

THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 6032 of 2012 (O&M)

Date of decision : 06.02.2015

National Insurance Co. Ltd.

.....Appellant

Versus

Geetanjali and others

...Respondents

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Ashwani Talwar, Advocate
for the appellant

Mr. Ramandeep, Advocate for
Mr. R.S. Bajaj, Advocate
for respondents No. 1 to 3

Mr. Atul Jain, Advocate
for respondents No. 4 and 5

ANITA CHAUDHRY, J.

This appeal has been filed by the Insurance Company against the award dated 18.7.2012 passed by Motor Accident Claims Tribunal, Kapurthala. It would be necessary to give the details as the Insurance company has raised an issue that it was a case of fraud and the Tribunal could not have passed an award in favour of the claimants. Obviously in the present case the basic question is as to whether the Tribunal was right in returning a finding on issue No. 1 in favour of the claimants.

Sher Singh was going on a scooter alongwith his son Ashutosh. When they were near hotel Saffron, a motor cycle came from the opposite direction, to the wrong side of the road and struck against the scooter and Sher Singh fell down and suffered multiple injuries. Ashutosh fell on the kacha path. The claimants pleaded that the driver's identity was disclosed as Jaspal Singh son of Jarnail Singh and Jaspal Singh ran from the spot. Sher Singh was admitted in the hospital where he died at 1.45 p.m. the same day.

Respondents No. 1 and 2 denied that the motor cycle was driven by Jaspal Singh. It was pleaded that it was driven by Jarnail Singh son of Sher Singh who had been wrongly impleaded as Karnail Singh.

The Insurance Company took a plea that the driver of the motor cycle was a minor and was not holding a licence and when they moved an application for production of documents i.e. the driving licence then instead of supplying the driving licence they filed reply to the application seeking amendment that the motorcycle was not driven by Jaspal Singh and it was driven by Jarnail Singh.

The Tribunal had framed the following issues.:-

- 1. Whether the accident causing death of Sher Singh son of Ratti Ram has been taken place due to rash and negligent driving of Jaspal Singh? OP Claimants*
- 2. If issue No. 1 is proved, the claimants/petitioners are entitled to compensation if so how much? OP Claimants*
- 3. Whether Jaspal Singh respondent No. 1 was not*

holding the legal and valid licence and vehicle of respondent was not insured ? OPR

4. Relief.

The original claim petition filed on 10.6.2010 shows that Jaspal Singh was arrayed as respondent No. 1 as driver and Karnail Singh son of Dayal Singh was shown as owner of the motor cycle.

Both sides led evidence and the Tribunal recorded the following on issue No. 1:-

9. The onus to prove this issue was on the claimants. Claimant No. 1 appeared in the witness box as AW1 and also examined eye witness AW2. To rebut the claim of the claimants respondent Jarnail Singh appeared as RW1. In the present case it is an admitted fact that the accident has taken place on 28.4.2010 in which deceased Sher Singh lost his life. It is also admitted that the accident has taken place with motorcycle No. PB-09-L 4088. The claimants alleged that the accident has taken place due to rash and negligent driving of the respondent, whereas the respondents alleged that the accident has taken place due to rash and negligence driving of the deceased. In his cross-examination nothing has come on the record that the deceased was negligent in driving his motorcycles. The entire cross-examination has been made just on the ground that many people collected at the spot and Jarnail Singh was driving the motorcycle instead of Jaspal Singh. No evidence has come on the file to show that the deceased was negligent in driving his scooter, rather there is admission on the part of respondent Jarnail Singh that he was driving the motorcycle at the time of accident in which Sher Singh lost his life and no evidence has come that deceased was negligent in driving his vehicle whereas eye witness AW2

proved that respondent was negligent and due to his negligence accident has taken place. Therefore, the issue is decided in favour of the claimants and against the respondents.

On issue No. 3, the Tribunal held that though the FIR was lodged against Jaspal Singh initially at the instance of claimants but since there was an admission by the respondent that he was driving the motor cycle, therefore the driving licence of Jarnail Singh was to be seen and he was holding a valid driving licence and as the vehicle was insured, therefore, the Insurance Company was liable to pay the compensation calculated by it i.e. ₹ 45,96,680/-

The submission made on behalf of the appellant is that in the claim petition filed by the claimants, the plea taken was that it was Jaspal Singh who caused the accident and it was Jaspal Singh who ran away from the spot after the accident and it did not refer to the presence of any other person. It was urged that the Insurance Company moved an application calling upon the owner driver to produce the licence and in the reply it was submitted that the vehicle was driven by Jarnail and the claimant conveniently moved an application seeking permission to amend the claim petition which was dismissed on 06.01.2012 and the Tribunal gave a finding beyond what was pleaded and justified the claim saying that since Jarnail Singh had taken the blame upon himself, it was his driving licence which was to be seen and it was valid and allowed the claim foisting the liability upon the Insurance Company. It was contended that the award should not only be set aside but heavy costs should be imposed for wasting the time of the Court. It was urged that the

Hon'ble Apex Court in ***United India Insurance Co. Ltd. vs. Rajender Singh and others, 2000(2) RCR(Civil) 483*** had held that if the Court or the Tribunal finds that fraud had been played upon it then they have the power to recall the order. It was urged that at no point, any statement was given by the claimants or by the driver to the police that it was Jarnail Singh who was driving the vehicle and Jaspal was tried by Juvenile Court which ended in acquittal. It was urged that the claimants had colluded with the owner and driver. It was urged that the factum regarding acquittal was disclosed by Jarnail Singh RW-1 and the complaint does not refer to the presence of any other person on the motor cycle and the story of a second person had been introduced subsequently.

On the other hand it was urged that the FIR is always lodged in a haste and it can not be said to be a substitute for a detailed version and there is no collusion and the award should not be set aside only because the Criminal Court had acquitted the driver and it has no relevance in a case before the Tribunal. It was urged that standard of proof in a criminal case and a tortious claims are different. Reliance was placed upon ***Virat Sama vs. Mohan Lal and others, 1994(1) PLR 82*** and ***Dr. B.D. Bagri vs. Daulat Ram and others, 1998(2) ACJ 1303***.

The facts which emerge from the record need a detailed reference. A claim petition was filed by the claimants impleading Jaspal Singh as driver and Karnail Singh son of Dyal Singh as owner. In para 24, the claimants pleaded that name of the driver was disclosed as Jaspal Singh and since several persons had collected,

Jaspal Singh ran from the spot. The claim petition was filed in June 2010. Respondents No. 1 and 2 filed their joint written statement. It was signed only by Jarnail Singh – respondent No. 2 on behalf of himself and on behalf of his son, Jaspal Singh. It was mentioned that his name was wrongly mentioned as Karnail Singh but he was the owner. It was pleaded that he was driving the motor cycle and his son Jaspal was a minor and it was Sher Singh who was at fault and the claimants in collusion with the police had wrongly registered the case against Jaspal Singh who was a student and it was done to ruin his future. The Insurance Company took a specific plea that the vehicle was driven by minor and was against the provisions of the Motor Vehicle Act and there was a violation of the policy as the driver did not have a licence.

The Insurance Company moved an application in April 2011 i.e. before the written statement was filed calling upon the driver i.e. respondent No. 1 to produce the documents namely the driving licence, registration certificate and the fitness certificate. In reply to that application a plea was taken that the vehicle was driven by Jarnail Singh who possessed a valid driving licence but the licence had been misplaced some where and could not be traced. The copy of the registration certificate was filed.

Thereafter, the claimants moved an application seeking permission to amend the petition and implead Jarnail Singh as driver and owner of the motor cycle. It was pleaded that at the time of the accident Ashutosh had informed that out of two persons who had ran away one was Jaspal Singh son of Jarnail Singh and believing his

version to be true they had impleaded Jaspal Singh as driver but later on they had come to know that it was Jarnail Singh who was driving the motor cycle. It had further pleaded that they had approached the police but were turned away and they were told that the FIR had been registered and challan had been presented and it was for the Court to take a decision.

The application was opposed by the Insurance Company and it was pleaded that the application had been filed with deliberations and it had been moved after they had filed an application for production of driving licence. It was pleaded that the FIR was lodged against Jaspal Singh and in the claim petition the driver was named as Jaspal Singh and there was collusion between the claimants and respondents No. 1 and 2 with a view to grab compensation and they had now switched the drivers to get compensation.

The Tribunal dismissed the application observing that the claimants had nothing to say as to who was driving and he was only to prove that the driver was either respondent No. 1 or respondent No. 2 and it was for the respondents to say and prove as to who was driving the vehicle and since they were admitting that respondent No. 2 was driving the vehicle, therefore, there was no need to amend the petition.

The plea taken by the claimants was that it was Jaspal Singh who was driving the vehicle. The Tribunal had framed the issue that the accident had occurred on account of rash and negligent driving of Jaspal Singh. While leading evidence the

claimants came up with a different version that there were two riders on the motor cycle i.e. the father and the son. This fact had never appeared in the First Information Report or in the claim petition. When Jarnail Singh pleaded this fact in the written statement, the claimants latched on it and introduced a different version. It was not the case of the claimants that there were two riders. The story was changed because the liability to pay the compensation would have fallen on the owner/driver and as the driver was a minor and had no licence, it would have been difficult to recover the amount.

The issue before the Court was whether accident had occurred on account of negligence of Jaspal Singh? Whether he was holding a valid driving licence? The finding recorded by the Tribunal was that it was Jarnail Singh who was driving vehicle and he was holding valid driving licence, therefore, the Insurance Company was liable. It is a clear case where the story has been changed to suit the claimants. The complaint had been lodged against Jaspal Singh who faced trial. At no point either the eye witness or the claimants approached the police to say that the driver was infact Jarnail Singh. A false plea had been taken that they had approached the police. No evidence was led. There was no reason for them to not file the complaint. The story had been weaved at a subsequent point of time and the eye witness also made a statement which is different to the one made before the police. The statement of the eye witness and that of respondents could not have been accepted. It was Jaspal Singh who was challaned and faced trial for his rash and negligent driving while in the claim petition a finding had been

returned that the accident was caused by Jarnail Singh. Though the plea was that Jaspal had caused the accident. It was is a clear case where fraud has been played by the claimants in collusion with the owner. There was a dubious concoction with sinister object to extract compensation. I am convinced that the award had been obtained on account of collusion between the claimant and respondents No. 1 and 2 and the Court has been misled. The FIR was first version which was given to the police. The police has also investigated the matter and had filed challan against the person who was named. In view of the above circumstances, the claim should not have been allowed. The award is set aside. The claim petition is dismissed and the appeal is allowed.

06.02.2015

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**(ANITA CHAUDHRY)
JUDGE**