

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 1694 of 2000 (O&M)
Date of Decision: 21.2.2017

The National Insurance Company

.....Appellant

Versus

Nirmala Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

None for the respondents.

ANITA CHAUDHRY, J

This is an appeal by the insurance company seeking discharge of their liability placed upon them vide award dated 8.1.2000 by the Motor Accident Claims Tribunal, Sirsa.

The facts first Amar Singh alias Rattan Lal along with Subhash Chander and Devki Nandan were going on a cycle to his in-laws house. When Amar Singh was near Surkhab Chowk, Sirsa, a truck bearing registration No. DHG-145 driven by respondent No. 1 came in a rash and negligent manner without blowing any horn and struck against the cycle from behind and sped away. Amar Singh received grievous injuries. He was shifted to the General Hospital on 28.8.1994 and then taken to Gulati Nursing Home at Hisar. He remained in the hospital for about 1½ month and succumbed to the injuries on 4.10.1994. It was also claimed that the other occupants of the bicycle had also sustained injuries.

It was also pleaded that FIR No. 318 had been registered on 28.8.1994 under Section 279, 336, 337 IPC (Section 304-A IPC was added later on). It was claimed that the police reached the hospital along with respondent No. 1 and respondent No. 1 asked for pardon.

The deceased was stated to be 24 years old and was running a readymade shop and was earning Rs. 5,000/- per month. It was pleaded that Rs. 53,000/- was spent on the treatment.

Respondents No. 1 to 3 denied the accident for want of knowledge, though they admitted that respondent No. 1 was driving the truck from Dabwali to Delhi on that day. They admitted that a cycle was going ahead of the truck and when respondent No. 1 tried to overtake the cycle, the cyclist lost control and struck against the side of the truck and fell down.

The insurance company denied the involvement of the truck and pleaded that it was a case of collusion and a case of hit and run and they were allowed to take all the defences by their application filed under Section 170 of the Motor Vehicles Act.

The Tribunal based on the admission of the accident by respondents No. 1 to 3 held respondent No. 1 responsible for the accident. It rejected the plea taken by Gurbachan Singh that he had not signed the written statement. The income of the deceased was taken to be Rs. 1800/- per month and after deducting 1/3rd and applying the multiplier of 16, the compensation was calculated at Rs. 2,30,400/-. An addition of Rs. 20,000/- was made for the amount spent on the treatment and award of Rs. 2,50,400/- was passed with interest @ 12%.

Notice of the appeal was given to the respondents but they

failed to appear. Service was effected through affixation on some of the respondents but they chose not to appear.

Counsel for the appellant has submitted that since there was no stay and the amount had been disbursed and therefore it appeared that they were not interested in contesting the appeal.

I have heard the counsel for the appellant at great length.

Subhash Chand in his first version Ex. D-1 mentioned that an unknown driver and a unknown truck had caused the accident. It was also mentioned that he had not seen the driver. The police had filed untrace report. The insurance company examined Gopal Krishan RW-1 who stated that the report had been filed as untraced as they could not trace out the truck or the driver. Gurbachan Sigh RW-3 stated that he owned the truck along with S.K.Chaudhary and they had sold the truck to one Dharam Singh and possession was also delivered and they had executed an agreement regarding transfer of ownership and produced agreement Mark-A. He also stated that he had not engaged the counsel in this case nor had filed the written statement and the signatures on the written statement were not his and he had not employed Krishan Kumar as his driver. He stated that the truck had been sold in August 1994. He stated that he came to know about the involvement of the vehicle on 11.1.1996.

A perusal of the MLR shows that the deceased was taken to the hospital by one Surja Ram. The admission is recorded at 10.30 P.M. on 27.8.1994. The patient was unconscious. The claimants had examined Subhash Chand PW-1. He gave the registration number of the vehicle and stated that he could identify the driver and was a witness to the accident.

He stated that the police had taken the truck into possession.

Subhash Chand had approached the police and had made a statement that an unknown driver and an unknown vehicle had caused the accident. Devki Nand was also with them, he did not make any statement nor was examined but subsequently he made a different statement before the Tribunal implicating respondent Krishan Kumar. The police had filed an untrace report as their investigation showed that neither the driver nor the truck could be traced as no names or details were given. No one had approached the police to prove the involvement of any vehicle nor any complaint was filed in the Court. The Tribunal had merely allowed the claim petition on the admission by the respondents. The claimants had arrayed a convenient person and a vehicle that was insured and had filed the claim petition. It is outrightly a case of collusion between the claimants and the private respondent. The claimants had to independently prove and show the involvement of the driver. There was no reason for the Tribunal to reject the first statement and accept the statement made subsequently. Subhash Chand was known to the deceased. He would not have made a wrong statement to the police on the first available occasion. The findings recorded by the Court below are set aside as the vehicle had been introduced to claim compensation.

The appeal is allowed. The award passed by the Tribunal dated 8.1.2000 is set aside. Consequently, the claim petition is dismissed. The claimants would refund the amount paid to them.

(ANITA CHAUDHRY)
JUDGE

February 21, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No