

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.123

Case No. : FAO No.6152 of 2023 (O&M)

Date of Decision : February 21, 2024

United India Insurance Co. Ltd. Appellant
vs.

Suman Devi and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Vijay Kumar Garg, Advocate
for the appellant.

* * *

GURBIR SINGH, J. :

1. **CM-21239-C-II-2023** : This is application under Section 151 CPC for condonation of delay of 84 days in re-filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 84 days in re-filing the present appeal is condoned. The application stands disposed of.

2. **CM-21239-C-II-2023** and **Main Appeal** : This appeal has been filed against Award dated 12.04.2023, passed by learned Motor Accident Claims Tribunal, Panipat (for brevity – the Tribunal), whereby claim petition filed by respondents no.1 and 2 has been partly allowed.

3. The brief facts, as culled out from the petition and necessary for disposal of the present appeal, are that on 18.08.2018, Devender (since deceased) was returning from his fields to his house at about 08:00 PM.

When he was crossing the road, in the meantime, a Maruti Swift car bearing registration No.HR-06-AK-0573 (for short – the offending vehicle), being

driven by respondent no.3 Parteek, at a high speed, in a rash and negligent manner, came and directly hit the deceased. He received multiple grievous injuries and died at the spot. Respondent no.3 – driver, who was also owner of the offending vehicle, fled away from the spot after causing accident. The brother of deceased namely Jai Chand got registered FIR No.241 dated 19.08.2018, under Sections 279 and 304-A IPC. Respondents no.1 and 2, being widow and son of the deceased (hereinafter referred to as – the claimants), filed claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988.

4. Respondent no.3 – driver-cum-owner of the offending vehicle contested the claim petition, submitting therein that no accident took place with his vehicle. A false FIR was got registered against him and his vehicle has been falsely implicated.

5. The appellant – Insurance Company contested the petition on the ground that the accident in question took place on 18.08.2018 and FIR was got registered on 19.08.2018 in collusion with respondent no.3 in order to grab compensation from the appellant Insurance Company. No accident has taken place with the offending vehicle. The vehicle involved in the accident has been intentionally planted.

6. From the pleadings of the parties, vide order dated 12.04.2021, following issues were framed by learned Tribunal :-

“1. Whether the accident took place on 19.09.2018 on account of rash and negligent driving of vehicle bearing registration no.HR-06-AK-0573 by respondent no.1? OPP.

2. *Whether the claimants-petitioners are entitled for compensation, if so, to what amount and from whom? OPP*
3. *Whether the respondent no.1 was having valid driving licence on the date of accident? OPR2*
4. *Relief.”*

7. In support of their case, claimants examined three witnesses.

Widow of the deceased namely Suman Devi herself stepped into the witness box as PW-1. Jai Chander – author of FIR and eye-witness was examined as PW-2 and Nisha – Criminal Ahlmad appeared as PW-3. They proved various documents and closed their evidence.

8. No witness was examined on behalf of driver-cum-owner of the offending vehicle as well as the appellant Insurance Company. Only documentary evidence was produced i.e. copies of insurance policy (Ex.R-1), report of investigator (Ex.R-2), FIR (Ex.R-3), driving license (Ex.R-4) and registration certificate of the offending vehicle (Ex.R-5).

9. Learned Tribunal, after appreciating the evidence on record, came to the conclusion that accident was caused by respondent no.3 – driver-cum-owner of the offending vehicle by driving the same in rash and negligent manner and causing injuries to Devender, who died at the spot. Accordingly, claim petition filed by respondents no.1 and 2 was partly allowed, by awarding them compensation.

10. Learned counsel for the appellant Insurance Company has challenged the impugned Award on the ground that vehicle bearing registration No.HR-06-AK-0573 was not involved in the accident and the

same has been planted later on. The FIR was registered against the unknown vehicle and unknown driver on the next day. The vehicle and driver were introduced afterwards. The Tribunal failed to take into consideration the report of Investigator. It has been further submitted that respondent no.2 i.e. son of the deceased is major and was not dependent upon the deceased. Therefore, deduction for personal expenditure should have been half of the income and not one-third.

11. I have heard learned counsel for the appellant Insurance Company and perused the case file.

12. The proceedings before the learned Tribunal are summary in nature and the facts are required to be proved on the touchstone of preponderance of probability. Since Section 166 of the Motor Vehicles Act is a beneficial legislation, so, strict proof of liability cannot be made applicable for grant of compensation.

13. Jai Chander – author of FIR and eye-witness of the accident has stepped into the witness-box as PW-2. He has deposed the manner and how the accident has taken place. He also got his supplementary statement recorded before the police. He disclosed the number of the offending vehicle and accident caused by it. No doubt, there is delay of two days in disclosing the same but he has explained the delay that Panchayat was convened for effecting compromise in the matter.

14. Respondent no.3 – owner-cum-driver of offending vehicle did not even step into the witness-box. No evidence was brought on record to contend that respondent no.3 was falsely implicated in the case. Since he has not stepped into the witness-box, so, adverse inference is required to be

drawn against him. Reliance in this regard has been placed on judgments namely **Kirpa Singh vs. Ajaypal** reported as **AIR 1930 Lahore-I**, wherein this Court has held that failure of a party to step into witness-box, to prove his interest in the suit, he being the best person to give evidence, the fact goes strongly against him. Similar analogy was propounded in **Allaha Ditta vs. Mist Bhajen** reported as **AIR 1930 Lahore 401**, wherein it was held that if a party does not appear in the witness-box, circumstances go strongly against him and he runs a great risk, if he does not enter into the witness-box to give evidence in his case upon the facts which are directly within his knowledge and which related to the matter in controversy. This analogy of law has stood test of time and is being followed even 80 years thereafter. It has been reiterated in **Singh Ram vs. Gian** reported as **1997(2) RCR (Civil) 125** by holding that where the defendant himself had not appeared in the witness-box to controvert the averments of the plaintiff, adverse inference has to be drawn against such litigant, as per settled law, who takes risk by not appearing in the witness-box to rebut the case of the applicant. Likewise, in **Ishwar Bhai C Patel vs. Harihar Behara** reported as **J.T.1999 (2) S.C. 250**, it has also been held that if a party does not enter the witness-box either to prove its own case or to state against the case of the opposite party, the adverse presumption has to be against such party.

15. So far as report of the Investigator is concerned, it has no value in the eyes of law. Since challan has already been presented against respondent no.3, for causing the accident in rash and negligent manner and causing death of Devender, he is facing trial for the same.

16. In view of the above discussion, I am of the view that the

accident in question has been caused by respondent no.3 while driving Maruti Swift car bearing registration No.HR-06-AK-0573 in rash and negligent manner. Since claimant no.2 is son of the deceased and is stated to be only 19 years old and there is nothing on the file to show that he is having any independent source of income, so, it cannot be said that he was not dependent upon his father (since deceased). Therefore, learned Tribunal has rightly considered personal expenses of the deceased to be one-third of his income. No other point has been raised. So, the impugned Award is completely in accordance with law and there is no ground to interfere in the lawful order passed by the learned Tribunal. The appeal is without any merit and is therefore, dismissed in limine.

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

February 21, 2024
monika

(GURBIR SINGH)
JUDGE

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