

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3174 of 2015 (O&M)
Date of decision 09 .07. 2015.

New India Assurance Company Limited

..... Appellant.

versus

Devender and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Mr. S.S.Sidhu, Advocate for the appellant.

K.C.PURI, J.

Oriental Insurance Company Ltd. has challenged the Award dated 10.02.2015 passed by Shri Jagdeep Singh, Motor Accident Claims Tribunal, Sonipat vide which an amount of Rs.2,28,700/- along with interest @ 7.5% stood awarded to the claimants on a claim petition filed under Section 166 of the Motor Vehicle Act, 1988 on account of injuries received by Devender claimant.

2. The facts, as put forth by the claimant, is that on 27.08.2011 petitioner was coming to his house in village Garh Shahjanpur after giving food/tiffin to the wife of his brother in Civil Hospital, Sonapat and his father Ram Parsad was coming from Sabzi Mandi after purchasing vegetables and

the petitioner and his father met on Sector 15 road and when they were talking to each other while standing on the extreme left side of the road, in the meantime, a Car make Tata Indica car bearing registration No. HR-55/DT/9079 hit the petitioner due to which he fell down on the road. Thereafter petitioner was shifted to Civil Hospital, Sonapat but due to serious injuries, he was referred to PGIMS, Rohtak where he remained admitted and spent about Rs.2lacs on his treatment, transportation, medicines, attendant etc. The petition is still under treatment as an outdoor patient. On the statement of father of the petitioner/claimant criminal case was registered against respondent No.1.

3. On notice, respondent No. 1 appeared and filed written statement and raised preliminary objections regarding maintainability, cause of action etc. On merits it is alleged that no such accident has ever been taken place with car bearing registration No. HR-55/DT/9079 and the answering respondent was driving car bearing registration No.HR-10L-6822 at a very moderate speed and on correct side of the road and it has come during investigation that car bearing registration No. HR-10L-6822 was involved in the accident and was therefore taken into possession by the police and later on released on superdari to its owner Smt. Raj Kumari Madan. Denying other averments, answering respondent prayed for dismissal of the claim petition.

4. Respondent No.2 appeared and filed separate written statement and raised preliminary objections regarding maintainability, cause of action etc. On merits it is alleged that car bearing registration No. HR-55/DT/9079 was not involved in the accident and the number of this car

was wrongly noted down and that during investigation of FIR No.206 dated 27.8.2011, it was found that car bearing registration No.HR-10L-6822 was involved in the accident and the same was therefore taken into possession by the police and later on released on superdari to its owner Smt. Raj Kumari Madan. Denying other averments, answering respondent prayed for dismissal of the claim petition. On the similar lines remaining respondents filed their separate written statements and prayed for dismissal of the claim petition.

5. From the pleadings of the parties, following issues were framed :-

1. Whether the injuries to petitioner Devender son of Ram Parsad are the result of accident which took place on 27.08.2011 due to rash and negligent driving of Tata Indica bearing registration No.55DT/9079 or Tata Indica bearing registration No. HR-10L-6822 by its drivers ?
OPP
2. If issue no.1 is proved, to what amount of compensation the petitioner is entitled to and from whom ? OPP
3. Whether respondent No.1 was not holding valid driving licence at the time of accident and the offending vehicle had violated the terms and conditions of the insurance policy, if so, its effect ? OPR-3
4. Relief.

6. The Tribunal, after assessing the testimony of the witnesses accepted the claim petition vide Award dated 10.02.2015, as aforesaid.

7. Feeling dissatisfied with the above said Award dated 10.02.2015, the Insurance Company has directed the present appeal.

8. I have heard learned counsel for the appellant/Insurance Company and have gone through the records of the case.

9. Learned counsel for New India Assurance Company has submitted that the Tribunal has committed grave error in holding that Tata Indica car bearing registration No. HR-55/DT/9079 is liable to pay the amount of compensation. It is submitted that investigation was done by the police and car bearing registration No. HR-10L/6822 was taken into possession. Even Manoj Kumar driver has stated that he was driving car bearing registration No. HR-10L/6822. So, the insurer of car bearing registration No. HR-55/DT/9079 could not be held liable to pay the amount of compensation.

10. I have carefully considered the said submission but do not find any force in that submission.

11. In this case in order to satisfy the Court, the record was summoned and the evidence was perused.

12. From the perusal of the record, it is revealed that original version given by the complainant in the FIR is that accident has taken place due to rash and negligent driving of car bearing registration No. HR-55/DT/9079. The author of the FIR as well as injured person, whose presence cannot be doubted have also categorically stated that accident has taken place by rash and negligent driving of car bearing registration No. HR-55/DT/9079. So, mere fact that car bearing registration No. HR-10L/6822 has been taken into possession, is not a ground to held that accident has taken place with car bearing registration No. HR-10L/6822. Counsel for the appellant could not point out a single evidence except the statement of ASI Shyam Sunder PW-1, who has simply stated that car bearing registration No. HR-10L/6822 was taken into possession. Ram

Parshad complainant while appearing as PW-3 has categorically stated that injured Devender suffered injury by rash and negligent driving of car bearing registration No. HR- 55/DT/9079 by respondent No.4. Similarly Devender injured claimant (PW-6) has also stated regarding rash and negligent act of respondent No.4. So, in these circumstances, the arguments advanced by the counsel for the appellant that insurance company of car bearing registration No. HR-10L/6822 should be held liable, cannot be accepted.

13. No other point has been urged before me during the course of arguments.

14. Consequently, the appeal is without any merit and the same stands dismissed in limine.

15. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

July 09 , 2015

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