IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr.No.311

Case No. : FAO No.2624 of 2023 (O&M)
Date of Decision : April 05, 2024

The Oriental Insurance Company Limited .... Appellant

vs.

Smt. Harinder Kaur and others .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. D. P. Gupta, Advocate
and Mr. Shubham Gupta, Advocate
for the appellant.

Mr. Amit Sharma, Advocate (Amicus Curiae)
for the respondents.

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GURBIR SINGH, J.

CM-19658-CII-2023

This application is moved under Section 151 CPC by Amicus Curiae seeking directions for an inquiry into the deliberate submissions of false affidavits to get the delay in filing the appeal condoned with the intention to deceive the Court. Brief facts as mentioned in the application are that Insurance Company challenged the award dated 07.11.2022 and the appeal against the award was filed on 27.02.2023. An application for condonation of delay was filed on 17.05.2023 and 11 days delay in filing the appeal and 11 days delay in refiling the appeal. The appellant employed delaying tactics and thereby wasted the valuable time of the Court. Respondent contested the application by filing the reply that appeal was filed on 27.02.2023. The Registry raised an objection on 27.03.2023 that appeal was barred by 11 days. Since there was delay of 11 days so application was moved for condonation of delay of 11 days in filing the appeal. The appeal was refiled on 06.05.2023 since the appeal could be refiled within 40 days but another application for condonation of delay of 11 days in refiling the appeal was moved excluding the period for getting the certified copy. None of the averments made in the affidavit and application for condonation of delay are false.

I have heard the submissions made by the learned counsel for the parties.

Keeping in view that affidavit annexed for the condonation of delay only and delay was condoned on 19.05.2023 by the Coordinate Bench of this Court and it is not in the interest of administration to conduct preliminary inquiry on the application for condonation of delay moved by the Amicus Curiae on behalf of the respondent.

This application is without merit and the same is dismissed accordingly.

Main case:

1. The present appeal has been filed by the Oriental Insurance Company Limited against the Award dated 07.11.2022, passed by learned

Motor Accident Claims Tribunal, Fazilka (for brevity – the Tribunal), in the Claim Petition under Section 166 of the Motor Vehicles Act. The parties hereinafter are being addressed as per their original status in the Claim Petition.

2. Claim Petition has been filed by the widow, father and mother of Jagmeet Singh (since deceased). On 08.02.2021, Jagmeet Singh along with his friend Gaganpreet Singh was coming on the i-20 Car bearing registration No.PB-22-K-1735, being driven by Jagmeet Singh, by observing all traffic rules and regulations, at a slow speed. At about 04:30 AM, when they reached in the area of village Balluana, a vehicle bearing registration No.PB-08-BQ-9856 (hereinafter called – offending canter), being driven by respondent no.1 – Chamkaur Singh in a rash and negligent manner, came from opposite side and struck against the car of the deceased by taking it on the wrong side of the road. The car of the deceased struck against the tree and he received multiple injuries on vital parts of his body and died at the spot. After causing the accident, the driver of the offending canter ran away from the spot. FIR No.11 dated 08.02.2021, under Sections 279, 304-A, 427 IPC was registered at Police Station Abohar against respondent no.1, on the statement of Daljit Singh that the accident occurred due to rash and negligent driving by driver of the offending canter. It was further averred that the deceased was of the age of 35 years only at the time of his death. He was an agriculturist and was also running a dairy farm. He used to earn Rs.70,000/- per month. The claimants were dependent upon the deceased.

3. Respondent no.2 – Insurance Company contested the Claim Petition by taking preliminary objections to the effect that the offending canter was not validly insured with the Insurance Company. Respondent no.1 – the alleged driver of the offending canter was not holding valid driving license to drive the aforesaid canter at the time of alleged accident. Jagmeet Singh (since deceased), who was driving the car, was also not holding a valid driving license at the time of accident. The accident, if any, had occurred, only due to rash and negligent driving of the car by Jagmeet Singh. The FIR was registered against the unknown person of unknown canter. It was a case of hit and run. The offending canter was being plied on the road without valid registration certificate, route permit, fitness certificate, road tax and insurance policy etc. The Petition was filed by the claimants in collusion with respondent no.1 to extort money from the Insurance Company.

4. Respondent no.1 did not appear before the learned Tribunal despite service and was accordingly proceeded against ex-parte. Later, he moved an application to set aside the ex-parte proceedings which was allowed on the same day. Respondent no.1 filed written statement and contested the Claim Petition by taking preliminary objection that the claimants had no locus standi or cause of action to file the Claim Petition. It was admitted that the offending canter was owned by him and was insured by respondent no.2. It was further averred that respondent no.1 was a perfect and well experienced driver, who was having a valid and effective driving license in his name, which was issued on 29.05.2007 and was valid up to 04.06.2025 for transport vehicles and up to 16.03.2028 for non-transport vehicles. The fitness certificate of said vehicle was also renewed and was valid up to 15.10.2022. It was also having valid registration certificate and was valid as per fitness certificate. The vehicle was also having valid permit. It was also admitted by respondent no.1 that the FIR in question was registered against him regarding the accident in question but later on, he was proceeded against ex-parte.

5. From the pleadings of the parties, following issues were framed :-

> *"1. Whether jagdeep Singh son of Jasveer Singh died in road accident involving canter bearing RC No. PB 08 BQ 9586 being driven by respondent no.1 rashly and negligently? OPP*
>
> *2. If issue no.1 is proved, to what amount of compensation, the claimants are entitled and from whom? OPP*
>
> *3. Whether the respondent no.1 being driver of canter bearing RC no. PB 08 BQ 9586 was not holding an effective and valid driving license at the time of accident in question? OPR*
>
> *4. Whether respondent no.1 has infringed the terms and conditions of the insurance policy? OPR*
>
> *5. Relief."*

6. The claimants, in support of their case, examined Manohar Lal as CW-1, widow of the deceased namely Harinder Kaur herself stepped into the witness box as CW-2 and also examined Davinder Wadhawan, Additional Ahlmad in the Court of learned Judicial Magistrate Ist Class, Abohar as CW-3. After tendering documents in evidence, claimants closed their evidence.

7. Respondent no.2 – Insurance Company examined Deputy Manager of the Company namely Sunil Kumar and also tendered some documents in evidence and closed their evidence.

8. On the basis of evidence led on the file, the learned Tribunal came to the conclusion that the accident in question was caused by respondent no.1 by driving the offending canter rashly and negligently, thereby causing death of Jagmeet Singh. It has further been held that the deceased was 35 years old at the time of his death and was the only bread earner of his family. Since the claimants did not prove any document regarding income of the deceased, so, his income was taken to be Rs.9000/- per month as that of a labourer at that time. Keeping in view the fact that the widow and his parents were dependent upon his income, one-third of his income was deducted as personal expenses. Multiplier of 16 was adopted. 40% of his income was added as future prospects.

9. Following the law laid down by Hon'ble Supreme Court in the case of **Sarla Verma and others vs. Delhi Transport Corporation and another** reported as **2009(3) The Punjab Law Reporter 22** and **National**

Insurance Company Limited vs. Pranay Sethi and others reported as **2017 SCC Online SC 1270**, the amount of compensation was assessed in the following terms :-

No.	***Head***		***Compensation Awarded***
01.	Monthly Income		Rs.9000/-
02.	1/3rd Deduction		Rs.3000/-
03.	Net Income		Rs.6000/-
04.	Annual Income		Rs.72,000/-(6000/- x 12)
05.	Multiplier (age of deceased = 32 yrs.)		16
06.	Total Income	(A)	Rs.11,52,000/-(72000/- x 16)
07.	Future Prospects @ 40%	(B)	Rs.4,60,800/-
08.	Total Income for computation	(A+B)	Rs.16,12,800/-
09.	Loss of Estate, Funeral, Consortium		Rs.70,000/-
10.	Enhancement @ 10% after 3 years		Rs.7,000/-
11.	**TOTAL COMPENSATION**		**Rs.16,89,800/-**

10. Learned counsel for the appellant – Insurance Company has argued that the Claim Petition was filed by the claimants in connivance with respondent no.1 – driver of the offending canter. The FIR was not got registered by the eye-witness. The offending canter has been introduced later on. Respondent no.1 initially did not appear before the learned Tribunal and was also proceeded against ex-parte, but later he appeared, filed written statement, placed the documents on record and thereafter, he was again proceeded against ex-parte.

11. Perusal of the record reveals that Manohar Lal (CW-1) stated in his cross-examination that he was working as a Senior Constable in Punjab

Police. He was posted as *Pairvi Officer* to pursue cases in the Courts. He could not tell the speed of the car. Since he was posted in the Court and was a Senior Constable in the Punjab Police, so it is not expected that he would immediately make statement before the police. He also stated it was not correct that the car struck against a tree and later on, offending canter was introduced to get the compensation. In this case, the claimants examined Manohar Lal, who has deposed and duly proved that accident was caused by rash and negligent driving of Canter by respondent no.1. On the other side, respondent no.1 did not appear in the witness-box to even deny the accident or the circumstances, under which the accident took place. The Criminal Ahlmad from the Court of Judicial Magistrate Ist Class, Abohar has duly proved that Challan under Section 173 Cr.P.C. (Ex.P-1) was filed against respondent no.1. There is no rebuttal to the evidence of Manohar Lal (CW-1).

12. The proceedings before the Tribunal are summary in nature and the Court is to weigh the evidence on the basis of preponderance of probabilities. The learned Tribunal, being Civil Court, is to decide the case on the basis of evidence brought before it. The normal rule that governs civil proceedings is that a fact can be said to be established if it is proved by preponderance of probabilities.

13. In the case in hand, even the driver of the offending canter did not dare to step into the witness-box to even deny the accident. Since he has not stepped into the witness-box, so, adverse inference is required to be drawn against him. The Challan has been filed by the police after investigation and in the absence of any evidence on the file, it cannot be said that the offending canter has been introduced afterwards. The learned Tribunal, relying on the case of **Girdhari Lal vs. Radhey Shyam** – **1993(2) PLR 109**, has rightly held that the driver of the offending canter was driving in a rash and negligent manner. There is no evidence to disagree with the well reasoned finding recorded by the learned Tribunal.

14. Learned counsel for the appellant Insurance Company has further argued that the owner-cum-driver of the offending canter was required to prove that he was having valid driving license and thereafter, the appellant was required to prove that the said driving license was fake. Reliance in this regard has been placed on a Full Bench judgment passed by Hon'ble Supreme Court in the case of **Pappu vs. Vinod Kumar Lamba – (2018) 2 RCR (Civil) 42**, wherein it is held that onus would shift to Insurance Company only after owner of offending vehicle pleads and proves basic facts within his knowledge that driver of the offending vehicle was authorized by him to drive vehicle and was having a valid driving license at the time of alleged accident.

15. The learned Amicus Curiae has submitted that the claimants also examined concerned Ahlmad of the Court of Judicial Magistrate Ist Class, Abohar as CW-3, where the Challan in question was pending, who brought the Challan file. He proved authorization documents annexed with the Challan including copy of driving license of Chamkaur Singh –

respondent no.1, who also appeared before the learned Court and filed written statement that he was having valid driving license at the time of accident. The learned Tribunal has held that the accident in question was caused by respondent no.1 by driving the offending canter in rash and negligent manner. The police, after investigation, filed the Challan as well to this effect. So, the burden was on the Insurance Company to prove that driving license of respondent no.1 was not valid. The appellant Insurance Company also examined Deputy Manager of the Insurance Company namely Sunil Kumar, who did not utter even a single word that the driving license of the driver was not valid. When license of the driver is brought on the record, then the burden is on the Insurance Company to rebut that the license was not valid but in the case in hand, the appellant did not prove any evidence that license of respondent no.1 was not valid. In case **National Insurance Co. Ltd. vs. Swaran Singh and Ors.** - **2004(2) RCR (Civil) 114**, it is held by Hon'ble Apex Court that burden is on the insurer to establish breach of policy by leading cogent evidence. In case **Pappu** ***(supra)***, the insured merely produced valid Registration Certificate and it is held therein that onus would shift to Insurance Company only after owner of offending vehicle proves that the driver of the offending vehicle was authorized by him to drive vehicle and was having a valid driving license at the time of alleged accident. However, in the case in hand, owner was himself driving the offending canter and his license is duly proved on record. So, the said authority is of no help to the appellant.

16. It is the further contention of learned counsel for the appellant that the Award passed by the learned Tribunal is on the higher side. This Court does not agree with the contention as the deceased was only 35 years old and only meager wages have been taken into consideration for assessing the income of the deceased. He has left behind his widow and old parents. One-third deduction has rightly been made. Since deceased was less than 40 years of age, so, 40% of his income has been added as future prospects. Under the conventional heads of loss of estate, funeral and consortium, a sum of Rs.70,000/- has also been awarded rightly. Lastly, since it was clearly mentioned in the judgment titled **Pranay Sethi** ***(supra)***, that the aforesaid amount of conventional heads should be enhanced @ 10% in every three years, so, additional amount of Rs.7,000/- was also rightly awarded.

17. In view of what has been discussed in the foregoing paragraphs, there is no ground to interfere in the lawful judgment passed by the learned Tribunal. The appeal is without any merit and is therefore, dismissed.

18. Pending applications, if any, shall stand disposed of along with this judgment.

April 05, 2024 **(GURBIR SINGH)**
monika/renu **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*