IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.9784 of 2014
Decided on: 03.11.2016

The Oriental Insurance Company Limited

....Appellant

Versus

Charanjit Kaur and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

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

Ms. Ekta Thakur, Advocate for respondents No.1 to 3.

Mr. Gaurav Sharma, Advocate for respondent No.4.

REKHA MITTAL, J.

The present appeal directs challenge against the award dated 26.08.2014 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been awarded in favour of Charanjit Kaur and others on account of death of Arvinder Pal Singh in a motor vehicular accident that took place on 30.10.2012 at about 07:30 a.m. near Mirchi Hotel village Mohri, District Kurukshetra.

The learned Tribunal accepted plea of the claimants that the accident took place due to rash and negligent driving of Tata Indigo car bearing No.CH01-AG-2685 by Pritpal Singh resulting in injuries to the victim travelling in the aforesaid car who later succumbed to injuries on the day of occurrence itself. The Tribunal assessed compensation under various heads, reproduced hereinbelow:-

SR. No.	HEADS	AMOUNT
1	Loss of dependency	Rs.10,78,858/-
2	Loss of consortium to the widow	Rs.1,00,000/-

3	Loss of care and guidance for minor child Karan Chabra	Rs.1,00,000/-
4	Expenses on funeral	Rs.25,000/-
	TOTAL	**Rs.13,03,858/-**

Counsel for the appellant has assailed liability of the insurance company to pay compensation primarily on two counts. The first submission made by counsel is that findings of the Tribunal on Issue No.1 regarding accident being the result of rash and negligent driving of car No.CH01-AG-2685 are contrary to the first version recorded in the FIR lodged at the instance of Harvinder Singh wherein he has stated that a car driver who was driving the car at a fast speed and negligently crossed his car bearing No.CH01-AG-8447 and hit against car going ahead of him bearing No.CH01-AG-2685 towards driver's side and as a result, balance of car No.CH01-AG-2685 got disturbed and the said car struck against the tractor-trolley on its back and the said tractor-trolley was on the side of said car. He has given the particulars of the alleged offending vehicle as PB-16-B-9661 or 1961. It is further argued that the claimants concocted a false story by attributing rashness and negligence to car bearing No.CH01-AG-8447 and introduced Vipan Negi – PW2 in order to support cause of the claimants. It is further submitted that testimony of Vipan Negi is controverted by Pritpal Singh, driver of the alleged offending vehicle.

Another submission made by counsel is that as per version given in the FIR, Arvinder pal Singh was travelling in the car in question for hire and reward, constituting breach of the terms and conditions of insurance and a valid defence under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act') therefore, the insurance company is entitle to be exonerated of its liability or in the alternative may be given recovery rights.

Counsel for the claimants has supported the award with the submissions that First Information Report is not a substantive piece of evidence and author of the FIR was not examined by the insurance company, thus, deprived the claimants of their right to cross-examine his with regard to the facts narrated in the FIR. It is further argued that Vipan Negi – PW2 was cross-examined at length but nothing tangible and material has been elicited in his cross-examination either to doubt correctness of his version or presence on the spot, when otherwise, Vipan Negi had no personal interest in success of the petition. It is further argued that Pritpal Singh – respondent No.1 appeared in the witness-box and categorically deposed that during formal discussion with Arvinder Pal Singh, he (Arvinder Pal Singh) came to know that Pritpal Singh was going to Delhi on 30.10.2012 for his personal work and Arvinder Pal Singh requested to take him to Delhi as he wanted to go there for his personal and domestic work. He further deposed that due to friendly relations, he could not refuse and told that he could accompany him to Delhi in his car bearing No.CH-01-AG-2685. Testimony of Pritpal Singh demolishes the plea that car was used for hire or reward, thus constituting breach of contract of insurance and a defence under Section 149(2) of the Act.

I have heard counsel for the parties, perused the paperbook and the records of the Tribunal.

Indisputably, the FIR in this case was registered at the behest of Harvinder Singh and the same certainly proves that on the fateful day, the deceased was travelling in car bearing No.CH01-AG-2685 driven by Pritpal Singh and the car met with an accident resulting in serious injuries to Arvinder Pal Singh that proved fatal. The claimants examined Vipan Negi resident of House No.2650, Sector 40, Chandigarh. He tendered into evidence his duly sworn affidavit Ex.PW2/A and a relevant extract from his testimony with regard to the date, time and manner of the accident, reads as follows:-

> *"On 30.10.2012, I was going from Chandigarh to Delhi. Another Indigo car bearing No.CH01-AG-2685 was going ahead of me. When at about 7.30 a.m. the said car reached near Mirchi Hotel, Village Mohri, G.T. Road, Mohri, District Kurukshetra, and was at very high and rash speed another car came from Ambala side. Both the cars hit against each other. Respondent No.1 who was driving above said car at very high rash speed and in negligent manner lost control over his car and it struck against the tractor trolley going ahead of it. As a result of which, Arvinder Pal Singh - deceased who was occupant in the above said offending car driven by respondent No.1, suffered multiple injuries on vital organs of his body, including head injury, which proved fatal for him. This accident took place due to rash and negligent driving of respondent No.1. My statement was recorded by the police. Copy of FIR is Ex.P5."*

The witness was cross-examined at length by both the sets of respondents. Counsel for respondent No.1 therein suggested to the witness that offending vehicle had overtaken him before the accident and the same was admitted to be correct. He has denied the suggestion that the tractor-trolley hit the car in question. A casual reading of the cross-examination by respondent No.1 is sufficient to indicate that respondent No.1 has not disputed presence of Vipan Negi at the spot. In his cross-examination by counsel representing the insurance company, the witness has deposed that he came to know about the claimants after the accident as he met them once or twice thereafter. No such fact has been elicited in his cross-examination that Vipan Negi was known to the victim family prior to the occurrence much less he being a close acquaintance of the deceased or his family. Under the circumstances, Vipan Negi is to be treated as an independent witness. The statement of Vipan Negi is sufficient to prove that the accident took place due to composite negligence of Pritpal Singh and driver of another vehicle. As per the settled position in law, in case composite negligence is attributed to two or more vehicles, the claimants have the liberty to file an application against any/all the vehicles to whom composite negligence has been attributed.

Counsel for the appellant has laid much stress upon the recitals in the FIR lodged at the instance of Harvinder Singh. Harvinder Singh has not been examined in the case. Indisputably, FIR is not a substantive piece of evidence and it represents the first version of the author and can be used for the purpose of contradiction or corroboration during the course of proceedings before a Court of law. As Harvinder Singh was not examined by the respondents, thus, denying an opportunity of cross-examination to the claimants, statement of Harvinder Singh in the FIR cannot invite primacy over testimony of Vipan Negi that was tested in cross-examination at the instance of the respondents including the insurance company. In this view of the matter, I find myself unable to accept the submissions of the appellant that findings recorded by the Tribunal on Issue No.1 upholding plea of the claimants that the accident took place due to rash and negligent driving of car bearing No.CH01-AG-2685 by Pritpal Singh are liable to be interfered much less set-aside.

This brings the Court to the second submission that the car in question was used by the insured for hire or reward, therefore, insurance company has a valid defence under Section 149(2) of the Act. Pritpal Singh, owner/insured of the offending vehicle tendered into evidence his affidavit Ex.RA and categorically deposed that the deceased was travelling in his car due to friendly relations between him and Arvinder Pal Singh. He was cross-examined at the instance of the insurance company. He has denied the suggestion that he was using vehicle No.CH01-AG-2685 as taxi and he charged money from the deceased for travel in his car. There is no worthwhile much less tangible material on records to substantiate plea of the insurance company that the vehicle in question was used for hire or reward constituting breach of terms and conditions of the contract of insurance to invoke Section 149(2) of the Act.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed. No order as to costs.

03.11.2016 **(REKHA MITTAL)**
yakub **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable: Yes/No