

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

**FAO No. 3760-2014(O&M)
Date of decision : 28.01.2016**

Oriental Insurance Company Ltd. Appellant

versus

Anu Gupta and nother Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Sanjiv Pabbi, Advocate for the appellant.

Mr.Ashwani Arora, Advocate for respondent NO.1.

Respondent No.2 ex parte.

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?

AJAY TEWARI, J. (Oral)

This appeal has been filed by the insurance company on the ground that the injured herself was the author of the DDR and in the DDR she had blamed some other vehicle in the accident but while filing the claim petition had taken an about turn and had falsely accused the driver of the insured vehicle of rash and negligent driving.

Brief facts of the case are that on 25.04.2011 at about 9.30 a.m. Claimant-respondent No.1 was going from Panchkula to her office in Sector 34, Chandigarh on a scooter bearing no. CH-04-K-0120 as pillion rider which was being driven by her sister-in-law

Deepika Gupta-respondent No.2 at a fast speed. When they were heading towards Tribune Chowk, Chandigarh near Centra Mall, a motor cycle came at a very fast speed from behind and hit the scooter as a result of which the scooter skidded and both the occupants fell down on the road and suffered injuries. Claimant-respondent No.1 who was riding the pillion received serious injuries whereas the driver of the scooter i.e. Deepika Gupta received simple injuries.

Claimant-respondent No.1-injured who is a 38 years old lady and employed as Audit Inspector in Chief Auditor Office, Punjab, Sector 34, Chandigarh getting a salary of Rs. 36,000/- per month, suffered fracture of left leg femur and her left leg below knee was also fractured and amputated from the knee. She was awarded a sum of Rs. 13, 67,458/- which included transportation charges, special diet, expenditure on prosthesis, pain and sufferings and compensation for leave etc. Both the respondents were jointly and severally held liable to pay the amount of compensation along with interest at the rate of 6% p.a. from the date of filing of the claim petition till realisation. The insurance company has come up in appeal taking the ground that there is an anomaly in the DDR lodged by the claimant-respondent No.1 in respect of the accident and the claim petition filed by her.

Learned counsel for the claimant-respondent No.1 has argued that the Tribunal has rightly held that the claim has to be decided on the basis of the evidence led before it and not on the basis of the DDR and even the judgment of the criminal Court is not binding. He has further argued that there can be many reasons why there may be an apparent anomaly between the DDR and the claim petition; the injured person may not be in a fit state of mind to give the exact facts or even she may have just appended

signatures on a statement prepared by the police. In this case, as per him, no question was even asked to the claimant about the anomaly. As per him it was incumbent upon the appellant to have confronted the claimant with the DDR and an adverse inference could have been drawn against her only if she was not able to satisfactorily explain the anomaly but once no question was put to her about this, the insurance company now cannot take benefit of the said DDR. I find myself in agreement with the counsel for the claimant. Therefore, this ground is rejected.

Learned counsel for the appellant has further argued that even as per the case set up by the claimant-respondent No.1 it was a case of composite negligence, therefore, the appellant is entitled to recover that component of the compensation which can be attributed to the other vehicle. Learned counsel for the respondent has accepted this.

In the circumstances it is held that the accident occurred due to the composite negligence of the scooter driver and the motor cyclist and the liability of the scooter driver would be only 50%.

Resultantly this appeal is allowed to the extent that the appellant would be entitled to recover 50% of the compensation amount from the driver/insurer of the motor cycle.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

January 28, 2016
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