

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.5315 of 2013 (O & M)
Date of Decision: *November 28, 2015*

Shri Ram General Insurance Company Ltd.
Chandigarh

..... APPELLANT

VERSUS

Rajesh Kumar & others

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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PRESENT: - Ms. Kavya Jariyal, Advocate, for Mr. Tejinder
 K. Joshi, Advocate, for the appellant.

None for the respondents.

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Jaspal Singh, J

CM No.22724-CII of 2013

Delay of 105 days in re-filing the appeal is
condoned.

Application is allowed.

CM No.22725-CII of 2013

For reasons stated in the application, delay of 210 days in filing the appeal is condoned.

Application is allowed.

FAO No.5315 of 2013 (O & M)

1. The appellant – Insurance Company has preferred the instant appeal challenging Award dated August 18, 2012 passed by the Motor Accident Claims Tribunal, Faridabad (for short, ‘Tribunal’) whereby the claimant – injured has been awarded a compensation of ₹ 85,696/- on account of injuries sustained by him in a vehicular accident involving three wheeler bearing registration No.DL-1LL-3809, holding respondent Nos.1 and 2 (in claim petition MVA Petition No.269 dated December 3, 2010) liable to pay compensation, jointly and severally. The appellant – Insurance Company has been directed to first satisfy the award and thereafter to recover the same from the insured by executing the award.

2. Briefly stated, the facts of the case are that on February 16, 2010 at about 2.00 PM, claimant – respondent No.1, Rajesh Kumar, was going to Badarpur-Border for some company work on his motorcycle No.HR-51AE-5056. A three wheeler bearing No.DL-1LL-3809 came from Delhi side in a

rash and negligent manner being driven by respondent No.2 – Inder Kumar at a high speed hit the motorcycle of claimant. As a result of the impact, claimant fell down and received injuries on his left leg and other parts of the body. The driver of offending three wheeler fled away from the spot. Injured – claimant was taken to Deep Medical Centre Private Limited where he was got admitted as an indoor patient and was given treatment. He remained admitted from February 16, 2010 to February 20, 2010. FIR No.39 dated February 17, 2010 under Sections 279, 337 IPC, Police Station, Sector 31, Faridabad, against respondent No.2 – Inder Kumar was also got registered.

3. Claimant preferred a claim petition, wherein he has been awarded a sum of ₹ 85,696/- as compensation on account of injuries sustained by him in the accident, vide Award dated August 18, 2012. The claimant being a third party and victim of accident, appellant – Insurance Company was directed, at the first instance, to satisfy the award and then to recover the same from the insured by executing the award.

4. Feeling aggrieved against the aforesaid Award passed by the Tribunal, Insurance Company has approached this Court for setting aside the same.

5. Learned counsel for the appellant has vehemently argued that findings recorded by the Tribunal are erroneous. The Tribunal did not appreciate the evidence available on file and wrongly & illegally fastened the liability to pay compensation upon the Insurance Company. Rather, no accident has taken place on February 16, 2010. Insurance Company is not liable to pay any compensation as respondent No.3 – owner of the three wheeler, has violated the terms of policy. The amount awarded on account of compensation is on higher side. Accordingly, learned counsel has prayed that award passed by the Tribunal, being against the evidence and legal proposition, is liable to be set aside qua appellant – Insurance Company.

6. After having heard learned counsel for the appellant, analyzing evidence and bestowing consideration to the impugned award, this Court is of the considered view that findings recorded by learned Tribunal are absolutely in consonance with the evidence available on file and settled cannons of law.

7. Rajesh Kumar, claimant – injured stepped into witness box as PW-3 and deposed the entire incident. He deposed that on February 16, 2010 at about 2.00 PM when he was going to Badarpur – Border for some work of company on

his motorcycle No.HR-51AE-5056, the offending three wheeler bearing No.DL-1LL-3809 came from Delhi side in a rash and negligent manner being driven by respondent – Inder Kumar at a high speed without adopting the traffic rules and hit his motorcycle, as a result of which, he received injuries on his left leg and other parts of the body. The said accident was witnessed by one Shyam Singh. Injured was taken to Deep Medical Centre Private Limited where he remained admitted from February 16, 2010 to February 20, 2010. On the basis of his statement, FIR No.39 dated February 17, 2010 under Sections 279, 337 IPC was registered at Police Station, Sector – 31, Faridabad. From the aforesaid FIR, it is clear that registration number of the offending three wheeler is mentioned therein. Name of driver of three wheeler is also categorically mentioned. Claimant has also categorically deposed in his affidavit Ex.PW-3/A that after causing the accident, the driver of the offending vehicle namely Inder Kumar came at the spot and telling his name, he fled away from the spot after leaving the three wheeler at the spot. So, from the aforesaid facts, it is proved that the accident took place and once the three wheeler was left at the place of accident, there remains no dispute about the identity of the three wheeler involved in this accident. Moreover, Inder Kumar – driver of the

offending vehicle did not appear in the witness box to rebut the version of claimant. Even from the statement of RW-1, Vinod Kumar - Criminal Ahlmad, it comes out that Inder Kumar was being prosecuted for causing the accident. The Tribunal has rightly held that the accident took place due to rash and negligent driving of three wheeler by Inder Kumar. Though, it was proved on record that driver Inder Kumar was not holding any valid and effective driving license on the date of accident, however, as the claimant is a third party and the victim of accident, the Tribunal has rightly directed the Insurance Company, at the first instance, to satisfy the award and then to recover the aforesaid amount from the insured by executing the award.

8. In the light of what has been discussed above, this Court does not find any merit in the instant appeal and the same dismissed.

9. No order as to costs.

November 28, 2015
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(Jaspal Singh)
Judge