

PUNJAB AND HARYANA HIGH COURT

Before: Justice Dr. Ravi Ranjan

UNITED INDIA INSURANCE COMPANY LTD. – Appellant,

versus

HARDEEP KAUR and others – Respondents.

FAO No.5213 of 2019(O&M)

21.08.2019

(i) Motor Vehicles Act, 1988, Section 166 - Delay of four days in lodging the FIR - In motor accident cases, the first effort of the persons concerned would be to rush to the Hospital along with injured person so that proper treatment could be given to him for saving his life - FIR was lodged after the death of the injured - Therefore, the delay of four days in lodging the FIR would not be of much relevance. [Para 15]

(ii) Motor Vehicles Act, 1988, Section 166 - Proceedings before the Tribunal under Section 166 of the Motor Vehicles Act, 1988, is summary proceeding in the nature of enquiry for the purpose of assessment of just and proper compensation which is awarded to the claimants and for that purpose, strict proof of the issues, which is required in a criminal trial, would not be required - Thus, non-examination of Informant or Investigating Officer would not be of much value in this case as the final report which has been submitted by the police after investigation charge-sheeting the driver for negligent and rash driving has already been brought on record, which would be sufficient to prove rash and negligent driving by the driver - The variation at the time of the cross-examination regarding the time of accident and identification would also be not of much value as there is no crisis of any identification or time of evidence as the police has already submitted its final report after investigating the matter and finding the accident to have been taken place at a particular time and due to rash and negligent driving by a particular person - That apart, the driver and owner did not have courage to come into the witness box to rebut the evidence led by the claimants - In such a situation, in my opinion, no further proof was required and the finding of the Tribunal that the accident was a result of rash and negligent driving by the driver of the offending vehicle, cannot be faulted with. [Para 16, 17]

Mr.Gopal Mittal, for the appellant.

DR. RAVI RANJAN, J.(Oral Judgement) - (21.08.2019) - The Award dated 30.04.2019

pronounced by the Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as "the Tribunal") in MACT Case No.3 of 2018 is under challenge in this appeal preferred by the appellant-United India Insurance Company Ltd.

2. By the impugned Judgment and Award of compensation Rs.13,52,500/- has been awarded in favour of the claimants (respondents herein) who had filed a petition under Section 166 of the Motor Vehicles Act, 1988.

3. Short facts necessary for consideration of the lis stand enumerated as under:-

4. On the fateful day, i.e., on 16.09.2017 at around 11.00 P.M, the deceased was going on his motorcycle bearing Registration No. PB-11BD-2565 from Ambala towards his residence. When he reached near the bus stand Village Kamalpur, the offending truck bearing Registration No.PB-11AP-5142 driven by Surinder Singh(respondent No.1 in the claim petition) came speeding up from behind and struck against the motorcycle. As a result of the collision between two vehicles, the deceased fell down on the road and received multiple 1 of 5 grievous injuries. He was taken to Civil Hospital, Ghanour from where he was referred to Rajindra Hospital, Patiala and further to GMCH Sector-32, Chandigarh. However, he succumbed to the injuries on 19.09.2017 during the course of treatment. FIR was also lodged by Informant-Shingara Singh son of Lachhman Singh.

5. It was averred in the claim petition that the deceased was a healthy person of 40 years of age and was earning Rs.20,000/- per month as labourer. He died leaving behind a widow, two minor children and their aged parents as his dependents.

6. The driver and the owner of the offending truck appeared and denied the case put forward by the claimants stating that accident occurred due to the rash and negligent driving by the deceased himself. It was further pleaded that the truck was duly insured with the appellant-United India Insurance Company Ltd., therefore, the liability would be upon the Insurance Company, in case any award is passed against the owner, to indemnify the owner.

7. Insurance Company accepted that the offending vehicle was insured but denied the liability on the ground that there was violation of the terms and conditions of insurance policy.

8. The Tribunal, on appreciation of rival pleadings, framed following issues:-

"1. Whether deceased Gian Singh died in a motor vehicular accident occurred caused by respondent No.1 rashly and negligently on 16.09.2017 as alleged? OPP

2. If issue No.1 is proved in affirmative, whether the claimants are entitled to receive compensation on account of death, if so, to what extent and from whom? OPP

3. Whether the petition is not maintainable in its present form?

4. Whether respondent No.1 being the driver did not have any valid and effective driving

licence? OPR 2 of 5

5. Relief.”

9. In order to establish their claim, the claimant No.1-Hardeep Kaur herself examined as CW1/A, one Arun Kumar has been examined as CW2/A, his statement under Section 161 Cr.P.C., copy of FIR and police report submitted under Section 173 Cr.P.C. have been brought on record as Ex.C3, Ex.C4 and Ex.C5 respectively. Copy of Aadhar Card of Gian Singh and copy of postmortem report of Gian Singh have also been brought on record.

10. To rebut the evidence, the driver and the owner of the offending vehicle did not lead any oral evidence. However, they have tendered a copy of the insurance policy as Ex.R1 as a documentary evidence. No evidence has been brought on record by the Insurance Company also either oral or documentary.

11. The Tribunal, upon consideration of the materials on record and after hearing the parties, had decided the issues in favour of the claimants holding that the driver of the offending vehicle to be responsible for the accident as he was driving the vehicle rashly and negligently.

12. In the aforesaid background of factual matrix, I have heard learned counsel for the appellant-Insurance Company.

13. Chiefly two points have been raised before this Court at the time of hearing. First is that there is a delay of about four days in lodging the First Information Report and secondly, that the time of accident as stated by the informant in the FIR and as has been stated by Arun Kumar CW-2 varies as, in the FIR, it is stated that time of accident was 3.00 PM to 3.20 PM whereas the stand of Arun Kumar (CW2) in his cross-examination is that the accident took place at about 11.00 PM. That apart, it is also submitted that the name of driver or the registration number of the offending vehicle was not disclosed in the First Information Report. Apart from the above, the Informant or the Investigating Officer has not been examined by the claimants.

14. However, upon consideration of the aforesaid submissions and materials which are available on record of this case, I find no force in the aforesaid submissions raised on behalf of the appellant-Insurance Company.

15. So far the delay of four days in lodging the FIR is concerned, now it is well established that in the such type of cases, the first effort of the persons concerned would be to rush to the Hospital along with injured person so that proper treatment could be given to him for saving his life. It appears that in this case, though the accident took place on 16.09.2017 and the death had occurred on 19.09.2017, however, the FIR was lodged on 20.09.2017 after his death. Therefore, the delay of four days in lodging the FIR would not be of much relevance. It is further well-established proposition that proceedings before the Tribunal under Section 166 of the Motor Vehicles Act, 1988, is summary proceeding in the nature of enquiry for the purpose of assessment of just and proper compensation which is awarded to the claimants and for that purpose, strict proof of the issues, which is required in a criminal

trial, would not be required. A reference in this regard is made to the decision of Hon'ble Apex Court rendered in '**Sunita v. Rajasthan State Road Transport Corporation**, AIR 2019 SC 994'. The Hon'ble Apex Court has held that strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Act and further, that the standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. It has further been observed that what is essential in such matter is that the opposite party should get a fair opportunity to cross-examine the concerned witness and once that is done, it will not be open to them to complain about any prejudice caused to them.

16. Thus, non-examination of Informant or Investigating Officer would not be of much value in this case as the final report which has been submitted by the police after investigation charge-sheeting the driver for negligent and rash driving has already been brought on record as Ex.C5, which would be sufficient to prove rash and negligent driving by the driver. The variation at the time of the cross-examination regarding the time of accident and identification would also be not of much value as there is no crisis of any identification or time of evidence as the police has already submitted its final report after investigating the matter and finding the accident to have been taken place at a particular time and due to rash and negligent driving by a particular person. That apart, the driver and owner did not have courage to come into the witness box to rebut the evidence led by the claimants.

17. In such a situation, in my opinion, no further proof was required and the finding of the Tribunal that the accident was a result of rash and negligent driving by the driver of the offending vehicle, cannot be faulted with.

18. In the result, this appeal fails and is accordingly, dismissed. However, there would be no order as to costs.