IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.345

FAO No.2080 of 2005
Date of decision : 07.11.2017

The Oriental Insurance Company Limited ..... Appellant

VERSUS

Anuradha and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. D.P. Gupta, Advocate, for the appellant.

Mr. B.S. Jaswal, Advocate, for respondent No.2.

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SUDHIR MITTAL, J. (Oral)

The present appeal has been filed by the Oriental Insurance Company Limited, against the Award dated 16.02.2005 passed by the learned Motor Accidents Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal').

2. A road accident took place on 02.08.2002, in which Anuradha minor daughter of Sarwan Kumar (respondent No.1-claimant) received injuries. She was returning home from Talwara at about 2.15 p.m. and had just crossed the railway crossing. She was going ahead of her parents when she was hit from behind by a Mohindra Trax Jeep No.PB-07-J-2898 being driven in a rash and negligent manner. The vehicle was stopped at some distance by Shingara Singh (respondent No.2) driver of the offending vehicle. Anuradha received injuries and became unconscious and while her parents were attending to her, respondent No.2, ran away from the scene alongwith offending vehicle. She remained admitted in Surgeons Hall, Ludhiana, upto 12.08.2002. FIR No.34 of 2002 under Sections 279, 337 and

338 IPC, was registered at the instance of Sarwan Kumar (father of Anuradha). As a result of the accident, she suffered an injury on her shoulder as well as in her brain and according to the medical opinion, she would need treatment for the rest of her life on account of brain injury.

3. The learned Tribunal granted a compensation of ₹82,000/- in favour of the claimant alongwith interest @ 9% per annum from the date of claim petition till the date of payment. The claimant felt satisfied with award because no appeal has been filed by her for enhancement. The liability has been imposed upon the owner, driver as well as the Insurance Company, jointly and severally.

4. In this appeal filed by the Insurance Company, the only issue is whether the learned Tribunal was justified in holding it liable because in this case, no driving licence has been brought on record implying that the driver was not holder of a driving licence at all. Learned counsel for the appellant submits that the driver (respondent No.2) did not put in appearance despite service and despite bailable warrants of arrest having been issued against him. The owner (respondent No.3) also could not produce the driving licence, although, in her examination-in-chief, she had stated that 'she had seen the driving licence of respondent No.1 and has also checked his driving skills.' Learned counsel appearing for the driver (respondent No.2) submits that due to unexplained circumstances, he could not put in appearance before the Tribunal and thus, was not in a position to produce his licence.

5. I am informed that the award of the Tribunal stands satisfied by the appellant-Insurance Company and therefore, I do not deem it necessary to dwell upon the question any longer. Suffice to say that it is proved that no driving licence exists on the record of this case nor has one been placed

on the record of the criminal case. In this view of the matter, the appeal is partially allowed and the Insurance Company is given the right to recover the amount paid, from the driver as well as the owner of the offending vehicle, whose liability is held to be jointly and several.

(SUDHIR MITTAL)
JUDGE

November 07, 2017
Ramandeep Singh

Whether speaking / reasoned Yes / No

Whether Reportable Yes/ No