
(2011) 01 P&H CK 0255
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 2353 of 2007 (O and M)

National Insurance Co.

APPELLANT

Vs

Gian Singh (deceased) through his L.Rs and Others

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163

Citation : (2011) 162 PLR 354

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—At the previous hearing on 29.11.2010, the counsel for the claimants namely Shri Sunil Kumar Sharma, Advocate, was not present, and therefore, I had directed the case to be posted after printing his name in the cause list. Today when the case is taken up, again the counsel for the claimants is not present. I have proceeded to examine the case in the presence of the counsel for the Appellant and the counsel appearing on behalf of the owner of the vehicle alleged to have been involved in the accident.

2. The appeal arises out of a claim for compensation for a death of a police constable in a motor accident alleged to have taken place at the time when the deceased going with another person in a scooter had been hit by yet another motor vehicle at 11.30 in the night near Rajpura on 17.07.2000. A case had been registered against the insured's vehicle and the driver was apprehended nearly 20 days after the incident. The attempt on the side of the claimants was to show that although the FIR did not disclose the name and identity of the vehicle which was involved in the accident, a statement was recorded through PW5-Seo Ram, who was alleged to have seen the accident, claimed that he was travelling in a truck which was following the insured's Tata sumo car and he had known that the Tata sumo dashed against the scooter and sped past without stopping the same. It was on this evidence that the Tribunal held the involvement of the insured's vehicle as having been established to make the insurer liable.

3. Learned Counsel for the Insurance Company points out that the FIR itself did not reveal the involvement of the insured's vehicle and the relevant portion in the FIR which was alleged at the instance of one Joginder Singh was that he was on night patrol duty on the day and he had seen several vehicles going towards Rajpura including trucks, car and Tata sumo and he heard a loud sound and ran to the site to see a dead body in the ditches and a Bajaj Chetak scooter was lying nearby. A little ahead, another dead body was also lying. The FIR makes a definite FAO No. 2353 of 2007 (O&M) - 3-reference to Tata sumo but gives no details of any particular identity with reference to the registration or the colour of the vehicle. PW5, who was brought to say that the insured's vehicle had been involved, was subjected to cross-examination and since he stated that he was travelling in a truck, he was enquired about the identity of the truck, the number of persons travelling and the persons, who were travelling along with him. His evidence as regards the so-called presence at that time hardly evokes any confidence. His evidence was as under:

...There were four persons sitting in the truck but I cannot tell their names sitting in the truck. I cannot tell the name of the driver of the truck. I had not been seen what was loaded in the truck but it seem that it was unloaded. This truck did not stop any octroi post. I cannot tell the number of the truck. It is wrong to suggest that I was not travelling in any truck on 17.7.2000 as alleged by me in my affidavit Ex.P7....

4. It is further elicited in the cross-examination that between his truck and between the truck in which he was travelling and the Tata sumo, there was yet another vehicle, which was going. The attempt was, therefore, to show that he could not have noticed the registration number or the identity of the Tata sumo. The relevant portion of his evidence is as under:

... There was one truck ahead of our truck and there were few vehicles coming and going. I did not note any number of any other vehicle at the spot. There was no carrier on the Tata sumo. I cannot tell the colour of the scooter nor I can tell the make, number of the same. I was to get down from the truck at Rajpura. There is a police post at Kauli, at Sadar Rajpura. It is correct that the turning to Kalka after crossing the entire Rajpura near G.T. road. There are police officials present at the crossing of turning towards Panchkula again said Kalka. I did not go to any police station on the way to report regarding this accident. I did not know who had lodged the FIR with the police regarding this accident.... I cannot tell whether the driver of the Tata sumo was a Sikh gentleman or Hindu gentleman.

5. It is more artificial that he could have proceeded without informing the police, who, according to him, was available immediately at the spot a little father away. The cross-examination does not again establish that he could have seen the accident or that he could establish the identity of the vehicle which was involved in the accident.

6. The driver of the vehicle himself was examined and he had given evidence to the effect that he had been falsely implicated and his vehicle was never involved in the accident. The evidence was hardly sufficient to find the involvement of the insured's vehicle as established. Evidently, it was a case of hit-and-run situation and the deceased person was a police official and, therefore, it has become possible for the police to make a false implication and lodge a case against the insured's driver. I do not find credible evidence to find the involvement of the insured's vehicle and I vacate the finding rendered by the Tribunal that the accident had been caused by the insured's vehicle. Consequently, the award passed in favour of the claimants is set aside and the appeal by the insurer is allowed. It shall be open to the claimants to apply to the State to claim the amount established under the fund constituted u/s 163 under the MV Act. It shall not become necessary for the parties to FAO No. 2353 of 2007 (O&M) - 5-doubt the death of the person as having been caused by a motor accident. If there is any delay in moving such application, the fact of pendency of proceeding before the Tribunal and before this Court may also be duly taken note of.

7. The Insurance Company had also pleaded that the driver did not have a valid driving licence but I do not think it is necessary to enter any finding as regards the same, having regard to the fact that I find that the involvement of the vehicle itself had not been established.

8. If any amount that may have been deposited by the Insurance Company at the time of preferring the appeal may be permitted to be withdrawn if it is still available.