

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

FAO No.2866 of 2013
Date of Decision: January 14, 2015

Navin Mahajan ...Appellant

Versus

Narinder Kumar and others ...Respondents

FAO No.2867 of 2013

Navin Mahajan ...Appellant

Versus

Indu Rani and others ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashok Aggarwal, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate
for respondent-New India Insurance Co. Ltd.

Mr. Abhinandan Pandhi, Advocate
for Ms. Manjari Nehru Kaul, Advocate
for respondent-National Insurance Co. Ltd.

FATEH DEEP SINGH, J.

Since both these appeals are directed against a common award dated 17.11.2012 of the learned Motor Accident Claims Tribunal, Chandigarh pertaining to the same very accident and, therefore, for the sake of brevity are being adjudicated through this common judgment.

The learned Tribunal through this consolidated

award has disposed off two claim petitions, one preferred by the widow Parkash Devi and others seeking compensation for the death of her husband Suresh Kumar in which during the course of the trial due to the death of Parkash Devi her legal representatives Indu Rani and Manju Kumari were arrayed as claimants and the second preferred by Naveen Mahajan for compensation on account of injuries sustained by him in this accident.

The brief facts that need to be reproduced are that on 21.12.2006 in car bearing registration No.CH-03-F-0014 one Suresh Kumar (deceased) was travelling and which vehicle was being driven by Naveen Mahajan-appellant in both the appeals. It was around 9.30 a.m. in the area of village Teoran, Police Station Sadar, Roop Nagar this car met with an accident with TATA 407 No.PB-10Z-9542 driven by respondent-Narinder Kumar leading to the death of Suresh Kumar. FIR of this accident was registered against Naveen Mahajan-appellant.

Learned counsel for the appellant has sought to attack the findings of the Tribunal qua issue No.1 in the first leg of his submissions. The most important witness is the alleged eye-witness PW2 Bajrang Singh, who was travelling in the ill-fated car at the time of the accident. It is not disputed by the counsel for the contesting parties that the FIR was lodged against the claimant Naveen Mahajan for having driven the vehicle in rash and negligent manner and that he is also the owner as well as driver of this vehicle at the time of the accident. There is specific mention by eye-witness that it was due to the rash and negligent driving of Naveen Mahajan, who had taken the vehicle on the wrong side resulted in the accident and he has proved his statement by way of

FIR Ex.P2, though, for obvious reasons this witness in the connected matter as PW1 has sought to align with the claimant Naveen Mahajan by taking plea that the driver of the truck Narinder Kumar was at fault. Thus, from this all, it leads to irresistible conclusion that accident is an admitted fact involving these two vehicles and the resultant death. The presence of PW2 Bajrang Singh could not be disputed and, thus, keeping in view that though the FIR is not a substantial piece of evidence but being a statement of this witness recorded in first point of time immediately after the accident certainly carries sanctity. Moreover, Ex.P3, discharge and follow up certificates which have been heavily relied upon by the Tribunal and the fact that is brought on the records that Navin Mahajan had faced prosecution in the criminal case rather in the light of the law laid down in **Keshub Mahindra v. State of Madhya Pradesh' II (1996) ACC 292 (SC)** is in itself prima facie proof of culpability of the driver of the car. No matter it is sought to be argued that he has been acquitted in the criminal case is another matter, thus, the findings of the Tribunal qua issue No.1 cannot be disturbed as respondent-driver has failed to displaced this evidence by any cogent and reliable evidence from his side.

As an off-shoot of this finding on issue No.1 the Tribunal has rightly deduced that the tortfeasor claimant Navin Mahajan certainly is not entitled to any compensation for the alleged injuries suffered by him in this accident and which findings on issue No.1 therefore, needs to be upheld.

Learned counsel for the appellant could not controvert the arguments of the learned counsel for respondent

No.3 as to the compensation that has been assessed to the tune of ₹3,57,040/- for the death of Suresh Kumar. How the same was not just and fair apparently keeping in view that the deceased at the time of his death was aged between 56-60 years and was earning to the tune of ₹57840/- per annum as held by the Tribunal on account of his retiral emoluments and from other sources and the Tribunal has deducted 1/3rd of this income and has applied multiplier of 9 and, therefore, compensation cannot be impugned by any means to be on the higher side and the findings pertaining to this compensation and the proven fact that Naveen Mahajan at the time of the accident was driver and owner of the vehicle which was insured with respondent-National Insurance Company Limited and, therefore, in view of the established principle of law that by virtue of Insurance contract Ex.RW1 the Insurer cannot wriggle out of its obligation towards third party claim and so the driver-cum-owner, therefore, certainly both of them are rightly held jointly and severally liable to pay the compensation amount and, thus, the conclusions drawn by the Tribunal qua this aspect of the matter also needs to be upheld.

In view of the foregoing reasons and discussions spelled out, there is no illegality and perversity in the findings of the Tribunal and the same needs to be upheld. Thus, there being no merits in both the appeals, the same stand dismissed.

No costs.

(FATEH DEEP SINGH)
JUDGE

January 14, 2015
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