

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

X-OBJC-179-CII-2014 IN/AND
FAO No.4787 of 2013 (O&M)
Decided on: 22.10.2016

Reliance General Insurance Company Limited

....Appellant

Versus

Usha Rani and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Kodan, Advocate
for the appellant.

Mr. Vijay Singh, Advocate
for Mr. Rakesh Nehra, Advocate
for respondent No.1/cross-objectors.

Mr. Rajneesh Malhotra, Advocate
for respondent No.4.

REKHA MITTAL, J.

This order will dispose of FAO No.4787 of 2013
“*Reliance General Insurance Company Limited vs Usha Rani and others*” and cross-objections No.179-CII of 2014 as these have emerged out of the same award dated 01.07.2013 passed by the Motor Accidents Claims Tribunal, Jhajjar (for brevity 'the Tribunal').

For the sake of convenience, the parties shall be referred to as '*the insurance company*' (appellant) and '*the claimants*' (cross-objectors).

Usha Rani, the claimant filed an application for grant of compensation under Section 166 and 140 of the Motor Vehicles Act, 1988 in respect of injuries sustained by her in a motor vehicular

accident that took place on 17.04.2011 while the injured was traveling in three-wheeler bearing No.HR-63-A-9818 driven by Manoj and the accident took place due to collision between the aforesaid three-wheeler and another three-wheeler bearing No.HR-63-A-8247 driven by Harpal Singh.

The learned Tribunal awarded compensation to the tune of Rs.9,70,000/- payable with interest @ 8% per annum from the date of petition till realization but liability to pay compensation has been apportioned to the extent of 50% each by the driver, owner and insurer of each of the vehicles involved in the accident.

The insurance company of three-wheeler bearing No.HR-63-A-8247 has preferred the appeal to challenge its liability to pay compensation to the extent of 50%. The sole submission made by counsel for the insurance company is that as accident in question took place due to sole rash and negligent driving of vehicle bearing No.HR-63-A-9818 in which the injured was traveling at the relevant time, findings recorded by the learned Tribunal holding the driver, owner and insurer of vehicle No.HR-63-A-8247 liable to the extent of 50% are liable to be set-aside. To substantiate his contention, he has invited attention of the Court to the statement of Usha Rani, the injured/victim wherein in her cross-examination by counsel for respondent No.4 before the Tribunal, she has stated, reads thus:-

“It is correct that accident took place due to the sole and negligent driving of driver of vehicle bearing registration No.HR-63-A-9818”.

Counsel representing the insurance company with whom

vehicle bearing No.HR-63-A-9818 was insured would urge that statement of a witness is to be read as a whole. Usha Rani tendered into evidence her duly sworn affidavit Ex.PW-1/A wherein she has attributed rashness and negligence to drivers of both the vehicles involved in the accident. Another occupant of the three-wheeler bearing No.HR-63-A-9818 in which Usha Rani was traveling namely Sunita Devi – PW2 was examined and she has also corroborated version of Usha Rani that accident took place due to rash and negligent driving of respondents No.1 and 4 in the claim petition. It is further argued that in view of the materials on record, no interference in the findings recorded by the learned Tribunal attributing negligence to both the vehicles to the extent of 50% is warranted.

Counsel for the claimant has submitted that the learned Tribunal has awarded an amount of Rs.9,70,000/- under various heads. As per evidence on record, the victim suffered disability to the extent of 35% owing to injury to the pelvis and spine proved by Dr. Himanshu Narang– PW6. It is argued that as the victim needed further medical treatment/intervention, she is entitled to compensation *qua* medical expenses on future treatment.

Counsel for the insurance companies have supported the award with regard to quantum of compensation assessed by the Tribunal.

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

Usha Rani, claimant tendered into evidence her affidavit

Ex.PW1/A by way of examination-in-chief wherein she has categorically attributed high speed, rashness and negligence to drivers of three-wheeler No.HR-63-A-9818 used by the victim as well as three-wheeler No.HR-63-A-8247. In her cross-examination by counsel for respondents No.1 and 2 before the Tribunal (driver and owner of vehicle No.HR-63-A-9818) she has denied a suggestion that accident took place due to negligence of respondent No.1. In her cross-examination by counsel for respondent No.4, driver of vehicle No.HR-63-A-8247, a relevant extract from her testimony reads as follows:-

“It is wrong to suggest that no accident took place with vehicle No.HR-63-A-8247. It is correct that the accident took place due to the sole and negligent driving of driver of vehicle bearing registration No.HR-63-A-9818. It is wrong to suggest that the driver of the three-wheeler No.HR-63-A-8247 was also driving the vehicle in normal speed. It is wrong to suggest that I am deposing falsely”.

The claimant examined Sunita Devi, her co-traveler in vehicle No.HR-63-A-9818. Sunita Devi tendered into evidence her affidavit Ex.PW/2 and reiterated the version set up by the claimant and brought-forth in her examination-in-chief by way of affidavit Ex.PW1/A. Sunita Devi was cross-examined at length by counsel representing two sets of respondents. In her cross-examination by counsel representing vehicle No.HR-63-A-8247, the witness has deposed in the following manner:-

“It is correct that respondent No.1 was asked many times to drive the three-wheeler in a proper manner. Volunteered the accident took place due to the rash and

negligent driving of both the drivers of both three-wheelers”.

When statement of the two witnesses Usha Rani and Sunita Devi are read in its entirety and in conjunction with each other, it is difficult to accept contention of counsel for the insurance company of vehicle No.HR-63-A-8247 that the accident was caused due to sole rash and negligent driving of driver of vehicle No.HR-63-A-9818. I would hasten to add that driver of vehicle No.HR-63-A-8247 did not appear in the witness-box to controvert the statements of Usha Rani and Sunita Devi that vehicle No.HR-63-A-8247 was not driven by him at a high speed, rashly and negligently and did not hit three-wheeler in which Usha Rani and Sunita Devi were traveling. In this view of the matter, the appellant – insurance company cannot successfully seek set-aside of the findings of the Tribunal by referring to a single sentence from statement of Usha Rani. On the contrary, I find merit in contention of counsel representing the insurance company of vehicle No.HR-63-A-9818 that the findings recorded by the Tribunal attributing negligence to both the vehicles to the extent of 50% each and apportioning the compensation in the same proportion are liable to be affirmed and ordered accordingly.

This brings the Court to the plea of the claimant for grant of compensation in regard to expenses on medical treatment in future. Indisputably, the accident in question took place in April, 2011. A period of more than 5 years has elapsed since that time. The claimant has not filed an application for additional evidence nor produced any documents in regard to her treatment subsequent to the award passed by

the Tribunal much less any expenditure incurred by her. On a pointed query raised by the Court, counsel for the claimant is not in a position to say that the claimant got any treatment after passing of the award inviting spending of money and thus entitling the claimant to seek compensation with regard to treatment in future. In this view of the matter, plea of the claimant for compensation *qua* future treatment is not tenable and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeal preferred by the insurance company fails and is accordingly dismissed. The cross-objections filed by the claimants are not tenable and accordingly rejected. No order as to costs.

22.10.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No