

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

FAO No.5240 of 2016 (O&M)

Date of decision : 18.10.2016

Magma HDI General Insurance Co. Ltd.

.....Appellant

Versus

Sapna and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Pankaj Mehta, Advocate for appellant.

DARSHAN SINGH, J.

CM-17783-CII-2016

There is delay of 33 days in re-filing the present appeal. The appellant has filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 33 days in re-filing the present appeal is hereby condoned.

CM-17784-CII-2016

There is delay of 05 days in filing the present appeal. The appellant has filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 05 days in filing the present appeal is hereby condoned.

Main Appeal

The present appeal has been preferred by the appellant-Insurance Company against the award dated 25.02.2016, passed by learned Motor Accidents Claims Tribunal, Panchkula (hereinafter called the “Tribunal”), vide which respondents-claimants No.1 to 4 have been awarded compensation to the tune of ₹ 16,85,728/- on account of death of Kuldeep Singh alias Kuldeep Kumar alias Chhota in the motor vehicular accident which took place on 26.08.2014.

2. The present appeal has been preferred by the appellant-Insurance Company to assail the award.

3. I have heard learned counsel for the appellant-Insurance Company and have gone through the paper-book meticulously.

4. Learned counsel for the appellant-Insurance Company contended that it is not established that the present accident has taken place due to rash and negligent driving of truck bearing registration No.HR-37D-5035 by respondent No.5 Jagjit Singh alias Jaggaet Singh alias Jagdish Singh. He contended that divergent version has been given in the claim petition and in the criminal case by PW-2 Rahul, the alleged witness of the occurrence. Such divergent statement should not be relied upon. He further contended that respondent No.5 has already been acquitted in the criminal case. Thus, he contended that the negligence on the part of respondent No.5

for causing this accident is not established.

5. He further contended that appellant-Insurance Company is not liable for payment of the amount of compensation as the driving licence of respondent No.5 was fake. He is resident of Ambala but he has obtained the licence from District Transport Officer, Tuyenang, Nagaland. As per the provision of law and instructions issued by the Nagaland Government, such licence could not have been issued.

6. I have duly considered the aforesaid contentions.

7. The perusal of the impugned award shows that the appellant-Insurance Company has not raised any issue before the learned Tribunal that respondent No.5 the driver of the truck has been acquitted in the criminal case. Even the statement made by Rahul PW-2, the witness of occurrence in the criminal case has not been brought on record of the claim petition. Rahul the witness of occurrence has been examined as PW-2 in the claim petition but he has not been confronted at all with the statement made by him in the criminal case. Thus, the procedure prescribed under Section 145 of the Indian Evidence Act for confrontation of the witness has not been adopted by the appellant-Insurance Company. Thus, the statement made by PW-2 Rahul in the criminal case is not the part of the evidence of the claim petition and, there is no material available on record to draw the conclusion that he has made any divergent statement in the criminal case.

8. Moreover, it is the settled principle of law that the claimants cannot be non-suited in the claim petition filed under the provisions of the Motor Vehicles Act, 1988 for grant of compensation on the ground of

acquittal of the driver of the vehicle in the criminal case. To support this view reference can be made to cases ***Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) 582, Pepsu Road Transport Corporation, Patiala Vs. Joginder Kaur 2001(3) RCR (Civil) 166, Harbans Lal and others Vs. Shingara Singh and others 2014(2) RCR (Civil) 570, Gurpreet Singh Vs. Rajinder Kumar Dhawan and others 2015(7) RCR (Civil) 883 and Charan Singh Vs. Sanjay Kumar and others 2015(8) RCR (Civil) 741.***

9. In view of the aforesaid consistent ratio of law, the acquittal of the driver of the vehicle in the criminal case is no ground to conclude that the rash and negligent driving on his part is not established. The Tribunal was required to record its finding on the basis of evidence adduced before it. The claimants have examined PW-2 Rahul, the witness of the occurrence who has categorically deposed that respondent No.5 the driver of the truck was driving the truck in question in a rash and negligent manner and hit the motorcycle being driven by deceased from behind. The hitting of the motorcycle from behind by the truck itself shows the rash and negligent driving on the part of respondent No.5. The evidence so adduced by the claimants has gone un rebutted as the driver of the truck has not stepped into the witness box, which raises the adverse inference against the respondents. So, no fault can be found with the conclusion arrived at by the Tribunal that driver of the truck (respondent No.5) had caused this accident by driving the truck in question in a rash and negligent manner which resulted into the fatal injuries to the deceased.

10. There is also no ground to exonerate the appellant-

Insurance Company from the liability to pay the awarded amount. Ex.R5 is the copy of the driving licence of the driver of the truck (respondent No.5). The appellant-Insurance Company has itself produced in its evidence the report of its Investigator Ex.R1. As the report Ex.R1 has been produced by the appellant-Insurance Company itself, so it cannot wriggle out from the contents thereof. The said report clearly shows that the driving licence Ex.R5 of respondent No.5 has been issued by the District Transport Officer, Tuyensang, Nagaland on 20.07.2010 and was valid up to 19.12.2016. He was authorised to drive the heavy transport vehicle also. The said report relied upon by the appellant-Insurance Company itself shows that respondent No.5 the driver of the truck was having a valid and effective driving licence on the date of accident. So, the appellant-Insurance Company cannot escape from the liability.

11. Thus, keeping in view my aforesaid discussion, the present appeal has no merits and the same is hereby dismissed.

18.10.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No