

*Before Nirmaljit Kaur, J.*

**SHRI RAM GENERAL INSURANCE COMPANY LIMITED—**  
*Appellant*

*versus*

**JEETO DEVI AND OTHERS—Respondents**

**FAO No.2231 of 2014**

December 3, 2019

*Motor Vehicles Act, 1988—S.166—Eye witness not supporting prosecution in criminal case, but supported claimants before Tribunal—Delay of 17 days in registration of FIR unexplained—claim rejected.*

*Held that*, the counsel for the claimants has not been able to answer the said submissions except that the other claimants, i.e. the mother, wife, and son of the deceased cannot be punished for the same as they do not know the reason why the witness may have turned hostile. However, the same does not help in as much as it is a fact that FIR was registered after almost 17 days inspite of the ascertain that broken number plate was found on the next day itself. No reasonable explanation is coming forward for the said delay. It is known fact that there is a rise in such like cases, wherein the vehicle is involved only to get compensation and thereafter the said witness turns hostile and saves the concerned driver knowing fully well that he had been earlier enroped falsely and in connivance with each other.

(Para 7)

*Further held that*, accordingly, the award dated 15.1.2014 is set aside and the appeal of the Insurance Company in these circumstances is allowed.

(Para 8)

Sanjeev Goyal, Advocate,  
*for the appellant.*

Shaurya Punj, Advocate for  
Tarun Vir Singh Lehal, Advocate  
for respondents No. 4 and 5.

**NIRMALJIT KAUR, J. oral**

(1) The present appeal is filed by the Insurance Company against the award dated 15.1.2014 passed by the learned Motor

Accident Claims Tribunal, Rupnagar, vide which, an amount of Rs.9,11,000/- was awarded as compensation to be paid to the legal heirs of the deceased, i.e. mother, father (now deceased), wife and minor son.

(2) While praying for the setting aside the said award, learned counsel for the appellant-Insurance company submitted that as per the claim petition Budh Ram alias Shammi was returning to his native village Nalhoti on his scooter on 7.4.2011 after closing his shop, when, respondent No.2 in the claim petition came in a trollea bearing registration No.PB-10-CA-8398 at high speed in rash and negligent manner and struck against the scooter. Budh Ram alias Shammi received injuries and died on the same day. FIR No.33, dated 25.4.2011 was registered under Sections 279 and 304-A IPC at Police Station Nurpur Bedi against respondent No.2 in the claim petition i.e., namely, Lal Kumar (Paramdish Verma), who was the driver of the said vehicle. It was the stand of the appellant-insurance company that the trollea No.PB-10-CA-8398 had been falsely involved. However, the arguments and the evidence was ignored by the Tribunal by granting compensation and passing the impugned award. It is contended that Jaswinder Singh PW-2 was cited as eye witness. He was also the complainant and the FIR was registered at his behest. PW-2 Jaswinder Singh is in fact the real brother of the deceased. As per his statement, a broken number plate of the trollea was found on the spot on the very next date and on enquiry, he came to know that the said number plate belongs to the trollea owned by respondent no.1 in the claim petition. Surprisingly, the said fact was not brought to the notice of the police and even the FIR was registered after almost 17 days.

(3) Learned counsel for respondents No.4 and 5 while defending the award submitted that the family was busy and occupied in view of the death of Budh Ram alias Shammi, therefore, registration of FIR was delayed.

(4) During the pendency of the present appeal, the FIR was investigated and challan was filed against respondent No.2 in the claim petition. However, during trial, eye witness PW-2, who is the real brother of the deceased was turned hostile. He stepped into the witness box and deposed that he has no knowledge regarding the case, as no accident took place in his presence. He also did not identify the accused present in the Court. In fact, learned APP cross-examined Jaswinder Singh but nothing fruitful came in favour of the claimants from the cross-examination. Moreover, the said witness was none other but the

real brother of the deceased.

(5) Learned counsel for respondents No.4 and 5, at this stage submitted that the test required in a criminal case is of proving the allegations beyond doubt, whereas, the same witness Jaswinder Singh had appeared before the Tribunal and his statement went un rebutted.

(6) This Court cannot loose sight of the judgment rendered by this Court in the case of *United India Insurance Company Limited versus Kamla Devi and others*<sup>1</sup>, wherein it was specifically held that in case an eye witness gives totally different version before the Court conducting trial in criminal case from the statement made by the said eye witness before the Tribunal, the testimony of such a witness is unworthy of being accepted and the evidence should be simply rejected. In fact, the learned Single Bench came down heavily on such witness and held that the said witness is also liable for perjury. Para No.5 of the said judgment is reads as under:-

“5. 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 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

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<sup>1</sup> 2010(53) RCR (Civil) 651

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.”

(7) The counsel for the claimants has not been able to answer the said submissions except that the other claimants, i.e. the mother, wife, and son of the deceased cannot be punished for the same as they do not know the reason why the witness may have turned hostile. However, the same does not help inasmuch as it is a fact that FIR was registered after almost 17 days in spite of the ascertain that broken number plate was found on the next day itself. No reasonable explanation is coming forward for the said delay. It is known fact that there is a rise in such like cases, wherein the vehicle is involved only to get compensation and thereafter the said witness turns hostile and saves the concerned driver knowing fully well that he had been earlier entraped falsely and in connivance with each other.

(8) Accordingly, the award dated 15.1.2014 is set aside and the appeal of the Insurance Company in these circumstances is allowed.

(9) The statutory amount of Rs.25,000/- deposited by the Insurance Company is ordered to be released in favour of the Insurance Company.

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*Tejinderbir Singh*