

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

F.A.O No. 448 of 2015

Date of decision:- 03.11.2015

National Insurance Co. Ltd.

...Appellant

Versus

Shobha Rani & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.C. Kapoor, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent Nos. 1 to 5.

None for respondent Nos. 6 to 8.

RITU BAHRI J.

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Chandigarh (for brevity, the tribunal'), vide its order dated 20.09.2014 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.37,10,160/-.

The claimants alleged that on 02.12.2010 at about 11.30 P.M, Vinod Kumar was coming from Baddi to Chandigarh while sitting in a car bearing registration No. HP-12-D-0999 which was being driven by Balwant Singh Mehta-respondent No. 1. After crossing Mullanpur

Barrier, at that time a tractor trolley bearing registration No. PB-65-H-T-4931 which was going ahead of them and was not having any indicator or reflector to warn ongoing traffic came in front of their car. The driver of the tractor-trolley did not give the way to the car and thereafter, the car struck against the said tractor-trolley. Vinod Kumar received serious injuries and was taken to PGI Chandigarh where he succumbed to his injuries on 31.12.2010. F.I.R No. 62 dated 03.12.2010 u/s 279/304-A IPC, P.S. Mullanpur Garibdass, District Mohali was registered against the driver of the tractor trolley for causing the accident.

On notice, respondent No. 1 appeared and filed written statement admitting the claim of the claimants and submitted that the accident took place due to rash and negligent driving of respondent No. 4.

Respondent No. 2 appeared and filed its written statement and on merits submitted that the accident has not been caused due to rash and negligent driving of car NO. HP-12-D-0999. The driver of car was not holding a valid and effective driving licence to drive the vehicle.

Respondent No. 3 filed separate written statement and on merits stated that the accident took place due to rash and negligent

driving of respondent No. 1 who struck his car into the backside of the tractor trolley.

Respondent No. 4 filed separate written statement and stated that respondent No. 5 has committed the breach of condition of the insurance policy by driving the said tractor trolley without holding a driving licence.

Respondent No. 5 did not appear to contest the claim petition despite service and was proceeded ex parte.

From the pleading of the parties, following issues were framed:-

- “1. Whether death of deceased Vinod Kumar took place on 02.12.2010 in an accident, due to composite negligence of driver of Car No. HP-12-D-0999 and driver of Tractor Trolley No. PB-65-HT-4931? OPP*
- 2. Whether the claimants are entitled to receive the compensation? If so, to what extent and from whom? OPP*
- 3. Whether the claim petition is not maintainable in the present form? OPR*
- 4. Whether the drivers of both the vehicles in question were not holding a valid and effective driving licence at the time of accident, if so, its effect? OPR*

5. *Relief.”*

The learned Tribunal relied upon the examination of P.W.3 Sher Singh who furnished an affidavit Ex PW3/A and stated that on 02.12.2010 when he was coming from his village Gochar towards Chandigarh on his motorcycle at slow speed, he saw a tractor trolley bearing registration No. PB-65-H-T-4931 which was going ahead of the car. The tractor trolley was not having any indicator or reflector to warn ongoing traffic came in front of car. The driver of the tractor-trolley did not give the way to the car and thereafter, the car struck against the said tractor-trolley. Vinod Kumar received serious injuries and was taken to PGI Chandigarh. However, in his cross examination, he put blame on respondent No. 1- driver of the car but respondent No. 1 had not entered into the witness box, so the adverse inference was drawn against him.

Even though the F.I.R has been registered against respondent No. 5 but since respondent No. 1 has not entered into the witness box, the Tribunal has come to a conclusion that the accident in question had occurred because of rash and negligent driving of respondent No. 1 and not of respondent No. 5, who was going ahead of respondent No. 1. Thus, issue No. 1 is decided against respondent No. 1 and 2 and in favour of the claimants as well as respondent Nos.

3, 4 and 5

Further the version given in the above said F.I.R is not in accordance with the real factual position on the spot, as is clear from photographs Mark A to G. Respondent Nos. 1 and 2 have not been able to rebut all these photographs, which have shown that it was respondent No. 1 who had himself rammed his car into the trolley from its back side. It was the duty of respondent No. 1 to take care as to when to overtake the tractor trolley which was going in front of the car. Further, respondent No. 1 has not entered into the witness box so as to explain the blame put up by P.W.3 upon him as well as to explain the above photographs (Mark A to G). Thus, the Tribunal has observed that the deceased Vinod Kumar and respondent No. 1 who was driving the car were police officials, then there was every possibility of maneuvering of the version in the F.I.R. P.W.3 in his cross examination has stated that the accident had occurred because of the faulty driving of respondent No. 1.

Learned counsel for the appellant has vehemently argued that the Tribunal has gone wrong in deciding issue No. 1 against respondent Nos. 1 and 2. Reference has been made to a judgment of Hon'ble the Supreme Court in a case of ***Raj Rani and others vs. Oriental Insurance Col. Ltd. And others, 2009 ACJ 2003*** wherein

the truck was parked in middle of the road without parking lights on and the car driver driving at a normal speed of 40 kph, owing to lights of another vehicle coming from opposite direction, sighted the truck only at last minute and could not avoid the accident resulting in his death. It has been held that the drivers of both the vehicles were equally negligent. Reference has been further made to numerous judgments i.e ***Khenyei vs. New India Assurance Co. Ltd. And others, 2015 ACJ 1441, New India Assurance Co. Ltd v. Harbans Kaur and others, 2011 ACJ 2677, Pawan Kumar vs. Harkishan Dass Mohan Lal, 2014 ACJ 704 (SC).***

The judgments cited by learned counsel for the appellant will not be applicable to the facts of the present case, as all those cases were of composite negligence. In the facts of the present case, as per photographs Ex Mark A to G, it is apparent that the tractor trolley was standing on the left side of the road and not in the centre of the road. The tractor trolley was not obstructing the movement of the traffic. It was the driver of the car who hit the tractor trolley from backside. The driver of the car should be more careful when to overtake the tractor trolley which was going in front of his car. Thus, the finding recorded by the tribunal that respondent No. 1 was at fault, does not require any interference by this Court .

Further P.W.3 in his examination in chief had stated that the accident had occurred on account of rash and negligent driving of respondent No. 5 but in his cross examination, he stated that the accident occurred on account of rash and negligent driving of respondent No. 1. Since respondent No. 1 did not appear in the witness box, the Tribunal has rightly drawn adverse inference against him.

In view of the above, order/award dated 20.09.2014 passed by the Tribunal does not require any interference by this Court.

The appeal stands dismissed.

03.11.2015

G Arora

(**RITU BAHRI**)
JUDGE