

(2010) 08 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 1810 of 2006

United India Insurance Company Limited	APPELLANT
Vs	
Kamla Devi and Others	RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163

Citation : (2012) 1 TAC 889

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The Insurance Company is in appeal challenging liability on the ground that the death alleged to have resulted by the involvement of the insured's vehicle was a fabricated version and the vehicle was not involved at all in the accident. It was a case wrought out on collision with the owner-driver and, therefore, the Insurance Company could not have been made liable. The accident is said to have taken place while the insured's vehicle a Tata sumo car ran over the deceased who was a pedestrian and the accident is said to have taken place opposite the main road at Rajpura. The only eye-witness was one Sitar Mohd., who had a tea shop opposite the police post focal point, Rajpura.

2. The Tribunal accepted the evidence of the witness produced by the claimant to find that the insurer's vehicle had been involved in the accident. It was a case where no FIR had been lodged and there was no other evidence to anchor than the statement of Sitar Mohd. to affirm whether the accident had taken place and whether the insured's vehicle had been involved in the accident. Finding there was the evidence of PW1, the Court went on to notice that a FIR, which had been lodged, referred to the fact that there was an incident of accident on that particular day and the deceased had died only due to a motor accident. The Tribunal therefore took that the death due to the motor accident must be relatable only to the insured's vehicle.

3. The Insurance Company is in appeal to point out that the death arose out of a motor accident is only addressing one portion of the entire version and what was more important was to bring in evidence to implicate the insured's vehicle in order to sustain a claim against the insurer. Referring to the evidence of the only witness Sitar Mohd. at the time when he gave evidence before the Tribunal that he had seen the particular Tata sumo car was responsible for the accident, he was confronted with the question whether he had given evidence also in the criminal Court for proceedings initiated against the driver by the police. He had admitted the same. He had then been asked whether he did not give a statement before the criminal Court that he had not seen any accident nor had he known that any Tata sumo vehicle was involved in the accident or not. He has admitted first, but later denied in the cross-examination. The statement in the criminal Court has, therefore, been marked to bring out the contradiction in evidence. The contradicted portion of the evidence before the criminal Court reads thus, "I do not know whether any Tata sumo was involved in the accident or not. My signatures was obtained by the police when I picked up a person who met with an accident" Elsewhere in the same statement which contradicts the version given before the Tribunal was "I cannot tell the date of the accident but nine months ago, I do not know what had happened..... Accident taken place in Focal Point, Rajpura but I do not tell the exact place where the accident took place (sic). I cannot tell what vehicle was involved in the accident." If there had been a statement before a criminal Court where he had stated that he did not know how the accident had taken place, perhaps it cannot conclude everything.

4. It should still have been possible for the Tribunal to take a decision uninfluenced by any decision that may have come before the criminal Court. The several decisions which have come about on this issue are to the effect that a judgment in a criminal Court is not binding on the Tribunal; the non-filing of a FIR is not material; even the fact of involvement of the vehicle as found by the criminal Court is not binding. While the Tribunal is competent to assess the evidence which is brought before it and take an independent decision, then the point that has to be seen is whether there was any evidence worth its name before the Tribunal to come to a finding that the particular vehicle was involved in the accident. It can be either that the version of Sitar Mohd. cannot be relied for he has contradicted himself wholesale with the version given before the criminal Court or looked for other evidence which was placed before the Court. Alternatively if any explanation had been given by the witness as to why he deposed falsehood before the criminal Court, even such an explanation could have been accepted to enter a finding that the accident took place only involving the particular insured's vehicle. In this case, no explanation has been given by the witness as to why he stated before the criminal Court that he did not know which vehicle was involved in the accident. He would, on the other hand, defy that he ever made any such statement before the criminal Court, necessitating the statement made before the criminal Court to be exhibited for contradiction before the Tribunal. It must be remembered a statement in criminal Court case

by a witness is also on oath. If he was uttering falsehood, he was liable for perjury. If there was contradiction between the version elicited before the Tribunal to the statement made before the criminal Court then such a witness will be unworthy of acceptance. The Tribunal could have simply rejected the whole evidence. If it was going to pick out one line from chief examination to say that the insured's vehicle was involved in the accident, the Tribunal was doing something which is not a judicial function but a travesty of justice.

5. The decision rendered by the Tribunal, under such a circumstance, relying on an untrustworthy witness cannot stand judicial scrutiny before this Court. The Learned Counsel appearing for the claimant would contend with vehemence that the witnesses do give different statements in different Courts and particularly in criminal Court to help the accused to secure an acquittal. It has been the bane in our country that the truth is ever a casualty in Courts. It is not a matter of pride that India records the lowest percentage of conviction which is as low as 8%. If truth is a casualty for Court, untruth cannot lend a premium to a claimant's cause as well. If the claimant must rely on such an untrustworthy witness, they have to fail by such evidence. We have come through situations where there have been instances of difficulty of proving the involvement of the particular vehicle. Insurance Companies are themselves not institutions of charity. They are run on public money.

A Court cannot be a party to indiscriminately award against an Insurance Company only because there is no solvent tortfeasor or the tortfeasor has not been traced. If we have a dispensation through a provision u/s 163 for payment of compensation for hit-and-run situation out of a State constituted fund, it came through recommendation from the Law Commission on the lines of what has been provided by U.K. by a fund constituted through Motor Insurance Bureau. The change in law which the Motor Vehicles Act provides through a scheme of compensation u/s 163 is perhaps just the beginning. We have still a long way to go if the compensation for hit-and-run cases themselves are not merely nominal and token awards but they duly go to relieve the family in distress. What a legislator has not thought fit to do yet, is not what a Court can. Courts can only administer justice as per law.

6. The Learned Counsel appearing for the respondents refers to a decision of this Court in National Insurance Company Limited v. Amar Singh & Others 2010 A.C.J. 415, to the effect that the MACT shall not be bound by the judgment of the criminal Court. I have not referred to any criminal Court judgment to rest my findings. The Learned Counsel also refers to a decision of this Court in Oriental Insurance Company Vs. Kamla Devi and Others, that states that registration of FIR is not a criterion to prove negligence. In this case there is a FIR but it does not go so far to suggest that the insured's vehicle was involved in the accident. In N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, the Hon'ble Supreme Court held that it is the duty of the Accidents Tribunals to take special care to see that innocent victims do not suffer and drivers and owners do not escape liability

merely because of some doubt here or some obscurity there. Culpability must be inferred from the circumstances where it is fairly reasonable. It is precisely the issue here. If there was ever a speck of evidence that the vehicle had been involved in the accident, it could have supported the award of the Tribunal. The case suffers from a whole lack of evidence. The award hinges on the most untrustworthy evidence of the person whose version is suspect. It is too fragile for this Court to make an affirmation. The award of the Tribunal is set aside and the appeal by the Insurance Company is, under the circumstances, allowed.