

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of Decision: January 29, 2015

1. **FAO No. 5912 of 2010 (O&M)**

Sunehri
.....Appellant.

Versus

Harbans Lal and another
.....Respondents.

2. **FAO No. 5913 of 2010 (O&M)**

Jogender
.....Appellant.

Versus

Harbans Lal and another
.....Respondents.

3. **FAO No. 5914 of 2010 (O&M)**

Umed Singh and another
.....Appellants.

Versus

Harbans Lal and another
.....Respondents.

4. **FAO No. 5915 of 2010 (O&M)**

Surender Singh
.....Appellant.

Versus

Harbans Lal and another
.....Respondents.

5. **FAO No. 5916 of 2010 (O&M)**

Rupesh Sarsar
.....Appellant.

*FAO No. 5912 of 2010 (O&M)
and other connected cases*

..2..

Harbans Lal and another
Versus

....Respondents.

6. FAO No. 6024 of 2010 (O&M)

Umed Singh and another

....Appellants

Versus

Harbans Lal and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Ms. Avnika Gupta, Advocate for
Mr. Vinod S. Bhardwaj, Advocate,
for the appellant(s).

Mr. R.N. Singal, Advocate,
for respondent No.2-Insurance Company.

1. Whether Reporters of 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?

JASPAL SINGH, J.

By this common judgment, this Court intends to dispose of six appeals bearing FAO Nos. 5912, 5913, 5914, 5915, 5916 and 6024 of 2014, being out come of one and the same award as well as the accident and there being a common question of law and facts involved.

2. Short facts of the case are that on January 08, 2008 Joginder s/o Sheopal, Rupesh s/o Ramniwas and Surender were

going to Bhiwani from village Jatu on motorcycle bearing registration No. HR-16-F-7497 and when they reached in the area of village Prem Nagar, near Paposa Bhatta Company, a TATA Sumo/Max No.23-B-4747 came from Bawani Khera side being driven by Harbans Lal in a rash and negligent manner and at a high speed and struck against their motorcycle. Thereafter, the said vehicle also dashed into two other motorcycles bearing registration No. HR-38-G-6158 Hero Honda Splender and HR-16-D-2669, which were coming from Bhiwani Side. Due to the impact, all the three persons traveling on motorcycle bearing registration No. HR-16-F-7497 fell down on the road and sustained multiple serious and grievous injuries on the various parts of their bodies. Two persons namely Mukesh s/o Kidar Singh and Sachin s/o Umed Singh succumbed to the injuries on the spot.

3. The injured as well as the dependents of the deceased preferred petitions under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") seeking compensation besides claiming damages to one of the motorcycle having damaged in the accident.

4. Upon notice of the claim petitions, respondents contested the same.

5. Respondent No.1 filed written statement raising preliminary objections on the grounds that claim petitions are not maintainable; that the petitioners are estopped from filing the petitions by their own conduct and acts; that the petitioners have no

locus standi to file the petitions; that the petitioners have no cause of action to file and maintain petitions; that the claim petitions are bad for non-joinder and mis-joinder of necessary parties and that the claim petitions are false, frivolous and vexatious to the knowledge of the petitioners and as such, liable to be dismissed with special costs.

6. On merits, respondent No.1 pleaded that in case, the Id. Tribunal comes to the conclusion that accident took place due to his rash and negligent driving, the liability to pay compensation should be fastened upon insurance company-respondent No.3 as the vehicle was duly insured and he was having a valid and effective driving license at the time of alleged accident.

7. Respondent No.3-Insurance company also filed written statement and resisted the petitions raising preliminary objections to the effect that the claim petitions are not maintainable as respondent No.1 did not transmit any information in writing to it about the occurrence of accident and has also failed to comply with the provisions of the Act; that respondent No.1 violated the terms and conditions of the insurance policy by not informing the insurance company; that neither petitioners have locus standi to file the petitions nor any cause of action accrued to them to file claim petitions and that the petitions are out come of the collusion in between the parties by falsely showing the involvement of vehicle No. HR-23-B-4747 in the accident.

8. On merits, all the averments made in the petitions have been denied. In order to settle the matter in controversy in between the parties, the following issues were culled out by the Id. Tribunal from the pleadings of the parties:-

- “1. Whether the petitioners Umed Singh and Smt. Maya are entitled for compensation on account of death of Sachin, son of petitioners and their damaged motorcycle Bajaj No. HR-16-F-7497, petitioner Joginder is entitled for compensation on account of injuries sustained by him, petitioner Rupesh is entitled for compensation on account of injuries sustained by him, petitioner Smt. Sunehri is entitled for compensation on account of death of Mukesh son of petitioner, petitioner Surrender is entitled for compensation on account of injuries sustained by him in an accident on 08.01.2008 caused by rash and negligent driving of respondent No.1? OPP*
- 2. If issue No.01 is decided in favour of petitioners, the extent of compensation to which they are entitled? OPP*
- 3. Whether the insurance company is not liable for the compensation on the ground that the vehicle was used in violation of the terms and condition of the insurance policy ? OPR No.02*
- 4. Whether the claim petition has been filed in collusion with petitioners and respondents No.1? OPR (2)*

5. *Whether the petitioners have no cause of action and no locus standi to file the present petition? OPR (2)*
6. *Whether the petition is not maintainable in the present form? OPR (2)*
7. *Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR (2)*
8. *Relief"*
9. The parties to all the claim petitions were afforded ample opportunities to conclude their evidence and they led oral as well as documentary evidence.
10. After hearing learned counsel for the parties and appraisal of evidence, all the six claim petitions were dismissed vide impugned award dated April 30, 2010.
11. Feeling dissatisfied, all the claim petitioners preferred instant appeals, which were admitted for hearing and are disposed of by this common judgment.
12. The main reason given by the Id. Tribunal while giving findings that vehicle No. HR-23-B-4747 was not involved in the accident is primarily on account of the fact that in the FIR, which was lodged by one Joginder, neither the registration number of the vehicle nor the name of the driver was mentioned and further that make of vehicle was also mentioned as TATA Sumo instead of Mahindra Max.
13. Undeniably, at the time of registration of FIR, PW-2 Joginder did not disclose the registration number and driver of the

vehicle involved in the accident but it may be due to the reason that he also sustained injuries at the spot. Two other persons namely, Rupesh and Surender also sustained injuries in the accident and two persons namely Mukesh and Sachin lost their lives. The driver of white coloured TATA Sumo/ Max after hitting three motorcycles sped away. Under these circumstances, it may be natural for him not to note down the number of offending vehicle. Moreover, the conduct of Joginder, author of the FIR can also be termed to be perfectly consistent with the normal human behaviour. In the case in hand, when Joginder appeared in the witness-box as PW-2, he has categorically deposed on oath by way of his affidavit that accident occurred due to rash and negligent driving of TATA Sumo/Max. To the similar effect are the testimonies of other injureds namely Rupesh and Surender. Their statements were recorded immediately after the registration of FIR, in which, they specifically mentioned the name of the driver as well as the registration number of the offending vehicle. Not only this, it is an admitted fact that Harbans Lal, owner/driver of TATA Sumo was arrested in a criminal case registered against him, in which he was bailed out by the trial court. Even during his cross-examination, Harbans Lal RW-1 has also categorically admitted that his vehicle was impounded by the police in a criminal case registered against him which was subsequently got released by him on sapurdari. Respondent No.1 driver of TATA Sumo/ Max No. HR-23-B-4747 was charge-sheeted and faced trial before the

criminal court, though on technical grounds, he was successful in getting himself acquitted.

14. It is well-neigh recognized principle that in a case pertaining to the motor accident claims, the claimants are not obliged to prove the case as it is required to be done in a criminal trial. Such a distinction is required to be kept in mind by the Id. Tribunal while dealing with the claim petitions under the provisions of the Act. In this connection, we can have the reference of the decision of Hon'ble Apex Court delivered in a case captioned as **"Bimla Devi vs. Himachal RTC (2009) 13 SCC 530"**, which is quite relevant for the purposes of the decision of these cases. The relevant portion of the said judgment is as under:-

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

15. A close scrutiny of the evidence as well as the impugned award transpires that much importance has been given by the Id. Tribunal to the negligible omissions while arriving at the conclusion that the claimants have failed to prove the involvement of TATA Sumo/Max No. HR-23-B-4747. The statements of Rupesh and Surender, who also sustained injuries in the accident cannot be

ignored, who have categorically deposed about the identity and involvement of the vehicle as well as its driver. There is not much difference in the shape of TATA Sumo and Mahindra Max. The Id. Tribunal has also made an observation while rendering findings on issue No.1 that the claimants have not placed and proved on record the statements of the injureds recorded under Section 161 Cr.P.C. during the course of investigation in a criminal case registered against respondent No.1. The mere omission in this regard is not sufficient to ignore their sworn testimonies made in the Court. Rather there is cogent, convincing and reliable evidence, which clearly establishes that the accident occurred due to rash and negligent driving of TATA Sumo/Mahindra Max No. HR-23-B-4747 driven by Harbans Lal-respondent No.1. Thus, the findings recorded by the Id. Tribunal on issue No.1 being not sustainable, are reversed and rendered in favour of the claimants.

16 Here, it would also be pertinent to mention that the Id. Tribunal has failed to deliver the findings on issues No. 2 to 8 simply in view of the findings on issue No. 1. But in view of the reversal of findings on issue No.1 by this Court, the other issues No. 2 to 8 are required to be dealt with and disposed of.

17. In the light of what has been discussed above, the impugned award dated April 30, 2010 is set aside and claim petitions are remitted to the Motor Accident Claims Tribunal, Bhiwani to deliver

findings on issues No. 2 to 8 after hearing learned counsel for the parties and to decide the claim petitions afresh.

18. The parties through their counsel are directed to appear before the Id. Tribunal, Bhiwani on 09.03.2015.

January 29, 2015
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**(JASPAL SINGH)
JUDGE**