that since the claimant/injured was a pillion rider, therefore, he is not entitled to any compensation, as such. Hence, it is submitted that the award deserves to be set aside.

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. It is not even in dispute that at the time of accident, the claimant/injured is stated to have been taken to hospital by none other than respondent No.1 Krishan, who is the

driver and owner of the motorcycle in question. Therefore, this fact itself is sufficient to establish that the said Krishan was available on the spot at the time of accident. Hence, the probability of his vehicle being involved in the accident is very high. Moreover, the injured himself has stepped into the witness box and has deposed as to the involvement of the vehicle in question in the accident, as well as, the manner as to how the accident had taken place. Despite lengthy cross-examination of the said witness, nothing adverse could be extracted from his testimony. Therefore, there is no scope for any doubt that the motorcycle in question was involved in the accident. The Tribunal has rightly recorded the said finding.

Although the counsel for the appellant has submitted that no documentary evidence has been led in evidence to connect the vehicle in question to the accident, however, there cannot be any document, as such, to establish the factum of involvement of a vehicle in the accident. The document can be, at the best, qua some collateral fact. In the present case also, a DDR was lodged by the injured after getting discharged from the hospital and after getting somewhat fit. Therefore, there is a supporting fact to the assertion made by the claimant; from the police record as well. Though any aspect of criminal case is irrelevant in itself for the purpose of maintainability of the claim petition, however, the police proceedings, if any, can be used only as a collateral aspect, to a limited aspect to show that the accident, in fact, had taken place. Beyond that, there is no relevance of any police proceedings in the matter of claim petition. The Tribunal is required to decide the claim petition as per the evidence led before it without being influenced by any police records. Therefore, any alleged delay in lodging DDR is totally an irrelevant fact.

Needless to say that the complainant hardly has any say in getting recorded the statement in the criminal case as when and what he actually wants. The police record is subject to the vagaries of the discretion of the Investigating Officer of the case.

Otherwise also, the appellant/Insurance Company has not led any evidence of any kind in support of anyone of its assertions, including the assertion that the claim petition was collusive in nature. Even, the owner of the vehicle has not been examined by the insurance company to establish this fact. Therefore, the insurance company cannot now be permitted to raise the unsubstantiated issue in appeal. Another argument raised by the counsel for the appellant is qua non-entitlement of a pillion rider on a two wheeler to the compensation in an accident involving the said two wheeler. However, this Court has already dealt with this issue in detail in the case of ***Shiv Lochan Singh @ Bhola Versus National Insurance Co. Ltd. and others, 2018 (1) R.C.R. (Civil) 559***, and has held the pillion rider to be entitled to maintain the claim petition and to get the compensation.

In view of the above, this Court does not find any illegality or perversity with the findings recorded by the Tribunal. Accordingly, finding no merit in the present appeal, the same is dismissed.

The statutory amount already deposited be sent to the Motor Accident Claims Tribunal, Narnaul for onwards payment to the appellant.

27th JANUARY, 2023
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>