

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

FAO No.564 of 2010

Date of Decision: 09.11.2016

Kuldeep Singh and another

... Appellants

Vs.

Chandanpreet Singh through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Saravpreet Singh Gurna, Advocate
for the appellants.

Mr. Vinod Chaudhary, Advocate
for the respondents.

Amol Rattan Singh, J

The appellants are the driver and owner respectively, of car bearing registration no.HR-51-C-6212, which was involved in an accident.

This appeal arises out of that accident, in connection with which MACT Case no.67 of 09.08.2007 was filed before the learned Motor Accident Claims Tribunal, Rupnagar, by respondents no.4 and 5 herein, on account of the unfortunate death of their son Beant Singh, in the said accident.

Though this appeal was listed alongwith FAO No.563 of 2010, with that appeal taken to be the first appeal, however, in view of the fact that a copy of the Award impugned in that appeal, passed by the same Tribunal on the same date (18.09.2009) in MACT Case No.9 of 2007, was not annexed with the appeal, as detailed in the order passed in that appeal, this appeal is now being decided separately, the Award impugned herein being an Award

passed only respect of MACT Case No.67 of 2007, decided by the Motor Accident Claims Tribunal, Rupnagar, on 18.09.2009.

2. As per the claimants, at about 6.30 a.m. on 24.09.2006, the first respondent before the Tribunal, i.e. Chandanpreet Singh (since deceased) was driving a motor-cycle bearing registration no.PB-12-H-8229, with Beant Singh riding pillion behind him. When they reached the light point on the dividing road between Sectors 45 and 46, Chandigarh, a Cielo car driven by appellant No.1 (respondent no.3 before the Tribunal), bearing registration no.HR-51-C-6212, came and struck against the motor-cycle, due to which both the riders fell down and received multiple grievous injuries. They were shifted to the hospital in Sector 32, Chandigarh, and were treated there, but Beant Singh succumbed to his injuries on the same day at about 7.00 p.m.

A post mortem examination was conducted on his body.

3. Thereafter, the claim petition was filed, in which the driver-cum-owner of the motor-cycle, the insurer of the motor-cycle, the owner and driver of the Cielo car (present appellants), and the insurance company with which the car was insured, were all impleaded as respondents, with the claimants stating that all of them were jointly and severally liable to pay them compensation.

It was contended that the deceased was a loving son who was studying in Class 10 only, was a brilliant student, who was also doing agricultural work and dairy farming, earning Rs.40,000/- per annum.

It was further contended that the claimants were dependent upon him as he had a bright future and consequently, they had suffered an irreparable loss. They therefore claimed a compensation of Rs.15 lacs, along with interest @ 18% per annum thereupon, running from the date of the

accident till the payment of the amount.

4. Upon notice issued to the respondents, the legal representatives of the first respondent before the Tribunal, i.e. the driver of the motorcycle, Chandanpreet Singh, filed his written statement, admitting the accident but stating that he was not at fault, as the accident had occurred due to the rash and negligent driving of appellant no.1, Kuldeep Singh, driver of the car.

The insurance company (M/s Oriental Insurance Co. Ltd.) with which the motor-cycle was insured (respondent no.2 herein), also filed a separate written statement, completely denying the accident with the motor-cycle, further stating that no liability could be fastened upon the company. .

5. The present appellants also filed a joint written statement, denying the accident and contending that it was a false and fabricated story.

The insurance company with which the car was insured, i.e. respondent no.3 herein, filed a separate written statement stating that neither the driver of the car nor the driver of the motor-cycle was holding a valid driving licence on the date of the accident and as such, it could not be fastened with any liability to pay compensation and further, it was pleaded that the accident took place due to the negligence of the driver of the motor-cycle and that the car had been falsely implicated in it.

6. Upon the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

“1. Whether the accident that took place at 6.30 A.M. on 24.09.2006 in the dividing road of Sector 45 and 46 Chandigarh occurred due to the rash and negligent driving by respondent No.3 of Car No.HR-51-C-6212?OPP

2. Whether the accident occurred at 6.30 AM on 24.09.2006

on the dividing road of Sector 45-46 Chandigarh occurred due to the rash and negligent driving by respondent No.1 of car No.PB-12-H-8220 ?OPP (wrongly mentioned as car, though it is shown to be a motorcycle).

3. Whether Beant Singh received injuries in the said accident and died due to them? OPP

4. Whether the claimants are entitled to recover Rs.15 lacs from the respondents along with interest @ 18 % per annum as compensation? OPP

5. Whether the petition is not maintainable on account of the preliminary objections raised in the written statement? OPR

6. Relief.”

7. Upon evidence being led, the learned Tribunal found that the respondents had eventually admitted to the accident, but with respondents no.1 and 2 stating that it had occurred on account of the rash and negligent driving of the car, whereas the other respondents contended that it was caused by the rash and negligent driving of the motor-cycle by its (subsequently deceased) driver.

It was also found that an FIR was lodged on the date of the accident itself (24.09.2006) and that respondent no.3 (present appellant no.1), was named as an accused in the FIR.

In cross-examination, after he (Kuldeep Singh) stepped into the witness box as a witness for himself and respondents no.3 to 5 (in the claim petition), he admitted that a criminal case with regard to the accident was pending against him at Chandigarh, and that he had not moved any

application with regard to the registration of a false case against him. He also admitted that the vehicle was at Chandigarh with him on the date of the accident.

Similarly, appellant no.2 (Baldev Singh), i.e. the owner of the car, admitted that appellant no.1 was his driver and that the car was being driven by him at Chandigarh on the date of the accident and also that an FIR had been registered against him (appellant no.1 herein, Kuldeep Singh).

8. It was further found by the learned Tribunal that PW-2, who was stated to be an eye witness, had deposed that while he was going for a morning walk, he witnessed the accident which occurred due to the rash and negligent driving of the car driver.

Hence, on account of an FIR having been registered against appellant no.1 herein and the testimony of PW-2 (eye witness), it was held that it was actually appellant no.1, Kuldeep Singh, who was responsible for causing the accident.

9. As regards compensation, it was found by the learned Tribunal that the deceased was a matriculate and a hockey player but no evidence was led to show that he was earning Rs.40,000/- per annum from agricultural work and dairy farming. It was also found that as per the post mortem report, he was 17 years old at the time of his death.

It was also found that he was the only son of the claimants and obviously they had suffered great mental agony and financial loss. However, thereafter, it was held that such a loss could not be calculated by mathematical calculation. Further, the Tribunal relied upon a judgment of the Supreme Court in New India Assurance Company Limited Vs. Satender and others, 2006 ACJ 460, wherein it was held that since the future of a

child is uncertain, “the question of assessment of compensation, therefore, becomes stiffer. The figure of compensation, therefore, becomes stiffer.”

Relying upon the above, the Tribunal awarded a compensation of Rs.4 lacs to the respondents-claimants, along with interest @ 9 % p.a. thereupon, running from the date of filing of the claim petition till its realization.

10 On the question of liability to pay compensation, it was found that as per the registration certificate, present appellant no.2 (Baldev Singh) was the owner of the vehicle (Cielo car) and as such he would be liable, along with the insurance company, to pay the compensation. However, it was further found that the insurance certificate was effective from 25.09.2006 till the midnight of 24.09.2007, whereas the accident took place on the morning of 24.09.2007. .

Hence, eventually it was held that the insurance company, respondent no.3, could not be held liable to indemnify appellant no.2.

The judgment of the Supreme Court in **Oriental Insurance Company Limited Vs. Porselvi and another**, 2009 (2) RCR (Civil) 926, was relied upon by the Tribunal to hold as above.

11. On the aforesaid reasoning, the claim petition was allowed, with the respondents-claimants held entitled to compensation of Rs.4 lacs with interest as aforesaid thereupon, but with the insurance company, respondent no.3 herein (United India Insurance Co. Ltd.), wholly absolved of paying any compensation, by way of indemnifying the owner of the car (appellant no.2 herein).

12. In the present appeal, Mr. Saravpreet Gurna, learned counsel for the appellants, submitted that it is only the issue of liability to pay

compensation that has been challenged in this appeal, with no question raised on the finding of the Tribunal on other issues.

Learned counsel for the appellants submitted that the cheque for payment of the premium, for issuance of the policy, was written out on 22.09.2006 by appellant no.2, with the cover note of the policy also issued on the same date. However, the detailed insurance policy was issued by the company only on 25.09.2006. Therefore, the learned counsel submitted, that the delay in issuing the policy is not attributable to the appellants in any manner and therefore, the company cannot take advantage of that fact, when the cover note was actually issued on 22.09.2006, i.e. two days before the accident. In this regard, learned counsel cited a judgment of the Supreme Court in **Balbir Kaur and others Vs. New India Assurance Company Limited and others**, (2009) 13 SCC 370.

13. On the other hand, Mr. Vinod Chaudhary, learned counsel for respondent no.3, i.e. M/s United India Insurance Company Limited, submitted that the policy earlier issued in respect of the vehicle owned by appellant no.2, had expired about 6 months earlier and that appellant no.2 had also signed an undertaking that the policy would be effective from 25.09.2006, even though the premium was remitted on 22.09.2006.

In this regard, it is to be noticed that since the records of the Tribunal stand burnt in the fire incident in the record room of this Court, which occurred in January 2011, learned counsel has produced a photocopy of the said undertaking dated 22.09.2006, seen to be signed by appellant no.2.

A photostat copy of the policy has also been produced in Court, showing that it was issued on 22.09.2006 at 9.05 a.m., but w.e.f. 25.09.2006.

Learned counsel for respondent no.3 has first relied upon the

same judgment as was relied upon by the Tribunal, in **Porselvis'** case (supra), as also on another judgment of the Supreme Court, in **The New India Assurance Co. Ltd. Vs. Ram Dayal**, (1990) 2 PLR 144.

14. Having considered the arguments of both learned counsel, as also the judgments of the Supreme Court relied upon by both the sides, it is seen that in **Ram Dayals'** case (supra), it was held as follows:-

“4. There is evidence in this case that the vehicle was insured earlier up to 31.8.1984 and the same was available to be renewed but instead of obtaining renewal a fresh insurance was taken from 28th of September, 1984, which is the date of the accident. We are inclined to agree with the view indicated in these decisions that when a policy is taken on a particular date, its effectiveness is from the commencement of the date and, therefore, the High Court, in our opinion, was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award.”

Similarly, in **Porselvis'** case (supra), which was a judgment decided on 02.04.2009, it was first observed as follows:-

“4. Learned counsel for the appellant brought to our notice the cover note which clearly indicates that the policy was valid from 29/05/1996 to 28/5/1997 though it was issued on 28/5/1996. A copy of the policy was brought on record. Relevant portion thereof reads as follows:-

“Effective date of commencement of insurance for the purpose of the Act, from O' clock on (date) 29.5.1996 to midnight of 28.5.1997.”

Thereafter, it was held as follows:-

“5. A three Judge Bench of this Court in ***New India Assurance Co. Ltd. v. Sita Bai (Smt.) and Ors.*** 1994 (4) RCR (Civil) 644: [(1990) 7 SCC 575] *inter alia* observed as follows:-

“6. The correctness and applicability of the judgment in

Ram Dayal case [(1990) 2 SCC 680] came up for consideration before this Court subsequently in a number of cases. In *New India Assurance Co. v. Bhagwati Devi 1999 (4) RCR (Civil) 350: [(1998) 6 SCC 534]* a three-Judge Bench of this Court relied upon the view taken in *National Insurance Co. Ltd. v. Jijubhai Nathuji Dabhi, 1997 (3) RCR (Civil) 397: [(1997) 1 SCC 66]*, wherein it had been held that if there is a special contract, mentioning in the policy the time when it was bought, the insurance policy would be operative from that time and not from the previous midnight as was the case in Ram Dayal case where no time from which the insurance policy was to become effective had been mentioned. It was held that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following, but in cases where there is a mention of the specific time for the purchase of the policy, then a special contract comes into being and the policy becomes effective from the time mentioned in the cover note/the policy itself. The judgment in Jikubhai case has been subsequently followed in *Oriental Insurance Co. Ltd. v. Sunita Rathi, 1998 (1) RCR (Civil) 429: [(1998) 1 SCC 365]* by a three-Judge Bench of this Court also.”

(Emphasis applied by this Court)

In **Balbir Kaurs'** case (supra), relied upon by the appellants' counsel, it was held as follows:-

“13. For the purpose of this case, we would assume that an insurance policy, in law, could be issued from a future date. A policy, however, which is issued from a future date must be with the consent of the holder of the policy. The insurance company cannot issue a policy unilaterally from a future date without the consent of the holder of a policy. Even the said circular letter had not been produced and/or no material was placed as to why the policy was issued from a later date. It is, however, not necessary for us to delve deep into the matter in view of the limited notice issued by this Court.”

15.

Thus, as per the aforesaid judgments, there seems to be no doubt

left that as regards the operation of the insurance policy, it can take effect from a date further ahead of the date on which it was issued, but in terms of what was held in **Balbir Kaurs'** case (supra), if the insurance policy is issued unilaterally on a later date by the company, the insured cannot be held liable.

In the present case, a perusal of the photostat copy of the insurance policy and the additional questionnaire filled in by appellant no.2, at the time of paying the policy, shows that he had undertaken that the insurer would have no liability in respect of any loss/damage/liability arising out of any accident earlier to 25.09.2006.

It is further seen that this additional questionnaire is specifically put to a person buying an insurance policy in a case where a previous policy has lapsed, there thus being a gap between the last date of the insurance coverage by the previous policy, and the date of purchasing a new policy. Therefore, an undertaking is obtained from the insured, absolving the insurance company of any liability prior to a specified date.

The questionnaire in the present case is shown to be dated 22.09.2006, duly signed by appellant no.2 as already noticed, on the date that he obtained the new policy, i.e. 22.09.2006. Thereupon a 'cover note' is stated to have been issued to him, with him having issued a cheque towards payment of the premium for the policy.

Hence, with appellant no.2 very clearly having admitted to his own liability prior to 25.09.2006, in respect of any accident which occurred after the date on which the previous policy lapsed, and before the new policy became effective, I find no error in the finding of the Tribunal, that it is the appellants only who are jointly and severally liable to pay the compensation to respondents no.4 and 5 herein, for the accident in question, as was

awarded by the Tribunal.

16. It also needs to be stated here that learned counsel for the appellant has not raised any objection to the fact that, with the records of the case having been burnt, the photostat copies of the documents produced in Court, i.e. the additional questionnaire and the insurance policy itself, were not documents that were exhibited before the Tribunal. That being so, obviously the authenticity of these documents is not in doubt.

Consequently, finding no merit in the appeal, it is dismissed, but with no order as to costs.

November 09, 2016
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(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking	?	Yes
Whether reportable	?	Yes