

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 7298 of 2014 (O&M)
Date of Decision: 08.05.2015

New India Assurance Company Ltd.

.....Petitioner

Vs.

Balwinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Paul S. Saini, Advocate,
for the petitioner.

Mr. Mayank Mathur, Advocate,
for respondent No. 1.

SABINA, J.

Petitioner has filed this petition challenging the order dated 06.08.2014, whereby application moved by the petitioner for impleading owner, driver and insurer of Three Wheeler No. PB11-AG-9983, was dismissed.

Learned counsel for the petitioner has submitted that in the present case the Three Wheeler in question was overloaded with passengers. The accident had taken place between the Oil Canter No. PB-11G-7655 and Three Wheeler No. PB-11-AG-9983. In these circumstances, it was very necessary to implead the owner, driver and insurer of the Three Wheeler as a party. In case, the Tribunal came to the conclusion that the accident had taken place due to

contributory negligence of the drivers of the both the said vehicles,

then in the absence of the owner/driver of the Three Wheeler, petitioner would have to pay the entire amount of compensation to the claimants and it would be difficult for the petitioner to recover the share of compensation which was liable to be paid by the owner, driver and the insurer of the Three Wheeler. Learned counsel for the petitioners has placed reliance on decision of the Hon'ble Supreme Court in case, titled as **Pawan Kumar and another** vs. **Harkishan Dass Mohan Lal and others** 2014 ACJ 704, wherein it was held as under:-

“In the present case, neither the driver/owner nor the insurer has filed any appeal or cross-objection against the findings of the High Court that both the vehicles were responsible for the accident. In the absence of any challenge to the aforesaid part of the order of the High Court, we ought to proceed in the matter by accepting the said finding of the High Court. From the discussions that have preceded, it is clear that the High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles.

We, accordingly, hold that drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them. The order of the High Court dated 5.7.2006 is modified to the extent indicated above and the appeal is allowed.”

Learned counsel for respondent No. 1, on the other hand, has opposed the petition.

In the present case, claimants have filed claim petition claiming compensation against driver, owner and insurer of the Canter bearing No. PB-11G-7655. During the pendency of the claim petition, Insurance Comapny-petitioner moved an application for impleading the owner, driver and insurer of Three Wheeler bearing No. PB-11-AG-9983. While dismissing the application, it has been noticed by the Tribunal that as per FIR which had been lodged on the basis of the driver of Zen Car, the Canter in question had struck against the Zen Car at the first instance and, thereafter, had struck against Three Wheeler No. PB-11-AG-9983. Thus, as per the material available on record, at this stage, at the first instance, the Canter in question had struck against the Zen Car and thereafter, struck against the Three Wheeler. Moreover, the claimants have levelled allegations qua rash and negligent driving against driver of the Canter. In the facts and circumstances of the present case, the learned Tribunal rightly held that the driver, owner and insurer of the Three Wheeler in question were not liable to be impleaded as a party.

I have gone through the judgment relied upon by learned counsel for the petitioner but the same fails to advance the case of the petitioner as it is based on different facts.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

May 08, 2015
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