

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

FAO-6708-2015

Date of decision : 15.01.2016

Raj Kumar Mahajan and another

..... Appellants

versus

Gurcharan Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr.Rishu Mahajan, Advocate
for the appellants.

Mr. D.R.Bansal, Advocate
for the respondent No.-2-Insurance Co.

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 owner against the award dated 07.07.2015.

The brief facts are that on 22.07.2013 the respondent No.1 was going back to his house after his routine job on his Hero Honda motorcycle bearing registration No.PB-02-AC-3626 from village Mattian and when he reached near vilage Uggar Aulakh, one Bolero vehicle No.PB-02-AJ-0096 which was being driven by appellant No.2 in a very rash and negligent manner. He suffered multiple injuries and became unconscious. His brother came at the spot and got him admitted in the hospital where he

remained admitted upto 12.08.2013. The Tribunal awarded him a compensation of Rs.2,49,000/- with the interest @ 7% per annum.

The claimants alleged that the vehicle was being driven by the son of the appellant i.e. appellant No.2. In the written statement the claim raised by the appellant was that his son was not driving the vehicle at the relevant time but he was driving the vehicle at the relevant time. Learned counsel for the appellants states that in this connection he made various applications even to the police that his son had been wrongly booked in the case whereas if at all the accident was proved it was he who was driving. The Tribunal has relied upon the statements of PW 6 & 7 (PW-6 happened to be injured and PW-7 was his brother) to come to the conclusion that it was the son of the appellant who was driving the vehicle. Learned counsel for the appellants has pointed out that PW 6 was lying unconscious and PW 7 had not witnessed the accident but had been told by somebody that the vehicle was being driven by the son of the appellant. As per learned counsel for the appellants this hear-say evidence could not have been relied upon to come to the conclusion that the vehicle was being driven by the son of the appellant and thereby absolving the insurance company. Learned counsel for the appellants has argued that in the testimony of PW-7 it has been mentioned that when he reached the spot the accident had already taken place and his brother PW-6 was lying unconscious and he came to know from some people.

In the circumstances it could not be proved that it was appellant No.2 who was driving the vehicle. On the other hand the appellant No.1 had specifically stated that at that time he was driving the vehicle.

Learned counsel for the Insurance Company is not in a position to refute this argument that both PW-6 & 7 did not have any means of knowing as to who was driving the vehicle in the circumstances. The appeal is allowed and it is held that the vehicle was not being driven in violation of the terms of the policy and consequently the respondent No.2 would be jointly and severally liable to pay the compensation.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

15.01.2016

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**