In the High Court of Punjab and Haryana at Chandigarh

1. **F.A.O No. 1402 of 1994**
Date of Decision: 24.5.2017

United India Insurance Company ......Appellant

Versus

Sumitra and others ....Respondents

2. **F.A.O No. 1403 of 1994**

United India Insurance Company ......Appellant

Versus

Sonna and others ....Respondents

3. **F.A.O No. 1404 of 1994**

United India Insurance Company ......Appellant

Versus

Sabhu Ram and others ....Respondents

4. **F.A.O No. 1405 of 1994**

United India Insurance Company ......Appellant

Versus

Baljinder Kaur and others ....Respondents

5. **F.A.O No. 1406 of 1994**

United India Insurance Company ......Appellant

Versus

Sabhu Ram and others ....Respondents

6. **F.A.O No. 1407 of 1994**

United India Insurance Company ......Appellant

Versus

Ramalo Devi and others ....Respondents

7. **F.A.O No. 1408 of 1994**

United India Insurance Company ......Appellant

Versus

Sabhu Ram and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate
for the appellant.

Mr. H.S.Dhandi, Advocate
for respondents No. 8 to 10 (in FAO-1402-1994)
for respondents No. 5 to 7 (in FAO-1403-1994)
for respondents No. 5 to 7 (in FAO-1404-1994)
for respondents No. 4 to 6 (in FAO-1405-1994)
for respondents No. 6 to 8 (in FAO-1406-1994)
for respondents No. 7 to 9 (in FAO-1407-1994)
for respondents No. 5 to 7 (in FAO-1408-1994)

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ANITA CHAUDHRY, J

These are seven appeals filed by the insurance company disputing their liability as a fabricated and a concocted version was given and the driver was changed as the person named in the FIR possessed a fake driving licence.

The paper book of these appeals had been burnt. The zimni orders which are available show that service had been effected on the respondents, Sh. Maharaj Baksh Singh, Advocate had appeared for the respondents. Since no other record was available therefore initially an order was passed that the presence of the claimants was not required and the appeals as against the claimants were dismissed and notice was only ordered to be issued to the remaining respondents but thereafter notice was again ordered to be issued to claimants. The zimni orders later on show that the appeals as against the driver i.e. Surinder Singh and the unserved respondents i.e. respondents No. 1 and 3 (in FAO Nos. 1402, 1403, 1404, 1406, 1407 and 1408 of 1994) and respondent No. 1 (in FAO-1405-1994) was dismissed for not furnishing the correct address.

The facts first: A Maruti Van bearing registration No. CHK-5318 was proceeding from village Bhawanigarh to Patran on 25.6.1992. Rajinder Singh was on his motor cycle and was returning from Samana and the Maruti Van was ahead of him. A truck bearing registration No. PCH-5051 came from the opposite direction and struck against the Maruti Van. The Maruti Van was crushed. The impact was high. Rajinder Singh stopped to help and saw the passengers were gasping for breath. Some other vehicles also stopped to help. The window panes were broken and the injured were taken out. They were sent to Civil Hospital. Three people by then had died. The driver of the truck, Surinder Singh son of Mehnga Singh was named in the FIR.

The police presented the challan against Surinder Singh and took his driving licence into possession. A photographer was called who took the photographs.

Ten claim petitions were filed out of which some of the claimants were seeking compensation for the deaths and some for injuries. It was claimed that the accident was caused by Surinder Singh.

In the joint written statement filed by respondents No. 1 to 4 it was pleaded that at the relevant time Surinder Singh was not driving the truck and the truck was driven by Kulwant Singh-respondent No. 2 and the accident did not occur on account of his negligence and the driver of the Maruti Van was overloaded and it came from opposite side and struck against the truck and the driver was drunk.

The insurance company took the plea that the driver did not have a valid driving licence and they were not liable.

Though in the claim petitions, the claimants have pleaded that the accident was caused by Surinder Singh but while leading evidence the injured made a different statement and stated that the accident was caused by Kulwant Singh. The Tribunal held respondent No. 2 to be responsible for the accident as a letter written by Kulwant Singh to the insurance company was produced. The Tribunal held that the letter established the genuineness of the respondent and the plea of change of driver was negated. The liability of payment of compensation was placed on respondents No. 2 to 5 jointly and severally.

The insurance company in these appeals only addresses the point that the driver had been switched and there was no proof that Kulwant was on the spot or was driving. The record of the criminal file was called.

I have heard both the sides.

Counsel for the insurance company submits that a Maruti Van loaded with passengers met with an accident in 1992 and Rajinder Singh the eye witness lodged the FIR the same day against the truck driver and named Surinder Singh its driver and the police had presented the challan against Surinder Singh and the trial ended in acquittal. It was urged that the owner wrote a letter to the insurance company that the vehicle at the relevant time was being driven by him and this was done with a design as he knew that their driver Surinder Singh had a fake driving licence. It was vehemently urged that it was unheard that the owner would come forward and plead his own involvement. It was urged that no application was given to the police and they allowed the driver to be challaned with a view to get an acquittal there and the claimants also changed their stand before the Tribunal as they were made to probably understand that they would not be able to recover the compensation and joined hands with the owner and changed their stand before the Tribunal. It was urged that the driver had been switched as the owner feared that the compensation would be very high on account of number of deaths, and it was a well planned game plan that the owner got the claimants to woo to his side and the claimants agreed and the plan fell into place. It was urged that the Tribunal wrongly accepted the owner's statement observing that it was a *bona fide* statement but the reality was that the owner wrote a letter to divert the course of the trial and to play fraud upon the insurance company. It was urged that had the fact been true and if the owner had *bona fidely* moved an application then he would have also written to the Superintendent of Police. It was urged that the driver did not claim that he was not driving the vehicle at the relevant time. It was urged that Surinder Singh was challaned and it is his driving licence which was taken into possession and had faced the trial. It was urged that since half of the amount had been paid they may be granted recovery right to recover the same from the owner.

On the other hand, the submission on behalf of the respondents was that the witnesses who had appeared before the trial Court were categoric that the accident was caused by Kulwant Singh and not by

Surinder Singh and the police had wrongly challaned Surinder. It was urged that the claimants had also stated before the Court that it was Kulwant who was driving the vehicle and therefore the liability of payment of compensation was placed on respondents No. 2 to 5.

The involvement of truck bearing No. PCH-5051 is not disputed. The main witnesses was Rajinder Singh who was travelling on the same road. He had witnessed the occurrence. It is at his instance that the FIR was lodged. The accident occurred at about 5.00 P.M. The FIR was lodged the same day at 6.45 P.M. The police had arrived on the scene and had taken the photographs. The accident had occurred when the truck driver went to the wrong side and as a result the front portion of the Maruti Van was completely crushed. The casualty was high. In a strange manner, one of the owners of the truck approached the insurance company and wrote a letter that he (Kulwant) was driving the truck on the fateful day. No such application was given to the police. The driver had been arrested earlier. His driving licence was taken into possession on 30.6.1992. The challan was prepared on 4.7.1992. The application which was given by Kulwant to the insurance company is Ex. R-4 is dated 2.7.1992. Copy of this letter was not endorsed or marked to any police officer. The police did not take the driving licence of Kulwant Singh in their possession. Before the criminal Court the witnesses failed to appear despite a number of opportunities. Only the official witnesses i.e. the photographer, motor mechanic and the police officials and the doctors and Rajinder Singh had appeared. Rajinder had named Surinder as its driver. The trial ended in acquittal on 21.3.1998. The Tribunal had passed the award in October 1993.

Before the Tribunal the author of the FIR was not examined.

Pritam Singh and Surja who were injured were examined. Both these persons are residents of Bhawanigarh. In their statement to the police, they had not named the driver but had stated that they could recognize him if brought before them. When they stepped into the witness box before the Tribunal, Pritam Singh stated that he knew driver Kulwant Singh. What is interesting is the cross-examination. The counsel who was representing Surinder Singh and Kulwant Singh asked the witnesses to identify the truck driver. The witnesses pointed out towards Kulwant Singh. He was only present in the Court. The Tribunal had noted that on that day, Surinder Singh named in the FIR was not present. This goes to show how the fraud had been perpetuated by the owner. In the claim petitions the plea was that it was Surinder who was driving the truck. At the evidence stage the two witnesses who had suffered massive injuries and fractures had stated that they had seen the driver. It was not possible for the injured to see the driver. The front part of the van was crushed, the windows had to be broken to take them out. It is difficult to believe that the truck driver would have stayed on the spot. It is not the case of either of the persons that the driver had helped them out. It is also difficult to accept that Pritam Singh would know the owner. They were not the residents of the same area i.e. Hoshiarpur. It is difficult to accept that they were known to each other. Had it been so, Pritam Singh would have named him in his statement under Section 161 Cr.P.C.

The conduct of the driver namely Surinder Sigh is also unnatural. He had been named in the FIR. His driving licence was taken into possession. If he was not driving the vehicle he would have made a complaint to the police or to the higher authorities. There was no reason for him to remain silent when his employer was supporting him.

The author of the FIR was the most crucial witness. He was kept away. The reason is easy to find. He was a stranger and did not want to tow their line. Before the criminal Court Rajinder had named Surinder as the driver responsible for the accident. An adverse inference should be drawn against the claimants for withholding the author of the FIR. It is a case of collusion. The driver had been changed. The owner stepped forward to fill in that space, he knew that his driver did not have a valid driving licence. The insurance company had proved that the driving licence of Surinder Singh was fake.

In the light of above, it is held that the owner had played fraud with insurance company as well as the Court. The Tribunal dealt with the case in a very light manner. The liability could not be placed upon the insurance company. The finding recorded against the insurance company is set aside. Recovery rights are given to the insurance company to recover the amount, already paid, from the owner.

All the appeals are allowed.

(ANITA CHAUDHRY)
JUDGE

May 24, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes