



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3742-2013 (O&M)

Date of Decision: September 12, 2024

United India Insurance Company Ltd.

...Appellant

VERSUS

Sumitra and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.D.S.Adlakha, Advocate
for the appellant.

Mr.Manoj K. Tanwar, Advocate
for respondents No.1 to 6.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-insurance company, thereby, assailing the Award dated 22.03.2013 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the claimants to the extent of Rs.9,15,050/-, on account of death of Leela Ram, in a motor vehicular accident.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

The facts germane, to be noticed, are as follows:-

That, on 31.07.2011, Leela Ram along with his brother Suresh Kumar, while on foot, was going from Satnali to his village Surehti Modiyan. At about 7.30 p.m., when they reached ahead of school in village Dhana, then a pick up bearing No.HR-61A-2027, driven in rash and negligent manner by respondent-Dalip Singh, came from opposite side and struck Leela Ram. As

**FAO-3742-2013****-2-**

of result of this accident, Leela Ram had sustained injuries and became unconscious. After the accident, respondent-Dalip Singh, stopped his vehicle for a while and on seeing serious condition of Leela Ram, he fled away together with the pick-up vehicle. Leela Ram was got admitted in the hospital by Suresh Kumar. However, Leela Ram succumbed to his injuries on 04.08.2011. On the next date i.e. 05.08.2011, FIR was got lodged, at the instance of Suresh Kumar, qua the accident in question.

In the claim petition, it was also asserted that Suresh Kumar was perturbed and lost his senses for long time and therefore, wrong number of the offending pick-up was given in the FIR Ex.P1, on the ground that the number plate of the pick-up was not legible, but later on, he disclosed correct number of the offending pick-up. Upon these assertions, the claimants, who are widow, minor children and parents of deceased Leela Ram, had filed the claim petition, for seeking compensation.

In pursuance of the notice issued, respondents made appearance and filed their respective written statements. Respondents No.1 and 2, in their written statement, had denied, in toto, about taking place of the accident in question and also about the involvement of the pick-up bearing registration No.HR-61A-2027, in the accident in question. Respondent No.3-insurance company, in its written statement had taken the plea that in the FIR, registration number of the FIR was mentioned as HR-61A-2236, but later on, offending pick-up bearing registration No.HR-61A-2027 was falsely implicated by the claimants, in collusion with the local police and respondents No.1 and 2. Also, the insurance company asserted about pick-up vehicle to be driven by its driver, in violation of terms and conditions of



the insurance policy.

After framing of the issues, to substantiate their claim, Sumitra, widow of Leela Ram, stepped into witness box as PW-1 and her sworn testimony, in the form of affidavit is Ex.PW1/A. Furthermore, Suresh Kumar, brother of the deceased, who accompanied the deceased, at the relevant time, tendered into evidence his affidavit Ex.PW2/A. Also, the claimants examined PW-3 Dr.Harish Bhardwaj, Medical Officer. Thereupon, counsel for the claimants tendered into evidence, certified copies of FIR Ex.P1, report under Section 173 Cr.P.C., chargesheet Ex.P3, ruqqa dated 31.07.2011 Ex.P4, ruqqa dated 04.08.2011 Ex.P5, post-mortem report Ex.P6 and closed the evidence.

Counsel for respondents No.2 and 3 also tendered into evidence, photocopies of Driving Licence Ex.R1, passenger and goods taxation Ex.R2, insurance Ex.R3, Registration Certificate Ex.R4 and fitness certificate Ex.R5 and closed the evidence. Even, counsel for the insurance company tendered into evidence, certified copy of insurance policy Ex.R6 and closed the evidence.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the accident to have taken place, on account of rash and negligent driving of pick-up bearing registration No.HR-61A-2027, driven by respondent-Dalip Singh and the same resulted into fatal injuries, on the person of Leela Ram.

Thereupon, while considering the earnings of the deceased as daily wager to be Rs.4500/- per month, 30% increase, on the count of 'future prospects' was made and the monthly earning was taken Rs.5850/-, annual



whereof, was worked upon as Rs.70,200/-. Out of the said amount, keeping in view the number of dependents to be six, 1/4th of the annual income was deducted as 'personal expenses' and loss of dependency was worked upon as Rs.52,650/-. Considering the age of the deceased to be 30 years, multiplier of '17' was applied and compensation was worked upon as Rs.8,95,050/-. Besides the same, another of amount of Rs.5000/- each was granted, on the counts of 'loss of estate' as well as 'funeral expenses'. Rs.10,000/- was granted to widow of deceased, towards 'loss of consortium'. Thus, a total of Rs.9,15,050/- was granted, as compensation.

Feeling aggrieved, the insurance company has filed the present appeal.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellant has submitted that the insurance company, in its written statement, had denied about the manner of taking place of the accident and involvement of the pick-up bearing registration No.HR-61A-2027, in the accident in question. It is submitted that since the claim petition was filed under Section 166 of the Motor Vehicle Act, it was required on the part of the claimants, to establish about the involvement of the pick-up bearing registration No.HR-61A-2027, in the accident in question and also about the rashness and negligence, on the part of its driver Dalip Singh. However, it is submitted that no satisfactory evidence, to so substantiate, has been led. In the given circumstances, much emphasis has been laid upon the fact that correct number of the vehicle, involved in the accident and name of its driver, not coming forth, even, in the FIR, though it was got lodged, after a period of



five days of taking place of the accident.

Furthermore, also learned counsel for the insurance company submits that the sole witness examined to give an eye witness account is Suresh Kumar, who allegedly accompanied Leela Ram, at the relevant time. He stepped into witness box as PW-2, but he has not explained the manner, in which Dalip Singh was nominated as driver of the offending pick-up, at the relevant time of accident. Much emphasis has been laid upon the cross-examination of PW-2 Suresh Kumar. Also, it is submitted that the accident had taken place on 31.07.2011, but however, the FIR was got lodged on 05.08.2011 and in the same, number of the offending pick-up, involved in the accident, was mentioned as HR-61A-2236, but the name of its driver was not, as such, mentioned. Furthermore, it is submitted that it was conscious effort made to replace the vehicle involved in the accident and thereupon, the claim petition was filed, while projecting the offending vehicle to be bearing registration No.HR-61A-2027, driven by Dalip Singh.

Considering the same, it is submitted that no satisfactory evidence, to substantiate about the involvement of pick-up bearing registration No.HR-61A-2027, as such, has been led. Further, learned Tribunal had erroneously considered the report under Section 173 Cr.P.C., to conclude about the involvement of pick-up bearing registration No.HR-61A-2027, driven by Dalip Singh, at the relevant time.

In the light of the same, it is submitted that finding on issue No.1, ought to be reversed and while doing so, the claim petition, ought to be dismissed.

On the other hand, learned counsel for the claimants-



respondents, has assiduously submitted that FIR is not an encyclopedia and there is no requirement of the FIR, to be lodged, to substantiate the factum of the accident. In the given circumstances, the number of vehicle, so mentioned, as such, cannot render the version, put forth by the claimants, to be doubtful, as the author of the FIR was perplexed, on account of death of his brother, at the time of recording of his statement to the police. However, it is submitted that after verification of the version, put forth by the claimants, the challan was presented in the Court, which was pending adjudication, at the time of decision of the claim petition and therefore, learned Tribunal had appropriately considered the rashness and negligence, to be there, on the part of Dalip Singh and also involvement of vehicle bearing registration No.HR-61A-2027, in the accident in question.

In view of the submissions made aforesaid, at the very outset, it is pertinent to mention that in pursuance of the accident, having taken place, in the eventuality of persons, knocking the door of the Court, by way of filing petition under Section 166 of the ibid Act, then it is incumbent upon the claimants to establish rashness and negligence, on the part of offending vehicle. The proof of imputation of 'rashness and negligence', on the part of driver of offending vehicle, is a sine qua non, for sustaining the plea for grant of compensation, while assessing the loss of dependency.

Also, as submitted, the learned Tribunal had not singularly relied upon the report under Section 173 Cr.P.C. as well as chargesheet, filed against Dalip Singh before the criminal Court, but however, has also taken into consideration, the testimony of Suresh Kumar, who was accompanying the deceased, at the relevant time.



The accident had taken place on 31.07.2011. Soon after the accident, Leela Ram was got admitted in the hospital and ultimately, he succumbed to his injuries, in the evening of 04.08.2011. It was, on the next day of his death, Suresh Kumar, brother of deceased, got lodged the FIR, copy whereof is Ex.P1. He deposed in consonance with the pleaded version and also stated therein, about the accident to have taken, on account of rash and negligent driving of pick-up bearing registration No.HR-61A-2236. However, with regard to the identity of the driver, he mentioned about the vehicle to be driven by unknown driver. The report under Section 173 Cr.P.C. is Ex.P2. This reveals that after lodging of the FIR and completion of the investigation, the challan was presented against Dalip Singh. However, chargesheet, coming on record is Ex.P3, which reveals that in the chargesheet, the number of the vehicle is mentioned as HR-61A-2236. May it be so, but this chargesheet, singularly, is not to be taken into consideration. It can be a typographical error or overlooking of the contents of the report under Section 173 Cr.P.C. Considering, various other documents, coming on record, it matters not much, if this number has been mentioned in the chargesheet.

But anyhow, it is pertinent to mention that in the claim petition, it is stated by the claimants only, that Suresh Kumar was perturbed, due to death of his brother Leela Ram and lost his senses and on that account, wrong number of the offending vehicle was given, as number plate of the vehicle was not legible. However, after he gained senses, he disclosed the number of the offending vehicle. While in the witness box, Suresh kumar had so deposed, but however, the version so given by him, as such, is highly



doubtful. Otherwise also, he does not explain anything about the manner, in which, the number was changed. It was on fifth day of the accident that FIR was got lodged.

It is also important to make reference to the cross-examination of the said witness, wherein, he categorically stated that he did not know driver of the vehicle bearing registration No.HR-61A-2027; that driver was not arrested in his presence and that pick-up vehicle was also not taken into possession by the police in his presence. He also further stated that police did not conduct any verification parade, at the time of arrest. Furthermore, he had stated the police had recorded his statement, two times, but none of those statements, had come on record. First statement is evident from the contents of the FIR as well as report under Section 173 Cr.P.C., but the second statement has not been proved on record.

Simultaneously, it is pertinent to mention that besides Suresh Kumar, in view of the number of the vehicle, being substituted subsequently and role having assigned to Dalip Singh, it was required for the claimants to examine the investigating officer, but no such, step has been taken. It is important to make reference to the report under Section 173 Cr.P.C. Ex.P2, which clearly reveals at the tail end of third page, it is mentioned that Suresh Kumar, along with his uncle (chacha) Sajjan Singh, had reached police station and had handed over the statements in the form of affidavits, to ASI Hargyan Singh on 21.07.2011. It shows that it was after a period of about more than 1½ months of taking place of the accident. These affidavits, at least, could have been brought on record, but no such steps, have been taken. Such being the recitals of the report under Section 173 Cr.P.C., even other satisfactory



FAO-3742-2013

-9-

evidence, be it in the form of testimony of investigating officer or the mechanic report etc., could have been produced, to establish about the involvement of pick-up bearing registration No.HR-61A-2027, in the accident in question, but however, the same has not been done so.

Consequently, there is a missing link, coming forth, which definitely raises doubt about the involvement of the pick-up bearing registration No.HR-61A-2027, in the accident in question. It gives an inkling to the mind about the vehicle having substituted later on by the claimants, to strengthen their claim to receive compensation, on account of death of Leela Ram, in a motor vehicular accident.

In the light of the aforesaid, when substitution of vehicle is evident and the genuineness of the involvement of the vehicle bearing registration No.HR-61A-2027, as such, does not stand established, at the behest of the claimants, therefore, involvement of vehicle bearing registration No.HR-61A-2027, in the accident in question and blameworthiness of Dalip Singh, as such, does not stand established. Thus, findings on issue No.1, are hereby reversed and the said issue is decided against the claimants.

In view of the aforesaid conclusion, the claimants, as such, are not entitled to compensation and therefore, Award passed by learned Tribunal, is reversed and the claim petition is hereby dismissed.

Hence, the present appeal stands allowed.

September 12, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No