

In the High Court of Punjab and Haryana at Chandigarh

.....

F.A.O. No.3374 of 2012 (O&M)

.....

Date of decision:3.7.2015

Shriram General Insurance Company Limited through its Branch Manager
.....Appellant

v.

Smt. Bimla and others
.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Aditya Kochhar, Advocate for the appellant.

Mr. Amit Jain, Advocate for respondents No.1 to 4.

Ms. Gurvir Kaur Gill, Advocate for respondents No.5 and 6.

.....

Inderjit Singh, J.

This appeal has been filed by Shriram General Insurance Company Limited (hereinafter referred to as 'the Insurance Company') against Bimla, Monica, Pawan and Smt. Lilo Devi-claimants (respondents No.1 to 4) and Gordhan-Driver and Smt. Kamla Devi-Owner (respondents No.5 and 6) of the offending Canter bearing registration No.PB-05Q-8826) (hereinafter referred to as 'the offending canter') challenging the impugned award dated 29.3.2012 passed by Motor Accident Claims Tribunal (Fast Track Court), Hisar (hereinafter referred to as 'the Tribunal'), vide which the award for compensation of ₹7,50,000/- along with pendente lite and future interest @6% per annum has been passed against the respondents in the

claim petition jointly and severally.

Notice of motion has been issued in this case.

Mr. Amit Jain, learned Advocate has appeared on behalf of claimants-respondents No.1 to 4 and Ms. Gurvir Kaur Gill, learned Advocate has appeared on behalf of Driver and Owner-respondents No.5 and 6 and contested this appeal.

The brief facts of the case are that Smt. Bimla-wife, Monica-minor daughter, Pawan-minor son and Smt. Lilo Devi mother of deceased Shiv Dayal-claimants/petitioners filed claim petition under 166 of the Motor Vehicles Act, 1988 claiming compensation on the death of Shiv Dayal (since deceased) in motor vehicle accident. It is stated in the claim petition that on 31.1.2011 at about 1.45 a.m. (night) Shiv Dayal along with his younger brother Surender and Jaibir were going from Sampla to Rohtak after filling diesel in Vodafone Tower at Sampla in Bolero Jeep bearing registration No.HR-99-HA(T)-7671 (now registration No.HR-20U-8993). Shiv Dayal was driving the Bolero jeep in question at a moderate speed. Jaibir and Surender were sitting on the rear seat. When at about 1.45 a.m. (night), they reached in between Ismaila and Gandhra, then offending canter bearing registration No.PB-05Q-8826 being driven by respondent No.1-Gordhan (respondent No.5 herein) in a rash and negligent manner came and overtook the Bolero Jeep and then directly hit against the Bolero in question. Due to impact, Shiv Dayal and Jaibir received serious injuries. Injured were taken to PGIMS, Rohtak in Police Ambulance. Shiv Dayal died due to injuries.

In the written statement filed by respondents No.1 and 2 in the

claim petition, it is stated that no alleged accident ever took place on the given date and time with the offending canter allegedly being driven by respondent No.1 and FIR has been falsely registered against respondent No.1 just to grab money from respondents in collusion with local Police. It is also stated that vehicle in question was insured with respondent No.3 (appellant herein) at the time of accident. Respondent No.3 submitted that the claim petition has been filed in collusion with respondents No.1 and 2 simply to grab compensation from the answering-respondent. It is their plea that the Driver was not holding valid and effective driving licence to drive the same. Driver and owner of the alleged vehicle have not given any information in writing to the answering respondent regarding the alleged accident.

The learned Tribunal on the basis of evidence produced by the parties held that the accident in question had taken place due to rash and negligent driving of offending canter by its Driver-Gordhan and awarded the compensation in this case to the tune of ₹7,50,000/-.

Aggrieved from this award, Shriram General Insurance Company Limited has filed this appeal.

At the time of arguments, learned counsel for the appellant argued only on one point that it is a case of contributory negligence. He has not challenged the quantum of compensation awarded by the Tribunal. Learned counsel for claimants/respondents No.1 to 4 argued that there is neither contributory negligence in the present case nor any evidence has been produced regarding the same.

From the record specially, the Tribunal record, I find that first

[4]

of all there is no such plea regarding contributory negligence taken by the driver and the owner of the offending canter. They have denied the accident with the offending canter. The Insurance Company also has no where admitted the accident. Rather, the plea of the Insurance Company is that the driver and owner have not informed it regarding the accident and the driver and owner are in collusion with the claimants. From the perusal of the evidence on record, I find that to prove the rash and negligent driving, PW-4 Jaibir has appeared into the witness box, who was travelling in the Bolero Jeep and deposed regarding the accident which was resulted from the rash and negligent driving of the offending canter by its driver. The FIR has also been registered. PW-1 Pawan Kumar, Criminal Ahlmad of the Court of learned Judicial Magistrate Ist Class, Rohtak, appeared and also proved the registration of the FIR and regarding presentation of challan against the driver of the offending canter.

On the other hand, the respondents in the petition have not led any evidence on the record even to say in the evidence that it is a case of contributory negligence. Even, the Driver of the offending canter has not come to the witness box to state that the accident had not occurred due to his rash and negligent driving. The evidence of the claimants/petitioners remained un rebutted on the file on this issue.

Therefore, from the record, it is clear that it is neither the case of the respondents regarding contributory negligence nor there is any evidence to show as to how it is a case of contributory negligence. Therefore, the findings given by the learned Tribunal are correct and as per

law, which do not require any interference from this Court and the same are upheld.

Therefore, finding no merit in the appeal, the same is dismissed.

July 3, 2015.

(Inderjit Singh)
Judge

hsp