

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

FAO No.10385 of 2014

Date of decision : August 23, 2016.

National Insurance Company Limited

.... Appellant

Vs.

Amrik Singh and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Rajbir Wasu, Advocate,
for the appellant.

Mr. S.S.Sarwara, Advocate,
for respondents No.1 to 5.

AMOL RATTAN SINGH, J.

This is an appeal filed by the insurance company that had insured the vehicle, the driver of which was found to be negligent, leading to an accident on 15.01.2012, in which Gurjit Kaur, aged 43 years, was unfortunately killed.

2. The facts, as taken from the impugned Award of the learned Tribunal, are that on that date the deceased was returning home to village Madiana from Ladwa, alongwith her husband and minor daughter Simranjit Kaur, the latter aged 16 years, on a motorcycle driven by Amrik Singh.

When they reached near a petrol pump, a truck bearing registration No.PH-06-G-6300 came from the side of the Ambala, driven by

respondent No.6 herein, allegedly in a rash and negligent manner and hit the motorcycle, on which the deceased and respondents No.1 and 2 herein were travelling. The said respondents fell on the left side due to the accident and Gurjit Kaur fell on the right side, upon which the tyre of the truck went over her head, due to which she died on the spot.

Respondents No.1 and 2 also suffered injuries. Respondent No.6 is stated to have run away from the spot.

A post mortem examination was conducted on the body of the deceased at the A.P.Jain Hospital, Rajpura and it was claimed that Rs.70,000/- was spent on her last rites etc. An FIR was also registered at Police Station Shambhu.

3. Consequently, the claim petition was filed by the present respondents No.1 to 5, who are the husband, two minor children and parents-in-law of deceased Gurjit Kaur, seeking compensation from the driver, owner and insurer of the “offending truck”, i.e. respondents No.6 and 7, as also the appellant herein.

4. On notice issued, the appellant and the driver of the vehicle (respondent No.6 herein) put in appearance and filed separate written statements, whereas the owner of the vehicle, i.e. respondent No.2, was proceeded against *ex parte*.

Respondent No.6, Raj Kumar, other than taking the usual preliminary objections, denied that he was responsible for causing the accident, whereas the present appellant insurance company also took up various preliminary objections, including the fact that neither the driver of the truck nor the driver of the motorcycle were holding valid driving licences and further, that the truck did not have a valid registration

certificate, fitness certificate and route permit. It was, however, admitted that for the period in question, the truck was insured with the company, with the company yet denying liability to pay any compensation, on the ground that there was a breach of the terms and conditions of the policy.

5. Upon the aforesaid pleadings, the usual issues with regard to negligence in driving, entitlement of compensation and validity of the driving licence of the driver of the truck were framed, after which, on the basis of evidence led, the Tribunal held respondent No.6 herein guilty of negligence in driving, thereby causing the accident in question.

On various parameters, a total compensation of Rs.11,40,000/- was awarded to the claimants-respondents No.1 to 5, alongwith interest @ 6% per annum on the aforesaid sum, running from the date of the filing of the claim petition, till the date of realization of the compensation amount.

With respondent No.6 not having appeared before the Court to get his statement recorded, the learned Tribunal, on the basis of the judicial file of the criminal case registered against him, found that an offence under Section 181 of Motor Vehicle Act, 1988 had been added, as it had been found that respondent No.6 was not carrying a driving licence.

Consequently, though all the respondents were held jointly and severally liable to pay the compensation, the present appellant was ordered to make the actual payment but was given rights to recover the same from the other two respondents, i.e. the driver and owner of the “offending truck”.

6. Hence, the insurance company is in appeal challenging its liability to pay the compensation, firstly contending that the entire negligence has been wrongly foisted onto respondent No.6, i.e. the driver of

the truck, whereas since respondents No.1 and 2 herein and the deceased were 'triple riding' on the motorcycle, against the motor vehicle rules, as such, equal liability needed to be fastened onto them, for causing the accident.

It is further contended that respondent No.6 not having found to be carrying any licence at all, the insurance company could not be burdened with the liability to pay any compensation at all and therefore, the question of recovery rights would not come in because the entire liability to pay the compensation was upon respondents No.6 and 7 herein, i.e. the driver and owner of the vehicle.

7. Reitering the above, Mr. Rajbir Wasu, learned counsel for the appellant, relied upon a judgment of the hon'ble Supreme Court in **Sardari and others v. Sushil Kumar and others (2008) 17 SCC 208**, to submit that since it was the statutory obligation of the owner to see whether the driver of the vehicle was carrying a valid licence or not, and since the driver was found to be without any licence at all, as opposed to a fake licence or one which had expired, the liability to pay compensation was not that of the insurance company, but that of the driver and owner themselves.

8. Mr.S.S.Sarwara, learned counsel appearing for respondents No.1 to 4, i.e. the claimants before the Tribunal, however submitted that as regards negligence, no evidence whatsoever was led by the respondents before the Tribunal, to controvert the testimony of respondent No.1 herein, i.e. the husband of the deceased (who was driving the motorcycle on which he and the deceased were travelling), and in fact, even respondent No.6, i.e. the driver of the truck, never appeared in the witness box to give his own version of the accident. Further, it was found by the Tribunal, from the

testimony of respondent No.1 herein, despite his extensive cross-examination, as also from the version of the accident given in the FIR and the post mortem report, that the negligence in causing the accident was wholly that of respondent No.6, i.e. the truck driver. Hence, regardless of the fact that the deceased was travelling with respondents No.1 and 2, 'triple riding' on the motorcycle, negligence could not be attributed to respondent No.1, the truck having come and hit the motorcycle.

8-A. As regards the question of liability of the appellant insurance company, he submitted that the vehicle having been duly insured, the first liability to pay the compensation was that of the insurer, after which the insurance company could recover the compensation amount from the insured, for violation of the terms and conditions of the policy.

Hence, he submitted that the Tribunal not having erred in any manner in that regard, the appeal deserves to be dismissed.

9. Before considering the aforesaid arguments of learned counsel, it needs to be observed that after notice was issued to the respondents vide order dated 22.12.2014, respondents No.1 to 5, i.e. the claimants, all stand served and are duly represented by learned counsel.

Respondent No.6, i.e. the driver of the truck in question stands served as per the report put up to this Court, though he refused to sign acknowledgement in receipt of the summons.

Respondent No.7, i.e. the owner of the truck, also stands served but chose not to appear and was consequently ordered to be proceeded against *ex parte*, vide order dated 07.04.2015.

Somehow, no order to proceed against respondent No.6 *ex parte* was passed, but since he has still chosen not to appear even up to this

date, either himself or through counsel, he is also proceeded against *ex parte*.

10. Having heard learned counsel for the parties, as regards the issue of negligence, primarily such negligence appears to be that of respondent No.6 herein, i.e. the driver of the truck, who did not even step into the witness box to rebut the testimony of claimant-respondent No.1 herein, Amrik Singh, who was driving the motorcycle with the deceased riding pillion behind him. Yet, there is no denial to the fact, which was actually even the case of the respondents-claimants, that three persons were riding on the motorcycle against which the truck hit, resulting in all three riders of the motorcycle falling down. It is also not denied that the motorcycle in question was actually a vehicle registered for carrying only two persons on it. Hence, with two persons, i.e. respondents-claimants No.1 and 2 having fallen one side after the accident and the deceased having fallen on the other, the third passenger was an extra passenger, and as such some liability has to be borne by the first claimant, i.e. the driver of the motorcycle.

Obviously, the Court understands that with all families not able to afford cars, carrying a third passenger, (who in this case was the 16 year old daughter of respondent No.1, she herself being respondent No.2), is a common fact in India, for possibly practical reasons. This is especially so when a person thinks twice about sending a lone girl on her own in a bus etc., when there is a choice of simply adding her as a third rider on a motorcycle, with the family travelling to the same place.

That, however, does not change the fact that for safety purposes, vehicles are registered, with the registration certificates giving

the carrying capacity (of passengers) for each vehicle. Hence, basic safety features cannot be given a go-bye, simply for convenience. Looked at from another angle, if 5 or 6 members of a family had to travel to the same destination, obviously they would take a bus or three different two-wheeled vehicles. Therefore, even if convenience pointed to all three riders travelling together, to go to the same destination, because practically a motorcycle seat can accommodate three persons, that however, does not change the motor vehicle rules and the basic safety features of each vehicle, that are required to be adhered to.

Consequently, some liability has to be fastened on the driver of a two-wheeler, who allows three persons (including himself/herself) to travel on the vehicle.

11. The question is as to how much liability, in this particular case, needs to be fastened on to respondent No.1.

Undoubtedly, a truck is a much 'larger' vehicle than a motorcycle and a far heavier one; therefore, whether 2 or 3 persons had been travelling on the motorcycle, the velocity with which the truck obviously struck against the motorcycle, it would still have fallen down, regardless of the number of persons travelling on it.

It also came in evidence before the Tribunal that the other two riders on the motorcycle, i.e. respondents No.1 and 2 herein, also sustained injuries due to the fall, whereas the deceased, having fallen towards the side of the truck, was unfortunately crushed under its tyre.

In such a situation, in my opinion, not more than 10% of the entire liability can be fastened onto respondent No.1, for allowing three persons to ride on the motorcycle, whereas 90% of the liability in causing

the accident and the consequent death of the deceased, remains fastened onto respondent No.6 herein.

12. Coming now to the issue of whether the insurance company that had insured the “offending vehicle”, has to bear the brunt of first paying the compensation to the claimants, and thereafter be allowed to recover it from respondents No.6 and 7 herein, as was ordered by the Tribunal, or whether, with respondent No.6 having been proved to have not been carrying a driving licence at all, respondents No.6 and 7 only are to be foisted with such liability, completely absolving the appellant-insurance company of any such liability, whatsoever.

13. Learned counsel for the appellant has cited a judgment of the hon'ble Supreme Court in *Sardaris'* case (supra) to submit that no liability at all can be fastened on the appellant.

A perusal of the said judgment shows that their Lordships, after discussing the law on the subject, held that no fault can be found with the judgment of the High Court and the Tribunal, holding that the insurance company in such a situation was not liable to pay any compensation and it was only the owner and driver of the vehicle, who would be liable to pay it.

However, even while holding as above, their Lordships also referred to an earlier judgment in **National Insurance Company Ltd. v. Kusum Rai** (2006) 4 SCC 250, wherein the Supreme Court exercised its jurisdiction under Article 136 of the Constitution, to decline to interfere in the judgment impugned in that case, by which the insurance company had been ordered to pay the compensation at the first instance and thereafter recover the same from the owner and driver of the vehicle in question.

Undoubtedly, that was exercise of jurisdiction under Article

136 of the Constitution, whereas the present appeal has been filed before this Court under Civil Appellate Jurisdiction. However, in **Oriental Insurance Company Ltd. v. Felix Correa and others** (2003) 10 SCC 289, after discussing the law in **New India Insurance Company Ltd. v. Mandar Madhav Tambe** (1996) 2 SCC 328, it was held by their Lordships that the insurance company could recover even the enhanced amount from the owner of the vehicle, after first paying it.

In *Correas'* case, the driver of the vehicle concerned was also not holding a valid licence on the date of the accident, his learners' licence having expired and a new one not having been issued to him.

14. In the present case also, it is not in doubt that the policy issued by the appellant to the insured (respondent No.7), was very much a valid policy, duly paid for by the insured, to indemnify him against third party liability. The respondents-claimants who, in any case are not at fault as regards the duty of the insured to ensure that the driver of his vehicle holds a valid driving licence, such driver and owner having chosen not to appear before this Court at all in this appeal, and the owner having been proceeded against *ex parte* even before the Tribunal, in the opinion of this Court, it would be highly unjust to burden the respondents-claimants with extended litigation to obtain the compensation due to them, on account of the death of deceased Gurjit Kaur, on account of the rash and negligent driving of respondent No.6, who was driving the vehicle owned by respondent No.7, and otherwise duly insured by the appellant-insurance company, on receipt of the amount of premium for such policy.

Hence, as regards the issue of the first liability of the appellant to pay compensation to respondents No.1 to 5 herein, following what was

held in *Felix Correas'* case (supra), the contention of learned counsel for the appellant is rejected.

15. Now, having found that negligence to the extent of 10% in the death of Gurjit Kaur, was that of the respondent-claimant No.1 himself, she being a third rider on the motorcycle, but with 90% liability still being that of the truck driver who came and struck his truck against the motorcycle, this appeal would otherwise have been partly allowed, by reduction of the compensation amount of Rs.11,40,000/- awarded by the Tribunal, to the extent of 10% thereof.

However, it is seen that, firstly, the deduction towards the personal living expenses of the deceased has been made to the extent of 1/3rd of her annual income of Rs.1,20,000/-, though the number of dependents on her were four, even taking her husband not to be dependent upon her; whereas, as per the ratio of the judgment of the Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another** (2009) 6 SCC 121, a 1/4th deduction was to be made towards such personal expenses.

Further, towards loss of consortium only Rs.10,000/- has been awarded by the Tribunal and no amount whatsoever, towards loss of love and affection of their mother, has been awarded to respondents No.2 and 3 herein, or for loss of love and affection of their daughter-in-law, to respondents No.4 and 5. Yet further, the amount awarded towards loss of estate and funeral expenses is Rs.10,000/- whereas, for funeral expenses etc., as per law now settled, Rs.25,000/- is awardable, the accident being of the year January 2012.

As such, the compensation may in fact, have otherwise been

enhanced in any appeal filed by the respondent-claimants, but this not being such an appeal, nothing further is said in that regard.

Yet, even with liability in the accidental death of Gurjit Kaur, to the extent of 10% having been fastened onto respondent No.1 herein, on account of 'triple riding', compensation is not reduced even to that extent, in view of what has been held immediately hereinabove.

16. Consequently, the appeal is dismissed but with no order as to costs.

August 23, 2016
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(AMOL RATTAN SINGH)
JUDGE