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

Date of decision : 16.11.2017

1.

FAO No.1916 of 2011 (O&M)

Krishan Kumar

... Appellant(s)

Versus

Naresh and others

... Respondent(s)

2.

FAO No.1917 of 2011 (O&M)

Lila Ram @ Jasbir Singh and others

... Appellant(s)

Versus

Naresh and others

... Respondent(s)

3.

FAO No.1918 of 2011 (O&M)

Krishan Kumar

... Appellant(s)

Versus

Naresh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.S.S. Sisodia, Advocate
for the appellant(s).

None for respondent Nos.1 and 2.

Mr. Sandeep Suri, Advocate
for respondent No.3/National Insurance Company Ltd.

AMIT RAWAL, J. (ORAL)

CM-5851-CII-2011 IN FAO-1916-2011

CM-5854-CII-2011 IN FAO-1917-2011

CM-5857-CII-2011 IN FAO-1918-2011

Deficiency of the Court fee has been made good.

CMs stand disposed of.

CM-5853-CII-2011 IN FAO-1916-2011

CM-5856-CII-2011 IN FAO-1917-2011

CM-5859-CII-2011 IN FAO-1918-2011

For the reasons stated in the applications which are duly supported by an application, the applications are allowed and the delay in re-filing the appeal is condoned.

MAIN CASES

This order of mine shall dispose of the aforementioned three appeals preferred by the appellant(s)-claimant(s) being the LR's of the deceased Sahab Kaur, aged 52 years and Surendra, aged 25 years working as a Labourer, Mausham aged 12 years, in respect of a vehicular accident having been taken place on 29.07.2007, while travelling in a jeep bearing Registration No.HR-61-4347, against the Award dated 21.08.2009 passed by the Motor Accident Claims Tribunal, Bhiwani (in short 'the Tribunal'), whereby the claim petitions after assessing the compensation have been dismissed on the ground that the appellant(s)-claimant(s) have failed to prove that the jeep had met with an accident and by relying upon the statement of PW-2 Lila Ram @ Jasbir Singh.

Learned counsel for the appellant(s)-claimants submits that learned Tribunal has committed illegality and perversity in referring to the statement of PW-2 Lila Ram @ Jasbir Singh, who in examination-in-chief stated that the offending jeep was following his jeep and his relatives were also travelling in the aforementioned jeep, but in the cross-examination, it surfaced that the jeep was coming from opposite side and on this premise, learned Tribunal found that he had not been consistent and coherent in his statement and dismissed the claim petitions. It did not advert to the statement of PW-3, namely, Tasbir Singh, a passenger in a jeep and RW-1

Naresh Kumar, owner of the jeep as both of them admitted the occurrence of the accident.

He further submits that the Insurance Company has been absolved on the premise that in view of the statement of PW 3- Tasbir Singh, there was an apparent breach of the terms and conditions of the policy as the passengers in the jeep were being ferried on charging of @ ₹ 4/-, which they were paid on the termination of the journey, thus, the award of the learned Tribunal viz-a-viz the findings rendered on issue No.1 are liable to be modified and compensation already assessed may be ordered to be maintained. During the course of the arguments, he has referred to the statements of PW-3 and RW-1.

Learned counsel for the Insurance Company submits that originally the name of the driver in the claim petitions was referred to Naresh Kumar as RW-1, but later on an amendment was sought and Talu Ram was introduced as a driver of the vehicle, thus, the claimants were not aware of even the particulars of the driver. The statement of PW-2, if read in conjunction, spilled the beans that vehicle was not involved, much less, the passengers sustained the injuries, were travelling in offending jeep bearing Registration No.HR-61-4347, thus, the award of learned Tribunal is based upon the testimonies of the witnesses, which cannot be tinkered with until and unless a grave illegality is pointed out, which is conspicuously wanting in the present case. The finding on issue No.10 is also liable to be upheld in favour of the Insurance Company in view of the fact that PW-3 had admitted in the cross-examination of making the payment of ₹ 4/- as fare, therefore, there was a breach of the terms and conditions of the policy, thus, urges this Court for dismissal of the appeals.

There is no representation on behalf of respondent Nos.1 and 2 despite service and accordingly, I proceed to decide the appeals on merits.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is a force and merit in the submissions of Mr. Sisodia viz-a-viz the findings arrived at by the Tribunal on issue No.1, for, no doubt PW-2 in cross-examination did not stick to the stand taken in the examination-in-chief, whereby he stated that the offending jeep was following his jeep, in which, he was carrying the vegetables, but in cross-examination, admitted that his jeep was coming from the opposite direction of the offending jeep. The aforesaid testimony, in my view, could not be a clincher for the Tribunal to opine against the claimants, had the statement of PW-3, tendered in evidence and as well as in cross-examination and that of RW-1, been read conjunctively. For the sake of brevity, the examination-in-chief and cross-examinations of PW-3 Tasbir Singh and RW-1 Naresh Kumar reads as under:-

"Affidavit of Tasbir Singh son of Bedharak Singh, aged about 28 years, resident of Village Kakroli Hukmi, Tehsil Charkhi Dadri, District Bhiwani.

I, the above name deponent do hereby solemnly affirm and declare as under:-

1. That the deponent herein is one of the petitioners of this petition and one of the sons of the deceased Ompati. Mother of the deponent namely Ompati along with her grant daughter Mausham, deponent, here Samdhan namely Sahab Kaur and brother-in-law of the deponent namely Surender was travelling on a jeep bearing registration No.HR-61-4347 on 29.07.2007 and was coming from village Lad to her village Kakroli Hukmi. This vehicle was being driven by the respondent No.1. The brother of the deponent namely Lila Ram alias Jasbir

Singh use to ply his vehicle regularly for carrying green vegetables and on the fateful night of accident, he was also at Badhra chowk along with his vehicle for returning to his village. Both the vehicle started from Badhra Chowk to village Kakroli Hukmi and the jeep No.HR-61-4347 was following the vehicle being driven by the brother of the respondent i.e. petitioner No.1.

2. *That the respondent No.1 was driving his vehicle at high speed and the persons sitting therein including the deponent asked the respondent No.1 to drive properly. But the respondent No.1 did not care for the objections raised by the occupants and soon after the same the vehicle being driven by respondent No.1 came down the road and hit a standing kinar tree as a result of which the jeep turned turtle and as such all the occupants of the vehicle in question sustained multiple injuries. Due to impact of the accident, the mother of the deponent namely Om Pati and mother-in-law of the petitioner No.1 died on the spot. The accident was also witnessed by the deponent being one of the occupants of the offending vehicle in addition to his brother petitioner No.1 and on the statement of his brother FIR No.186 dated 29.07.2007 under Sections 279/337/304-A IPC was registered against the respondent No.1 for his rash and negligent driving and autopsy of the deceased mother of the deponent was conducted by the medical Officer of General Hospital, Charkhi Dadri, vide PMR No.VS/21/07/CD dated 29.07.2007.*

3. *That the respondents being driver/owner and insurance company of the offending vehicle are jointly and severally liable to compensate the petitioners including the deponent as the accident took place due to sole rash and negligent driving on the part of the respondent No.1 and the petitioners including the deponent being victim of the accident are entitled to amount of compensation from the respondents, as prayed for.*

Cross-Examination

XXXX by Sh. D.V. Lamba, Advocate for respondent Nos.01 and 02 and Sh. M.L. Sardana, Advocate for respondent No.03.

I was also sitting in marshal jeep. We were coming from village Lad to village Kakroli Hukmi. It is incorrect to suggest that I did not witness the accident in question. PW Lila @ Jasbir is my brother. It is incorrect to suggest that the story given by me in my affidavit that offending vehicle was being followed by PW Lila is false. It is also incorrect to suggest that false petitions have been filed by us to claim compensation. The vehicle driven by my brother Lila was not owned by him. I did not received any injury in the accident. It is incorrect to suggest that accident in question was not caused due to rash and negligent driving of respondent No.01.

There were five passengers including driver of Bolero vehicle. No fare was taken from us because the accident took place prior to our destination. It is correct that driver of these Bolero used to charge ₹ 04/- as of fare from Badhra to Kakroli Hukmi but we did not pay any fare and boarded this bolero otherwise. We did not pay fare because just after covering 02/2.5 kms accident took place. Had the accident no take place we would have paid fare. T hat bolero used to carry passengers upto Bhiwani."

RW-1 Statement of Naresh Kumar (Deponent) in shape of**Affidavit**

I, Naresh Kumar, aged 25 years son of Shrilshwar, R/o Badhra Tehsil, Charkhi Dadri District Bhiwani (Haryana) do hereby solemnly affirm and state as under:-

1. That I am the Registered owner of Vehicle No.HR 61-4347 Bolero XI AC alleged to be involved on the date of accident. The original RC of the vehicle is on file of Hon'ble Court of SDJM Charkhi Dadri in FIR No.106 dated 29.07.2007 PS Badhra under Sections 279, 337, 304-A IPC against Talu Ram S/o Hazari Lal R/O Pinjo Khera District

Bhiwani.

2. *That on the fate date of accident the at the time of accident the vehicle was driven by Talu Ram S/o Hazari Ram R/o Village Pinjo Khera District Bhiwani having valid driving licence No.3666 SDR dated 25.08.2005 issued by Licencing Authority Ratia (Fatehabad). I was seating by the side of the driver. I am handicapped and unable to drive any type of vehicle. My name as driver of the vehicle has falsely been included in the FIR with collusion. Question of driving the alleged vehicle involved in the accident does not arise at all. The vehicle was being driven at a moderate speed all of a sudden a cow (Neel Gai) come on the road and a truck was also coming from the opposite side to save the Neel Gai and to avoid accident with the truck the Driver applied sudden brakes on sudden arrival of a cow (Neel Gai) on the road which instead of stopping the vehicle and failure of shock observers the vehicle turned turtle which was beyond the control of driver of the vehicle. The accident if any h as taken place due to act of God. After accident the deponent made telephone calls and arranged for another vehicle and evacuate all the injured persons to Hospital. No other vehicle was following the vehicle of deponent. In fact Lila Ram @ Jasbir Singh was not at all present at the scene of accident and wrongly lodged the FIR just to get compensation. In fact all the injured were removed to hospital by the owner of the vehicle. The accident took place due to the rash and negligent driving of the driver of the vehicle as alleged. The accident if any, has taken place due to act of God beyond the control of owner and driver of the vehicle.*

Cross-examination

"I tender into evidence my affidavit Ex.R-01 which may be read as a part of my statement. Photocopy of RC of vehicle No.HR-61-4347 is mark RA and photocopy of driving licence of Talu Ram is mark RB.

XXXX by Sh. Sunil Sheoran, Advocate counsel for claimants.

It is correct that Smt. Ompati, Sahab Kaur, Mausham and Surender died in this accident. It is incorrect to suggest that I was driving offending vehicle No.HR-61-4347. It is correct that FIR was registered against me. At his own stated Talu Ram driver of the vehicle ran away from the spot as I failed to run away and had received injuries in this accident and that a false FIR has been registered against me. It is incorrect to suggest that driver has been changed in connivance with the police. It is incorrect to suggest that I was driving the jeep at a very fast speed rashly and negligently. It is incorrect to suggest that after the accident, I ran away from the spot and did not take the injured to hospital. At his own stated, I myself took the injured to the hospital.

XXX by Shri M.L. Sardana, Advocate counsel for respondent No.03.

It is correct that I have no driving licence. There were seven passengers in the jeep including driver. It is correct that jeep was insured as private vehicle. None of the other passengers were my relatives but they were known to me because brother of the deceased used to drive vehicle and was known to me. I did not complain to higher authorities in writing about my false implication in criminal case. It is incorrect to suggest that as I was not having driving licence, therefore, driving of vehicle was changed or that vehicle was being plied as a taxi. I was not having any permit to ply this vehicle as a taxi. It is incorrect to suggest that I was deposing falsely to escape from liability to pay compensation."

On going through the statements of Naresh Kumar and as well as of Tasbir Singh, I am of the view that the factum of the jeep having been involved in the accident on the aforesaid date has been admitted and this fact, in my view, had grossly been ignored by learned Tribunal. Now, the

question which arises before this Court for adjudication in the present case, is that "whether the jeep was being driven rashly and negligently" as the claim petitions were filed under the provisions of Section 166 of the Motor Vehicles Act and not under Section 163-A. For answering the aforesaid question, again a reference would be made to the statement and cross-examination of RW-1 Naresh Kumar *ibid*, who unequivocally stated that he was also travelling in the same jeep, but was not driving, being handicapped. The fact of the matter is that if cow (Neel Gai) had come in front of a jeep, had it been driven at a moderate speed, it would not have turned turtle on the left side of road by hitting the *Kikar* tree on the side of the road, but would have stopped on either the side of the road or in the middle, therefore, the possibility of the jeep being driven little faster than what he has been explained cannot be ruled out. The death of the persons, aforementioned on account of the injuries sustained, has also not been denied. Learned Tribunal has heavily relied upon the cross-examination of PW-2 Lila Ram @ Jasbir Singh viz-a-viz the fact that he did not receive the injuries and found it to be an imaginative, in my view, in many cases, it has been seen that many passengers have come unscratched in an accident owing to sheer luck and that cannot be an issue for denying the compensation to the claimants being LR's of the deceased, who have been deprived of the love and affection and company of husband, mother and child. On cumulative reading of the findings of mine as well as on reading of the statement of PW-3 and RW-1, I am of the view that the findings of the learned Tribunal on issue No.1 are not sustainable and the same are hereby set aside.

Since learned counsel for the claimants has not pressed for

enhancement of compensation as assessed by the Tribunal, the findings viz-a-viz the assessment of compensation are upheld.

As regards the findings on issue No.10, I am of the view that there has been a categoric statement of PW-3 that passenger had paid a fare of ₹ 4/- on the termination of the journey to the driver of the jeep, thus, in my view, apparently the jeep was being driven in defiance to the terms and conditions of the policy and therefore, the Insurance Company cannot be called upon to indemnify the insured, thus, the findings on issue No.10 are upheld, but with a rider that since the compensation as assessed has been upheld and findings on issue No.1 have been reversed, respondent No.3/Insurance Company is directed to pay the entire compensation to the claimants as assessed by the Tribunal along with interest @ 6% from the date of filing of the claim petition till realization, within a period of three months from the date of the receipt of the certified copy of the order, failing which, it entails further interest @ 12%.

However the recovery rights are given to the Insurance Company to recover the amount of compensation from the owner in view of the fact that the vehicle was being driven in defiance to the terms and conditions of the policy.

Resultantly, the appeals are allowed and the award is modified in the aforesaid terms.

16.11.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes**

Whether Reportable **Yes**