Before Harminder Singh Madaan, J.

NEW INDIA ASSURANCE CO LTD.—*Appellant*

versus

VEENA DEVI & ORS.—*Respondents*

FAO No. 3596 of 2017

December 07, 2022

Motor Vehicle Act, 1988—S.166—Delay of one day in lodging of FIR—Held—S.166 of the Motor Vehicles Act is a piece of welfare legislation strict rules of evidence and procedure are not applicable.

Held, that section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well asto the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. Delay may be relevant while deciding criminal liabilityof a person during the trial but here while adjudicating upon a claim petition under the Motor Vehicles Act, 1988, delay cannot be given undueimportance.

(Para 13)

Motor Vehicles Act, 1988—Non-mentioning of type of vehicle which caused the accident and name of driver, in the FIR Held: FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion, and non-mentioning of type and vehicle would not help the insurance company.

Held, that the FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident.The FIR can be got registered by a person, who may not be an eye-witness of the occurrence. It is only during investigation of the case that policecan come to know about the culprit / criminal, who had committed the crime. Therefore, non mentioning of type of vehicle and name of Vikram Singh as its driver, which had caused the accident does not help the insurance company in developing its case that the offending vehicle had not caused the accident and was planted wrongly just to get the compensation.

(Para 15)

Pardeep Goyal, Advocate, for the appellant in FAO-3596-2017 and for respondent No. 2 in FAO-4017-2019.

Gurmeet Kaur, Advocate for Rajesh Duhan, Advocate, for the appellants in FAO-4017-2019 and for respondent No.4 in FAO-3596-2017.

H.S. MADAAN, J.

CM-13371-CII-2019 &
CM-13372-CII-2019

For the reasons mentioned in the applications, the same are allowed and delay of 309 days in re-filing of the appeal and delay of 176 days in filing of the appeal stand condoned.

FAO-3596-2017(O&M) &
FAO-4017-2019(O&M)

(1) By this order, I shall dispose of two FAOs i.e. FAO-3596-2017 filed on behalf of appellant – New India Assurance Company Ltd. and FAO-4017-2019 filed on behalf of appellants – Smt.Veena Devi and others, which have arisen out of the same accident.

(2) Briefly stated, the facts of the case are that on 25.10.2014 at about 7:30 p.m., one Manjya Yadav son of late Sh.Mahadev Yadav was going from village Naru Kheri towards village Pingli on a motorcycle being driven by him at a moderate speed on left hand side of the road; one Ravi was sitting as a pillion rider on the motorcycle; in the meanwhile a TATA Ace bearing registration No.HR45-A 2652 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 Vikram Singh in a rash and negligent manner and at a high speed came from behind and by going on the wrong side, it struck against the motorcycle of Manjya Yadav; resultantly both the riders of the motorcycle fell on the ground and sustained multiple serious and grievous injuries on their persons; Manjya Yadav died at the spot, whereas Ravi was shifted to hospital for treatment. Formal FIR No.750 dated 26.10.2014 for the offences under Sections 279 and 304-A IPC was registered against respondent No.1 – Vikram Singh with Police Station Sadar, Karnal.

(3) The legal representatives of deceased, namely, his widow – Smt.Veena Devi, minor daughter – Puja Kumari, minor son – Shubham Kumar had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against

respondent No.1 – Vikram Singh – driver-cum-owner of the offending vehicle and its insurer respondent No.2 - New India Assurance Company Lt., Karnal, impleading Smt.Shakuntla wife of late Sh.Mahadev Yadav, mother of the deceased as proforma respondent.

(4) On notice, respondents No.1 and 2 had appeared and offereda contest praying for dismissal of the claim petition.

(5) Issues on merits were framed.

(6) The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

(7) After hearing arguments, the claim petition was accepted by Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as the Tribunal) and compensation of Rs.16,64,300/- along with interest @ 7% per annum was awarded to the claimants payable by respondents No.1 and2 jointly and severally.

(8) The claimants and insurance company felt aggrieved by the award and they have filed separate appeals before this Court.

(9) I have heard learned counsel for the parties besides going through the record.

(10) As far as **FAO-3596-201** filed by insurance company is concerned, learned counsel for the appellant - insurance company has contended that the offending vehicle i.e. TATA Ace bearing registration No.HR45-A, 2652 was not involved in the accident and it had been planted simply to enable the claimants to get compensation since that vehicle was insured with the appellant – insurance company; the Tribunal fell in error in returning a finding that respondent No.1 Vikram Singh was author of the accident by his rash and negligent driving of the offending vehicle.

(11) After hearing learned counsel for the appellant and going through the record, I find that these arguments advanced by the learned counsel for the insurance company lack merit. The Tribunal by proper analysis of the evidence adduced by the parties before it, had come to the conclusion that accident had in fact taken place due to rash and negligent driving of the offending vehicle in question by Vikram Singh – respondent No.1. While drawing this inference, the Tribunal had relied upon the testimony of PW2 Sanjay Kumar, an eye-witness of the accident, who had categorically stated that the mishap was caused by Vikram Singh-respondent No.1 while driving the offending vehicle in question in a rash, negligent and careless manner. He stated that the

motorcycle was being driven by the deceased at a moderate speed and the offending vehicle driver in a rash and negligent manner without observing traffic rules came from behind and struck the motorcycle driven by deceased from behind and thereafter the driver of the offending vehicle ran away from the spot. The Tribunal had further observed that FIR in question had been lodged by PW2 Sanjay Kumar, a brother of the deceased. It was he who had lodged the FIR regarding the accident as Ex.P5. No reason is there to disbelieve the testimony of this witness.

(12) As regards the delay of one day in lodging of the FIR, the Tribunal has rightly observed that the accident had taken place on 25.10.2014 in the evening time and FIR was lodged on the next day at 10:40 a.m. with delay of just 14-15 hours, which has been duly explained by the petitioners. I do not find myself in disagreement with the Tribunal in that regard. The brother of the deceased having seen his brother in an injured condition, his first priority would have been to take him to hospitalso as to give him immediate medical aid, rather than leaving him unattended at the spot and going to the police station to lodge report there first.

(13) Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well asto the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. Delay may be relevant while deciding criminal liabilityof a person during the trial but here while adjudicating upon a claim petition under the Motor Vehicles Act, 1988, delay cannot be given undueimportance. The respondent No.1 – driver has been sent up to face trial forcausing this accident by his rash and negligent driving and is facing trial. The evidence oral and documentary adduced by the claimants has gone unrebutted. Respondent No.1 – Vikram Singh driver did not appear in the witness-box to deny that he had causeed the accident by his rash and negligent driving of the offending vehicle. The respondent No.1 has ratherclosed his evidence after tendering copy of his driving licence as Ex.R1 and copy of registration certificate of the offending vehicle as Ex.R2 and other documents. Therefore, it cannot be said that the offending vehicle i.e. TATA Ace bearing No.HR45A-2652 was not involved in the accident and it has been roped in later on.

(14) As regards the contention of learned counsel for the appellant insurance company that in the FIR neither the name of the

driver nor type of the vehicle, which caused the accident is mentioned, which makes the case of claimants doubtful; as has been generally observed when FIR regarding the accident is lodged the informant sometimes does not know about the type of vehicle involved in the accident and the person who was driving it. The informant may not be the eye-witness of the incident.

(15) The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident.The FIR can be got registered by a person, who may not be an eye-witnessof the occurrence. It is only during investigation of the case that policecan come to know about the culprit / criminal, who had committed the crime. Therefore, non mentioning of type of vehicle and name of Vikram Singh as its driver, which had caused the accident does not help the insurance company in developing its case that the offending vehicle had not caused the accident and was planted wrongly just to get the compensation.

(16) As regards the plea taken up by learned counsel for the insurance company that driver of the offending vehicle was not holding any valid or effective driving licence at the time of accident and for several reasons like he was permanent resident of Haryana and as per Section 9 of the Motor Vehicles Act, he could not have obtained licence from Nagaland; secondly the Licencing Authority, Nagaland had issued notification vide which the licences needs to be converted into smart card, further the licence of the driver is not smart card and should be consideredas invalid at the time of accident.

(17) However, the Tribunal in its award has not accepted this plea of the appellant insurance company and I on my part do not see anyreason to disagree with the Tribunal on that point. The onus was on the insurance company to show that respondent No.1 was not possessed of a legal and valid driving licence at the relevant time but it has failed to do so.

(18) The Apex Court in Special Leave Petition (C) Nos.9027 of 2003 titled ***National Insurance Co. Ltd.*** *versus* ***Swaran Singh and Ors.*** with other SLPs, date of decision being 5.1.2004, had observed that insurer is entitled to raise all defences available under Section 149(2) of the Act, however mere absence, fake or invalid licence at the relevant timeare not the defences available to insurer against the insured or third partiesbecause to avoid its liability towards the insured also, the insurer has to prove the insured to be guilty of negligence and failure to

exercise reasonable care in compliance of conditions of policy. The burden is onthe insurer to establish breach of policy by leading cogent evidence and mere non-production of licence or evidence by the insured cannot be considered as discharge of burden of insurer.

(19) Therefore, the appellant – insurance company cannot take advantage of this fact and start denying liability under the award.

(20) Now coming to the quantum of compensation.

(21) Learned counsel for the appellant – insurance company has contended that the deceased was an unskilled labourer, however, his income was taken as per DC rates, whereas it should have been considered as fixed by Labour Department under the Minimum Wages Act, which were 5639.50. However, the Tribunal had taken the monthly income of the deceased to be Rs.8,100/- in terms of the Deputy Commissioner's order issued as per instructions contained in the Punjab Government FD letter NO.7084-F-41/6057 (Fin.Genl) dated 21.11.1941, where the maximum rate of wages for unskilled labourer for the year 2014-15 was fixed as Rs.8,100/-. Therefore, the Tribunal took figure, as such.

(22) The Tribunal cannot be faulted in doing so as assessing income of deceased where no documentary evidence of such income is available is somewhat ticklish task. The Tribunal has to consider the income of a similarly placed trained person having same educational qualifications as that of the deceased. Some amount of guesswork and approximation is also involved. Taking guidance from the order passed by D.C. issued on the basis of instructions issued by Punjab Government fixing salary for unskilled labourer as Rs.8,100/- per month, cannot be found fault with and it can certainly be not said to be on higher side.

(23) But as per the case of the claimants, the deceased was working as an Accountant in M/s Shiv Rice Mills, Pingli, District Karnal and getting Rs.12,000/- per month. To prove that fact, the petitioners had examined PW3 Hari Ram, Contractor, who in his affidavit Ex.PW3/A hadstated that he was engaged in providing the services of labourers and office staff to Sheller/Rice Mills, factories and business institutions and he had got appointed deceased Manjay as Accountant in Shiv Rice Mills, Karnal on salary of Rs.12,000/- per month.

(24) The Tribunal wrongly ignored such piece of evidence adduced by the claimants for the reason that employer or employee

from the rice mills was not examined by the claimants. Once the Labour Contractor through whom the services of the deceased had been hired had been examined, there was no necessity for examining any employer of the rice mill or any of its employees. In my view the income of the deceased should be taken as Rs.12,000/-.

(25) The Tribunal has not added any amount towards future prospects. In view of the ratio of authority ***National Insurance Company Limited*** *versus* ***Pranay Sethi and Ors.***[1]**,** keeping in view the age of the deceased, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.12,000 + 4800 = Rs.16,800/-.

(26) The Tribunal has rightly deducted 1/4th of the amount towards personal expenses. Doing that the dependency of claimants comes out to Rs.12,600/- (16800 -4200) per month, annual dependency comes out to Rs.12600 x 12 = 1,51,200/-.

(27) The Tribunal has rightly used multiplier of 17 in view of ratio of authority ***Smt. Sarla Verma and others*** *versus* ***Delhi Transport Corporation and Anr.***[2]**.** Doing that the compensation payable comes out to Rs. 1,51,200 x 17 = 25,70,400/-.

(28) Under the conventional heads, the Tribunal has awarded Rs.1 lakh to petitioner No.1 – Veena Devi for loss of consortium. Rs.1 lakh each to petitioners No.2 and 3 being minor children of deceased for loss of care and guidance and Rs.1 lakh to proforma respondent No.3, who is mother of deceased towards loss of love and affection and in addition to that petitioners were further awarded a sum of Rs.25,000/- towards funeraland obsequies expenses.

(29) However, the legal position in that regard has been clarified in subsequent judgment by the Apex Court i.e. ***Magma General Insurance Co. Ltd.*** *versus* ***Nanu Ram alias Chuhru Ram & Ors.***[3], wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited*** *versus* ***Pranay Sethi and Ors. (supra)***, which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of

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[1] 2017 (4) RCR (Civil)1009
[2] 2009 (3) RCR (Civil)77
[3] 2018 (4) RCR (Civil) 333

Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded.

(30) Doing that the compensation comes out to be Rs.27,60,400/ (25,70,400+40000+40000+40000+40000+15000+15000).

(31) In this way, the enhanced amount comes out to Rs.10,96,100/- (27,60,400 - 16,64,300). Since FAO-4017-2019 has been filed belatedly by 485 days (309+176) the appellants/claimants would be entitled to interest at rate of 7.5% per annum on the enhanced amount of compensation from the date of filing appeal till actual payment. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

(32) Thus FAO-3596-2017 filed by the insurance company stands dismissed, whereas with above modification, the FAO-4017-2019 filed bythe appellants/claimants is allowed partly with costs.

(33) Since FAO-3596-2017 stands dismissed and FAO-4017-2019 is allowed partly with costs, the miscellaneous application(s), if any, stand disposed of accordingly.

Ankit Grewal