

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

Date of decision:7.11.2016

1.

FAO No.4495 of 2016(O&M)

New India Assurance Co. Ltd.

.....Appellant

VERSUS

Bowali @ Babli Devi and others

.....Respondents

2.

FAO No.4496 of 2016(O&M)

New India Assurance Co. Ltd.

.....Appellant

VERSUS

Ram Mehar @ Ram Kumar and others

.....Respondents

3.

FAO No.4756 of 2016(O&M)

New India Assurance Co. Ltd.

.....Appellant

VERSUS

Amarjeet and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Gupta, Advocate for the appellant.

REKHA MITTAL, J.

This order will dispose of FAO Nos.4495, 4496 and 4756 of 2016 as these have emerged out of the same award dated 05.04.2016 passed by the Motor Accidents Claims Tribunal, Jind. For brevity, facts are taken from FAO No.4495 of 2015.

Counsel for the appellant (New India Assurance Co. Ltd.) has assailed the award primarily on two counts. The first submission made by counsel is that as four persons were travelling on motorcycle bearing No.HR-26-BE-3067 driven by Amarjeet son of Ram Mehar, one of the alleged injured/victim,, the victims are guilty of violating the provisions of Section 128 of the Motor Vehicles Act, 1988 (for short 'the Act'). In addition, it is argued that as the motorcycle is meant for use of two persons namely the driver and passenger on the pillion seat, the very fact that four persons were travelling on the motorcycle is sufficient to prove that the driver could not occupy sufficient space and thus rendering him unable to control the vehicle. It is argued that in view of the facts and circumstances of the case, the injured/victims are to be attributed contributory negligence and, therefore, compensation awarded by the Tribunal is liable to be reduced to the extent of negligence attributable to them.

Another submission made by counsel is that the insurance company summoned an official from the office of RTA/DTO Fatehabad, along with record of driving licence of Dharambir son of Kesara Ram and on the summons issued by the Court , a report was received that licence No.51/RTA/FBD is of the year 1997 but the authority has been constituted in the year 2001. It is vehemently argued that the report received on the summon under the seal of Secretary, Regional Transport Authority, Fatehabad is sufficient to establish that driving licence possessed by the driver was invalid, therefore, the insurance company is liable to be exonerated of its liability or in the alternative entitled to be given recovery rights against the insured by invoking Section 149 of the Act.

I have heard counsel for the appellant and perused the paper-book.

During the course of hearing, counsel for the appellant has made available a copy of the statement of Amarjeet, driver of the motorcycle and one of the injured/victim in the occurrence wherein negligence has been attributed to Dharambir son of Kesra Ram, driver of Tata Ace bearing No.HR-39-C-4477. Amarjeet tendered into evidence his affidavit Ex.PW2/A by way of examination in chief. A relevant extract from his testimony with regard to manner of accident reads as follows:-

“...on 07.01.2014 at about 2.30 PM deponent along with his mother Rajpati (since deceased) and his relative Sanjay and wife of Sanjay namely Babli Devi was going on Bajaj Discover motor cycle bearing Regn. No.HR-26-BE-3067 from village Kharar to Narnaund in his relation and the above said motor cycle was being driven by deponent whereas his mother Rajpati (now injured), Sanjay and Bowali @ Babli Devi were pillion rider on this motor cycle and when they reached near Pardeep Petrol Pump, Narnaund then one Tata ACE (Chhota Hathi) bearing Regn. No.HR-39-C-4477 came from Narnaund side in rash and negligent and zic zac manner at high speed which was being driven by respondent No.1 and stuck his TATA ACE with motor cycle of the deponent bearing No.HR-26-BE-3067 after coming on wrong side and all occupants of the motor cycle fell down on the road and suffered multiple, grievous and serious injuries on their person. After causing the accident, the respondent No.1 fled away from the spot along with his TATA ACE....”

The witness was cross-examined at length but nothing tangible and material has been elicited in order to prove that the accident occurred due to any fault attributable to driver of the motorcycle or its occupants. He has denied the suggestion that no accident took place with Tata Ace and he falsely involved the Tata Ace only to extract compensation in collusion with the police or that the motorcycle fell down

on the road on his own negligence because there were four persons sitting on the motorcycle. However, there is no challenge to testimony of the witness that Tata Ace struck with the motorcycle after coming on wrong side and as a result, occupants of the motorcycle fell down on the road and suffered injuries. Counsel for the appellant has not disputed that criminal proceedings were initiated against driver of the offending vehicle for causing the accident. Counsel has failed to point out any materials on record that application for compensation was filed in collusion with the driver or/and owner of the Tata Ace. He has also not pointed out any evidence adduced by the respondents to rebut testimony of Amarjeet PW-2. In absence of any materials on record that driver of the motorcycle contributed, in any manner, in causing the accident, the mere fact that four persons were travelling on the motorcycle may constitute a traffic offence but is not sufficient to attribute negligence to driver of the motorcycle or its occupants. In this context, reference can be made to judgment of this Court **Karnail Singh and others vs. Balwinder Singh and another, 2013(1) PLR 774.**

With regard to plea that driver of the offending vehicle was not holding a valid driving licence, the appellant did not examine a witness from the office of RTA/DTO Fatehabad to discharge the onus that licence No.51/RTA/FBD of 1997 is not a valid one. Any report made on back of the summon is not per se admissible in evidence nor can be used against the insured without providing him an opportunity to challenge its correctness and authenticity by way of cross examination of the witness called upon to prove the same. This apart, in the report purported to be made by an official of the Regional Transport Authority, Fatehabad, it was

mentioned that a photocopy of the driving licence containing particulars of renewal be sent so that the record could be produced in the Court. There is nothing on record suggestive of the fact that subsequent to receipt of report, the insurance company made any effort to supply the requisite particulars to the concerned Licensing Authority much less to examine a witness along with relevant records in order to establish that Dharambir was not holding a valid driving licence at the time of occurrence, thus, the insured is guilty of committing breach of the terms and conditions of insurance constituting a valid defence under Section 149 of the Act or entitling the insurer to seek recovery rights against the insured.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed in *limine*.

NOVEMBER 7, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no