

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 2498 of 1999

United India Insurance Company Ltd.

..... Appellant

Versus

Smt. Maya Devi and others

..... Respondents

2. FAO No. 2500 of 1999

United India Insurance Company Ltd.

..... Appellant

Versus

Smt. Usha Devi and others

..... Respondents

3. FAO No. 3373 of 1999

Lal Chand and another

..... Appellants

Versus

Smt. Usha Devi and others

..... Respondents

4. FAO No. 1207 of 2000

Lal Chand and another

..... Appellants

Versus

Smt. Maya Devi and others

..... Respondents

Date of decision: 13.10.2015

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. V. Ramswaroop, Advocate
for the appellant(s) (in FAO Nos. 2498 and 2500 of 1999).

Mr. Rishav Jain, Advocate for
Mr. Arihant Jain, Advocate
for respondents No. 5 and 6 (in FAO No. 2498 of 1999);
for respondents No. 7 and 8 (in FAO No. 2500 of 1999) and
for the appellants
(in FAO Nos. 3373 of 1999 and 1207 of 2000).

Mr. Nikunj Dhawan, Advocate for
Mr. Harsh Aggarwal, Advocate
for respondent No. 11 (in FAO No. 3373 of 1999) and
for respondent No. 10 (in FAO No. 1207 of 2000).

RAMENDRA JAIN, J. (ORAL)

Above titled four appeals are being disposed of by this common judgment, i.e. two filed by the United India Insurance Company Ltd. (FAO Nos. 2498 and 2500 of 1999) and remaining two (FAO Nos. 3373 of 1999 and 1207 of 2000) by the registered owner and driver of Tata four wheeler No. HNU-6105, against the impugned Award dated 06.04.1999, passed by the learned Motor Accident Claims Tribunal, Faridabad (for short 'the Tribunal'), raising grouse that they were not liable to make payment of any compensation. For brevity, the facts are being extracted from FAO No. 2498 of 1999.

2. On 16.08.1993, deceased Satya Pal and Harbal were going from Palwal to village Billochpur and Rasulpur in a four wheeler No. HNU-6105, driven by respondent No. 5-Arjan Singh (respondent No. 1

before the learned Tribunal). When respondent No. 5 tried to overtake a truck bearing No. HR-29-C-6713, driven by respondent No. 7/10-Lakhmi Chand (respondent No. 4 before the learned Tribunal), applied sudden brakes without giving any signal. As a result thereof, their four wheeler struck against the truck and turned turtle into a pit on the right side of the road. Satya Pal, Harbal and other occupants of four wheeler received severe and multiple injuries. Satya Pal and Harbal succumbed to their injuries. FIR under Sections 379/337/304-A IPC dated 16.09.1993, was registered on the same day against respondent No. 5 (driver of four wheeler No. HNU-6105). The legal heirs of deceased Satya Pal aged about 26 years claimed compensation of ₹ 8 lacs by pleading that he used to earn ₹ 2700/- per month, whereas legal heirs of deceased Harbal aged 35 years claimed compensation of ₹ 7 lacs claiming that he used to earn ₹ 8000/- per month as an agriculturist and diary farmer, in their respective claim petitions under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act').

3. Upon notice respondents No. 1 and 2, namely; Arjan Singh and Lal Chand (herein respondents No. 5 and 6) contested the claim petitions by filing their separate written statements. Respondent No. 5- Arjan Singh, denying the factum of accident, pleaded that a false FIR was registered against him. Both the deceased were not travelling in his four wheeler at the relevant time. In fact, on the date of accident, he was driving his four wheeler with utmost care and caution, but the accident took place on account of negligence of respondent No. 7/10-Lakhmi

Chand driver of the aforesaid truck, despite his best efforts to avoid it. He while admitting the ownership of respondent No. 6-Lal Chand over the four wheeler driven by him, completely blamed respondent No. 7/10-Lakhmi Chand driver of the aforesaid truck in causing the impugned accident. Respondent No. 3 was unnamed (herein respondent No. 9), whereas respondents No. 2A and 2B, namely; Lakhmi Chand and Beena Devi (herein respondents No. 7/10 and 8) did not contest the claim petitions and chose to proceed them against *ex parte*. Respondent No. 6 taking the similar pleas as taken by respondent No. 5, pleaded that he was not liable to make payment of any compensation, because, he had already sold his four wheeler to respondents No. 7/10 Lakhmi Chand and his wife respondent No. 8 Beena Devi, much prior to the accident.

4. The appellant-Insurance Company (respondent No. 6 before the learned Tribunal) in its written statement took the stand that the accident in question had taken place due to sole negligence of the driver of four wheeler No. HNU-6105. The aforesaid truck was falsely implicated with an ulterior motive to extract compensation from it in an illegal manner by way of amendment in the claim petitions, because of the reason that four wheeler in question was not insured at the time of accident as the same as well as the aforesaid truck were owned by one and the same persons i.e. respondents No. 7/10 and 8, namely; Lakhmi Chand and Beena Devi (respondents No. 2A and 2B before the learned Tribunal). Even otherwise, the insured had violated the terms and conditions of the Insurance Company, therefore, it was not liable to make

payment of any compensation.

5. The learned Tribunal after framing necessary issues and recording evidence to the satisfaction of parties, partly accepted both the claim petitions by negating the plea of appellant-Insurance Company that truck bearing No. HR-29-C-6713 was falsely implicated in this case. The learned Tribunal granted compensation of ₹ 3,84,000/- against the death of Satya Pal and ₹ 1,98,000/- against the death of Harbal along with interest @12% per annum from the date of filing of claim petition till its realization to be payable by all the respondents jointly and severally.

6. Learned counsel for the appellant-Insurance Company argued that since the offending four wheeler No. HNU-6105 was not insured at the time of accident, therefore, registered owner of the same, namely; Lal Chand-respondent No. 6 in a clandestine manner involved respondents No. 7 and 8, namely; Lakhmi Chand and Beena Devi, (the subsequent purchasers of aforesaid four wheeler), who falsely implicated their own truck bearing registration No. HR-29-C-6713 to escape from their liability in collusion with claimants. Initially, FIR Ex. P-4 was lodged showing the absolute negligence of four wheeler No. HNU-6105, by PW-5 Rambir, who too was travelling in the four wheeler at the relevant time. The story put forth by the claimants that the truck bearing No. HR-29-C-6713 was also going ahead of aforesaid four wheeler in a rash and negligent manner and when respondent No. 5-Arjan Singh tried to overtake it, its driver respondent No. 7/10-Lakhmi Chand applied sudden brakes on account of which the accident took place. The above

story put forth by the claimants was completely false and concocted. It was further argued that the learned Tribunal had wrongly and illegally permitted the claimants to amend their claim petitions vide order dated 05.06.1998, after closure of evidence by the claimants. The evidence led by the claimants did not ever spoke about the negligence of truck driver, but despite that the learned Tribunal has wrongly held this case to be of contributory negligence. With these broad submissions, he prayed for exonerating the liability of appellant-Insurance Company as insurer of truck bearing No. HR-29-C-6713.

7. On the other hand, learned counsel for respondents No. 5 and 6 driver and owner of the four wheeler No. HNU-6105 argued that since on the date of accident, respondent No. 6-Lal Chand was not the owner of four wheeler in question and was also not in possession of the same, therefore, the learned tribunal has erred in holding him liable in making payment of compensation jointly and severally with other respondents as he had sold the same to respondents No. 7 and 8, namely; Lakhmi Chand and Beena Devi. Respondent No. 5-Arjan Singh as RW-2 had categorically admitted before the learned Tribunal that the four wheeler driven by him was owned and possessed by respondents No. 7 and 8 and thus, the learned Tribunal ought to have fixed their liability only.

8. I have given by thoughtful consideration to the rival submission made by both the sides.

9. The appellant-Insurance Company cannot be permitted to raise grouse after 17 years against the amendment of claim petitions

permitted by the learned Tribunal vide order dated 05.06.1998, more particularly, when it did not choose to challenge the aforesaid order within prescribed limitation by way of any appeal or revision. In other words, when the appellant-Insurance Company did not challenge the order dated 05.06.1998, at the initial stage, in that eventuality, it is now estopped by its own act and conduct to raise any such grouse. There is also no force in the arguments of learned counsel for the appellant-Insurance Company that truck No. HR-29-C-6713 was falsely implicated by respondent No. 6-Lal Chand to escape from his liability by taking the plea that he had already sold his vehicle i.e. four wheeler No. HNU-6105 to respondents No. 7 and 8, much prior to the date of accident as respondent No. 7/10-Lakhmi Chand was also the owner and driver of aforesaid truck duly insured with appellant-Insurance Company, because perusal of final report under Section 173 Cr.P.C. shows that the police had found contributory negligence of both the drivers of four wheeler and truck in causing the accident. The appellant-Insurance Company never filed any application before the police authorities to re-investigate the matter. Even, it did not ever try to summon the subsequent purchaser of aforesaid four wheeler and driver of the aforesaid truck to prove that the same was never involved or purchased by them. Respondent No. 5-Arjan Singh, driver of four wheeler No. HNU-6105 as RW-2 had categorically deposed about the negligence of driver of truck No. HR-29-C-6713. There is not rebuttal to his deposition. Hence, I am not inclined to differ with any of the findings of learned Tribunal in this respect.

10. As far as the arguments raised by learned counsel for respondents No. 5 and 6, namely; Arjan Singh and Lal Chand, driver and registered owner of four wheeler No. HNU-6105 are concerned, the same are also completely devoid of any merit because it is well settled that the registered owner cannot escape from its liability unless and until he proves on record the transfer of the vehicle. The facts and circumstances of the judgment of this Court in **J.S. Choudhary Proprietor of Ambala Finlease Corps Vs. Ritu Devi and others, 2011 (2) PLR 397**, relied upon by learned counsel for the appellant-Insurance Company are not identical to the facts of present case. Therefore, no benefit whatsoever of the same can be given to it. It has been held in that case that where the ownership is in question, the first attempt must be to see that who is the registered owner. If the registered owner denies ownership and pleads transfer to a 3rd party, but the transferee is not made a party, the Tribunal may call upon any party to direct the impleadment and if the evidence shows admission of transfer by the transferee, the Tribunal will be justified in making the transferee alone as liable, whereas in the instant case the transferees i.e. respondent Nos. 7 and 8, namely; Lakhmi Chand and Beena Devi, have not admitted themselves to be the transferees of the offending four wheeler. The evidence led by the claimants about contributory negligence has gone un rebutted and thus, has rightly been relied upon by the learned Tribunal while holding this case to be of contributory negligence. Even otherwise, in the instant case the appellant-Insurance Company insurer of truck No. HR-29-C-6713

coupled with the owner and driver of four wheeler No. HNU-6105 have been held jointly and severally liable to make compensation. Hence, the liability at the first instance has to be satisfied by the appellant-Insurance Company.

11. I have gone through the impugned Award and found no illegality or perversity in the same.

12. No other point was urged before me.

13. In view of the above discussion, all the four appeal bearing FAO Nos. 2498, 2500 & 3373 of 1999 and FAO No. 1207 of 2000, are hereby dismissed.

October 13, 2015
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(RAMENDRA JAIN)
JUDGE