

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.2008 of 2000
Date of Decision: 14.01.2015

New India Assurance Co. Ltd.

..... Appellant

Versus

Smt. Darshani Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON

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Present: Mr. Sukhdarshan Singh, Advocate,
for the appellant.

Mr. Shrey Goyal, Advocate,
for respondent No.1.

None for respondents No.2 to 4.

S.S. SARON, J.

As per office report, notice issued to respondent No.2 has been received back unserved with the report that his address is incomplete.

Respondents No.3 and 4 are proforma respondents.

After hearing learned counsel for the parties and perusing the impugned award dated 09.05.2000 passed by the learned Motor Accident Claims Tribunal, Kaithal, notice to respondent No.2 Ashok Kumar Vijay Kumar in the facts and circumstances of the case would not be necessary.

Smt. Darshani Devi (respondent No.1) and Shamsheer Singh (since dead) (proforma respondent No.3) filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 ('Act' for short) claiming

compensation for the death of their son namely Dayala, aged 17-18 years in a motor vehicle accident that occurred on 14.02.1994. Shamsher Singh (proforma respondent No.3) father of Dayala died during the pendency of the claim petition. The claim petition survived only in respect of Darshani Devi (respondent No.1).

According to the claimants, Dayala (deceased) along with his uncle Raghbir Singh, resident of Village Keorak was going to Satsang Bhawan situated at Ambala Bye-pass Road, Kaithal. They boarded a bus from the village on 14.02.1994 at about 8.30 am. The bus stopped near Satsang Bhawan. In the meantime, the offending truck No.HNX-5177 came from Kaithal side, which was being driven in a rash and negligent manner. It struck against Dayala from the rear side. He fell on the ground and suffered multiple injuries. He was taken to Civil Hospital, Kaithal, where, he succumbed to his injuries. According to the claimants, Dayala (deceased) was a mechanic for winding motors and he used to earn ₹2,000/- per month. A sum of ₹3,00,000/- was claimed as compensation.

The claim petition was contested by Ashok Kumar (respondent No.2), owner of the offending vehicle and New India Assurance Company Ltd. (now appellant). The driver of the truck was proceeded against ex-parte and later it was reported that he had died. Ashok Kumar (respondent No.2) owner of the offending truck in his written statement denied the fact of accident. It was pleaded that on the date of accident, the offending truck was parked at a godown and was not involved in the accident. The appellant-New India Assurance Company Limited also denied the fact of accident. It was stated that the offending vehicle was being driven by its driver, who did not have a valid driving licence. It was also stated that the petition was vague and was liable to be dismissed for non-joinder of necessary parties.

From the pleadings of the parties, the learned Tribunal framed the following issues:-

1. Whether the accident in question resulting into death of Dayala was caused due to rash and negligent driving of truck No.HNX-5177 by its driver-respondent No.2? OPP
2. If issue No.1 is proved whether the claimants are entitled to compensation, if so, how much and from whom? OPP
3. Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties, as alleged? OPR
4. Whether the petition is not maintainable in the present form, as alleged? OPR
5. Whether the claimants are estopped to file the claim petition, as alleged? OPR
6. Whether the truck No.HNX-5177 was being driven by a person not holding a valid driving licence at the time of the accident, as alleged? OPR
7. Relief.

After considering the evidence and material on record, the learned Tribunal held that the accident in question resulting in the death of Dayala was caused due to the rash and negligent driving of the offending truck by its driver. Accordingly, issues No.1 and 2 were decided in favour of the claimant, besides, ₹1,00,000/- as compensation was awarded to Smt. Darshani Devi. Issues No.3 to 5 were not contested. It was held that the claim petition was maintainable and there was no estoppel from filing the petition. All these issues were decided against the respondents in the claim petition. The offending truck, it was held was duly insured with the appellant Insurance Company as per insurance policy (Ex.R-3) and also Ex.R4. The driving licence was held to be valid. Accordingly, the claim

petition was allowed and ₹1,00,000/- was awarded as compensation to Darshani Devi (respondent No.1). Aggrieved against the same, the appellant-New India Assurance Company has filed the present appeal.

Learned counsel appearing for the appellant has contended that the findings of the learned Tribunal on issue No.1 are erroneous and incorrect. It is submitted that the issue has been decided only on the basis of deposition of Raghbir Singh (PW-2). It is submitted that Sub Inspector Madan Lal (PW-3) had brought the record of case FIR No.45, dated 14.02.1994 registered at Police Station City, Kaithal for the offences under Sections 239 and 304-A Indian Penal Code. Initially, the case was marked as un-traced. Later on, the case was entrusted to Madan Lal, Sub Inspector (PW-3) on 04.10.1998 for re-investigation. He deposed that the offending truck No.HNX-5177 was involved but the truck was not traced. He recorded the statement of Raghbir Singh son of Jang Bahadur, who informed him that the truck involved in the accident was HNX-5177. Re-investigation in the case was still pending. It was stated that till the investigation was completed, it could not definitely be said that this truck was involved. However, the learned Tribunal wrongly held in para 14 of its judgment that on re-investigation, it was found that truck No.HNX-5177 was involved. Therefore, it is submitted that since the truck that was involved in the accident had not been traced and its identity not established, the appellant-New India Assurance Company Ltd. cannot be held liable for payment of compensation.

In response, the learned counsel for the claimant-respondent No.1 Darshani Devi has submitted that the learned Tribunal on the basis of independent findings has decided issue No.1 in favour of the respondents in the claim petition and held that truck No.HNX-5177 was involved in the accident. The said finding in fact it is

submitted is not liable to be dislodged on the basis of evidence on record.

I have given my thoughtful consideration to the matter. As already noticed, the son of the claimant Darshani Devi (respondent No.1) namely Dayala along with his uncle Raghbir Singh (PW-2) had boarded a bus from their village on 14.02.1994 at about 8.30 am. They proceeded to Satsang Bhawan situated at Ambala Bye-pass road, Kaithal. When they got down from the bus and were going to Satsang Bhawan, the offending truck No.HNX-5177 came from Kaithal side. It was being driven in a rash and negligent manner. The truck struck against Dayala from his rear side. He fell on the ground and suffered multiple injuries. He was taken to Civil Hospital, Kaithal, where, he succumbed to his injuries. Raghbir Singh (PW-2) was with Dayala at the time of accident. In his deposition in Court, he stated that truck No.HNX-5111 was involved in the accident. It was deposed by him that in fact he had got recorded that truck No.HNX-5177 i.e. the offending truck that was involved in the accident.

The learned Tribunal considered the evidence of Raghbir Singh (PW-2). It was noticed that he had inter-alia deposed that after he and Dayala got down from the bus and Dayala was crossing the road, the offending truck came at the speed of 60-70 km per hour. It was being driven in a rash and negligent manner. The truck struck against the deceased, who fell on the ground. He was taken to Civil Hospital, where, he died. It is stated by him that the truck number was HNX-5177 but the police wrongly recorded the number as HNX-5111.

In cross-examination, Raghbir Singh (PW-2) stated that the offending truck was of full size and had an open body. He noted down the number after the accident. After getting down from the bus, he (PW-2) was standing on the un-metalled portion of the road in order to

cross the road, while the deceased was crossing the road. He stated in the cross-examination that they had come from Keorak to Kaithal side. Satsang Bhawan was situated on the right side of the road, whereas, the bus had stopped on the left side of the road in front of Satsang Bhawan. They got down from the back door of the bus. The deceased tried to cross the road after passing from the rear side of the bus and the truck was coming from Kaithal side.

Sub-Inspector Madan Lal (PW-3) had reinvestigated the case and during re-investigation, it was detected vehicle No.HNX-5111 was not owned by Ashok Kumar (respondent No.1). It was for the said reason that the case was also sent as untraced. On reinvestigation, it was found that the truck No.HNX-5177 was involved. The driver of the truck Sobha Ram had died. Ashok Kumar (RW-1) stated that his truck was not involved in the accident on 14.02.1994. On that day, the driver Sobha Ram had died. Copy of the driving licence (Ex.R1) was placed on record.

Ashok Kumar (respondent No.2) in his written statement had taken the stand that on 14.02.1994, the truck was parked in a godown at Yamuna Nagar. During cross-examination, he however, stated that he had no godown for parking a truck at Yamuna Nagar. He could not tell as to where the truck was a day prior to the accident or a day after the accident. He admitted that the police had come to Yamuna Nagar and verified about his truck. He did not know as to where he himself was on 14.02.1994. The said statement evidently shows that a wrong stand was taken in the written statement that the offending truck was parked in a godown at Yamuna Nagar. This is for the reason that in the cross-examination, Ashok Kumar (RW-1) stated that he had no godown for parking truck at Yamuna Nagar.

In the circumstances, the learned Tribunal has rightly placed reliance on the deposition of Raghbir Singh (PW-2), who was an eye-witness to the occurrence. The mere fact that the learned Tribunal had recorded that on re-investigation, it was found that truck No.HNX-5177 was involved is inconsequential as the learned Tribunal has on the basis of evidence and material as adduced before it come to the conclusion that truck No.HNX-5177 was involved in the accident. The said truck was insured with the appellant-New India Assurance Company as per the insurance policy (Ex.R3) and also exhibited as Ex.R4. The driving licence (Ex.R1) of the driver has been placed on record, which is not shown to be invalid.

In the circumstances, there is nothing to dislodge the findings and conclusions reached at by the learned Tribunal that the truck No.HNX-5177, which is insured with the appellant-New India Assurance Company Ltd. was not involved in the accident.

For the foregoing reasons, there is no merit in the appeal and the same is accordingly dismissed.

(S. S. SARON)
JUDGE

14.01.2015
G. Bhardwaj