

(2010) 10 P&H CK 0361
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 4816 of 2002 (O and M)

National Insurance Company Limited

APPELLANT

Vs

Bimla and Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Citation : (2011) 163 PLR 797

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The Insurance Company is in appeal challenging the involvement of the insured's vehicle and would state that it was a fabricated claim. The contentions made on behalf of the claimants were that the husband of the first claimant Raghubir Singh was driving the scooter with one Balwan, who was the pillion rider. The accident was said to have resulted when the insured's jeep coming from the opposite direction attempted to overtake a bullock-cart which was going ahead of the jeep and in that process, he struck his jeep against the scooter on the kacha portion of the road. The scooterist fell down and received grievous injuries that proved fatal. The accident was alleged to have taken place on 15.09.1999 at about 8 PM near S.D. School, Narwana on canal road. He was initially taken to CMC Hospital, Hisar in a serious condition where he admitted upto 17.09.1999 and later referred to PGIMS, Rohtak but on the way, he had succumbed to his injuries.

2. The owner of the jeep filed the written statement admitting the accident but denied that it took place on account of negligent driving of his driver Prem Singh but that the accident took place only by the scooterist having struck a bullock-cart and later on striking against the jeep. The Insurance Company contested the case stating that the claim petition was fraudulent and the petition itself was not maintainable without impleading the driver. It was also contended that there was no FIR/DDR regarding the alleged incident and that therefore, the claimants are not entitled to obtain any compensation making the insurer liable.

3. The Tribunal relied on the evidence of Balwant the alleged pillion rider in the vehicle driven by the deceased. The Tribunal took the evidence of PW2 to obtain corroboration from the statement of Balbir Singh RW1, who was stated to be the owner of the vehicle. The Tribunal rejected the plea of collusion between the claimant and the owner by pointing out that the insurer had not even asked the witness Balbir Singh why he was travelling in the jeep at the relevant time and what was the purpose for his coming to Narwana. The Insurance Company had made their investigation through a private investigator and they were convinced that no such accident had taken place involving the insured's vehicle.

4. There are certain loose ends in this case. It is not seen from the evidence as to why no attempt was made to bring the driver of the alleged offending jeep to the Tribunal to make a statement about the accident. If the non-examination of the driver could be explained by the fact that the owner himself had been examined and he had admitted to the involvement, then in the face of the contention that there is a collusion between the owner and the claimant, it begs the question that we have to answer whether the evidence of the owner was sufficient for proof of involvement of the vehicle. The fact has to be elicited without reference to the evidence of the owner of the vehicle. The Tribunal reasoned that the claimant could not be expected to go after the police to register the complaint. They may not have done immediately but there is nothing elicited in the evidence that even after the death of her husband and after she was weaned from her mourning period, she had ever made an attempt to complain about the act of the accident to the police. After the death, it was not as if the claimant did not know, who was responsible for the accident. If they had known that the first Respondent's vehicle had been involved, it ought to be explained why a complaint was not given referring to the said vehicle and seeking for investigation and cause the apprehension of the driver of the offending vehicle. The Tribunal found the involvement of the vehicle ultimately only by the admission of the owner of the vehicle. In my view, it will be too dangerous to accept pleas of involvement of a vehicle only through the so-called admissions especially when the plea is that the claimant and the owner had colluded with each other to lodge a false complaint.

5. The instances of hit-and-run are facts of life and a legislative initiative for compensating the victims or the members of the family in hit-and-run cases have not yielded sufficient results. They have not at least gone to abate fraudulent and fictitious claims and the compensation awarded u/s 163 is so woefully inadequate that parties make ingenious attempts to create evidence of willing owners or drivers, who are prepared to admit to the involvement so long as there are no serious criminal consequences. In this case, it could be seen how the ploy unfolded itself. The driver is not named in the petition. The owner, who says that he travelled in the vehicle and who knew about the accident makes reference to his driver as Prem, Premo and Prem Singh but gives no details about the driver. He does not also explain as to how the driver, who caused the accident that resulted in death of a person, did not come with any contact with law

enforcement agencies. Claimants themselves have no explanation to offer as to why they did not take any attempt to get the guilty punished. The evidence of PW1, a pillion rider, becomes untrustworthy if he cannot explain why he also did not inform the police at any time. If the evidence placed before the Tribunal is convincing and the reasoning of the Tribunal examines all facets of the case, there would be no occasion to interfere but there are far too many loose ends to make a credible version that can found a cause of action against the involvement of the vehicle and the liability of the insurer.

6. I would, therefore, set aside the award of the Tribunal and allow the appeal of the Insurance Company. It shall be open to the claimants to apply to the State sponsored scheme floated u/s 163 for realizing of the amount under hit-and-run situations. I have not the details whether the claimants have obtained the benefit of award during the pendency of appeal and if they have, there shall be no scope for applying u/s 163, without giving up the benefit, if any, secured under the award of the Tribunal.