

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

FAO No.4171 of 2012 (O&M)

Date of decision: 20th January, 2015

Harjinder Singh and another

... Appellants

Versus

Amrik Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Tribhawan Singla, Advocate
for the appellants.

Mr. Simranjeet Singh, Advocate for
Mr. Amit Kumar, Advocate
for respondent No.1

Mr. Pardeep Goyal, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

Appellants/owner and driver of the offending vehicle make Innova bearing registration No.PB-13T-2727 have preferred this appeal against the Award dated 07.03.2012 of learned Motor Accident Claims Tribunal, Sangrur.

Heard Mr. Tribhawan Singla, Advocate for the appellants,
Mr. Simranjeet Singh, Advocate appearing on behalf of Mr.Amit

Kumar, Advocate for the claimant/respondent No.1 and Mr.Pardeep Goyal, Advocate for the insurer/respondent No.2.

The owner though has sought to rake up the issue that no such accident ever took place but as is well elicited from the cogent evidence that it was on 27.05.2010 around 12.30 p.m. when Amrik Singh was going as pillion rider on motorcycle bearing No.PB-44B-2269 being driven by Gurbax Singh, the offending vehicle which was being driven by respondent Suresh Kumar driver in the reverse manner hit the motorcycle resulting in injuries to Amrik Singh. The learned Tribunal had very well appreciated the evidence which comprises of medical evidence as well as oral testimonies of CW1 Dr.Prabhjot Singh Sibia; CW2 Yugdutt Sharma Clerk from Medicity Hospital, Ludhiana; own testimony of claimant Amrik Singh as CW3 and CW4 Dr. Harbir Singh, the Medical Officer, Medicity Hospital, Ludhiana as well as corroboration from eye witness Gurbax Singh CW5. The documents brought on the record comprise of indoor treatment record Ex.C5, discharge card Ex.C2, bills Ex.C3 and Ex.C7 to Ex.C16 along with the expenses incurred on treatment at Medicity Hospital proved by way of Ex.C20 to Ex.42 as also the purchase bills Ex.C43 to Ex.C47 and the authority letter given to CW2 Yugdutt Sharma Ex.C6 together with the statement of Dr.Harbir Singh CW4 that the patient was admitted on 27.05.2010 and was discharged on 31.05.2010 on account of left temporal EDH type II AC joint dislocation on left side, left fracture tibial lateral condyle and tibial spine, and undisplaced fracture of left zygoma and on the basis of discharge slip

Ex.C17, OPD slip Ex.C18 and Ex.C19 has brought about nature of these injuries.

Though the driver and owner are contesting but none of them has stepped into the witness box to state their side of the story and the entire evidence in this regard has remained unrebutted and therefore, on account of this conduct of the driver and owner an adverse inference needs to be drawn against them in terms of Section 114 of the Evidence Act and therefore, findings of the learned Tribunal on issue No.1 cannot be faulted with.

The expenses have been brought on the record and there is no tangible evidence to rebut the same and the learned counsel for the appellants could not convince this Court how the same was on the higher side and the learned Tribunal has only awarded ₹2,02,725. Rather learned Tribunal has failed to award compensation as per the settled law laid down in '**R.D. Hattangadi v. Pest Control (India) Private Limited**' 1995 (2) PLR 298 SC, however the same has not been put to challenge by the claimant.

The own stand of the owner that the offending vehicle was insured with respondent No.2 by virtue of the insurance policy Ex.R2 and its registration certificate Ex.R3 brings about its ownership being an SUV vehicle falls under the category of LTV as has been held by the learned Tribunal and the own driving license of the driver brought on the record proves that he was authorized to drive scooter/car and therefore was not competent to drive LTV vehicle in terms of Section 2 of the Motor Vehicles Act, 1988 as Innova car being LTV does not

stand covered under the definition of 'car' and therefore, in the absence of any evidence, especially when the verification report Ex.RW1/A shows that it was only in respect of motorcycle/scooter/car and therefore did not authorize the driver to drive the vehicle in question at the time of accident and which conclusion has been rightly drawn by the learned Tribunal. However, the Tribunal has straightaway dismissed the claim petition qua the insurer though keeping in view there being a legal and valid insurance policy at the time of accident and in view of the settled position of law reference of which can be taken from '**New India Assurance Company Ltd. v. Kamla and others**' 2001 (1) PLR 830 SC, the Tribunal ought to have passed the Award jointly and severally against the driver, owner and the insurer however giving the insurer right of recovery of the amount as it is a case where the driver's driving license is invalid for this purpose and it is not a case that he was not in possession of any driving license. However, learned counsel for the appellants could not convince this Court how the ultimate findings of the learned Tribunal were in any manner infirm or illegal and therefore, the appeal being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 20, 2015

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