

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 11.07.2016

1. FAO No.5658 of 2010 (O&M)

National Insurance Company Limited ...Appellant

Vs

Yashpal Sharma and othersRespondents

2. FAO No.5659 of 2010 (O&M)

National Insurance Company Limited ...Appellant

Vs

Rajinder Lal Sharma and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Manmohan Garg, Advocate for
Mr. Suman Jain, Advocate
for the appellant(s).

Mr. Hitesh Kumar Sammi, Advocate for
Mr. N.L. Sammi, Advocate
for respondent No.1.

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?*

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment FAO Nos.5658 and 5659 of 2010 are being decided as common issue is involved in both these appeals. For brevity, facts are being taken from FAO

No.5658 of 2010.

[2]. Claimants Yashpal Sharma and Rajinder Lal Sharma filed claim petitions under Section 166 of the Motor Vehicles Act (hereinafter to be referred as 'the Act') for the grant of compensation on account of injury suffered by them in a vehicular accident.

[3]. Brief facts as gathered from the record are that the accident took place on 13.06.2005 when Yashpal Sharma-claimant along with Rajinder Lal Sharma and Kamlesh Rani was going to Panipat from Faridabad in a maruti car. Respondent No.4 was driving the vehicle. At about 10.15 a.m., when their car reached on the bridge of Piro Maniari a four-wheeler was parked in the middle of the road without any indication. No fencing by way of stones was kept on the road and no parking lights were working. The driver of the car tried his level best to save the vehicle from stationed four-wheeler which was wrongly parked in a negligent manner by respondent No.1, but the car struck against the four-wheeler from behind and as a result of that claimant suffered injuries on their limbs. Rajinder Lal Sharma, Kamlesh Rani and driver of the car also sustained injuries on their person. Passerby saved the occupants of the car. The injured were removed to Hospital and were medically examined. On the statement of claimant-Yashpal Sharma FIR

No.95 dated 13.06.2005 under Sections 279/337/338 IPC was registered against Mukesh Kumar, driver of the offending vehicle.

[4]. Injured Yashpal Sharma claimed that he spent an amount of Rs.1 lac towards his treatment, attendant charges, special diet and transportation etc. He became permanent disabled and was unable to undertake his routine work. He remain bed-ridden and claimed compensation to the tune of Rs.10 lacs.

[5]. Similarly Rajinder Lal Sharma also claimed compensation for the injuries suffered by him to the tune of Rs.10 lacs in the said vehicular accident. He alleged that he remain admitted in Raghudeep Hospital, Panipat from 13.06.2005 to 20.06.2005.

[6]. The Motor Accidents Claims Tribunal, Sonapat (for short 'the Tribunal') concluded under issue No.1 that the accident was the result of rash and negligent act of respondent No.1. Under issue No.2 both the claimants-Yashpal Sharma and Rajinder Lal Sharma were held entitled to the compensation of Rs.80,000/- and Rs.1,55,000/- respectively along with interest @ 6% per annum from the date of institution of the claim petition till final realisation of the amount.

[7]. The Insurance Company felt aggrieved against the award and ventured to file the present appeal on the ground that there was no insurance policy prepared for the offending vehicle and, therefore, recovery rights should have been granted in favour of the appellant-Insurance Company.

[8]. Apparently, Naresh Kumar Record Keeper, National Insurance Company Limited, Karampura, Delhi appeared as RW-1 and submitted in the context of cover note which was prepared by the Company pertaining to the offending vehicle that the insurance policy was not prepared as the requisite amount which was allegedly paid by way of cheque was not honoured as the same stood dishonoured.

[9]. Admittedly, a cover note was issued in favour of offending vehicle. The aforesaid witness in his cross-examination stated that as per his record dated 28.12.2007, the cheque had not been collected and he has no record regarding the fact, when the cheque was deposited in the Bank. The witness of his own clarified that the cheque was deposited on the next date of its receipt. However, he admitted that the concerned Bank had sent the letter dated 28.12.2007 regarding non-collection of cheque in question. The cover note was valid from 28.07.2004 to 27.07.2005 i.e. at the time of accident.

[10]. Similarly RW-2 Yogeshwar Kumar, clerk of the Bank testified on the same lines that the cheque was endorsed and there is no date of cheque. The Insurance Company had sent letter to the Bank on 28.01.2007 regarding the cheque in question and then the Bank sent the reply on the same day. There was no correspondence prior to that between the Company and the Bank. Ex.R-2 did not contain any stamp of the Bank.

[11]. During the course of proceedings before this Court, it was found that the notices issues to respondents No.2 and 3 were received back unserved with the report that they were not residing at the given address. Substituted service was ordered to effect service upon the said respondents. Both the respondents were ordered to be served by way of affixation on their last known addresses. The service was ultimately ordered to be effected through publication of the notice in the newspaper. Publication was done. None appeared on behalf of respondents No.2 and 3 and they were accordingly proceeded against *ex parte* vide order dated 18.12.2015.

[12]. Evidently, the record of the insurance policy was also destroyed and there was no material available before the witnesses to depose with reference to record and, therefore, it could not be safely admitted as to whether any insurance policy

was prepared or not in respect of the vehicle. Admittedly, cover note was valid at the time of accident. The Tribunal has rightly concluded that the Insurance Company was liable for the award made in favour of the claimants along with interest and held the liability to be joint and several against respondents No.1 to 3.

[13]. In considered opinion of this Court, the award dated 30.04.2010 passed by the Tribunal is not required to be interfered with in view of the fact that there was no material available on record to infer that the insurance policy was not prepared on account of non-payment by the owner of the defaulting vehicle in favour of the Insurance Company. Admittedly, cover note was issued which was valid for the period in question.

[14]. Since there was no evidence to infer any incriminating material in favour of the Insurance Company, therefore, the award passed by the Tribunal cannot be held to be vitiated on account of any misreading of evidence or perversity of any type.

[15]. Resultantly, both the appeals are found to be totally devoid of merit and the same are accordingly dismissed.

July 11, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE