

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.5117 of 2012
Date of Decision.15.11.2017

Bharti Axa General Insurance Co. Ltd.Appellant

Vs

Harvinder Singh and othersRespondents

2. **FAO No.6575 of 2012**

Harvinder Singh @ Pal SinghAppellant

Vs

Mahinder Singh and othersRespondents

Present: Mr. Subhash Goyal, Advocate
for the appellant in FAO No.5117 of 2012 and
for the insurance company in FAO No.6575 of 2012.

Mr. DPS Bajwa, Advocate
for the appellant in FAO No.6575 of 2012 and
for the respondent No.1 in FAO No.5117 of 2012.

Mr. R.K. Saini, Advocate
for respondent Nos.1 to 3 in FAO No.6575 of 2012 and
for respondent Nos.2 to 4 in FAO No.5117 of 2012.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals bearing Nos.5117 of 2012 and 6575 of 2012. The former is at the instance of the insurance company challenging the liability fastened upon it and the latter is at the instance of the claimants seeking enhancement of the compensation.

Mr. Subhash Goyal, learned counsel appearing on behalf of the insurance company submits that the Tribunal has committed illegality and perversity in not apportioning the liability. As per the uncontroverted facts

and evidence brought on record that the claimant Harvinder Singh @ Pal Singh, who was driving the motor cycle bearing registration No.HYZ-2740 on 16.08.2010 had hit a stationary truck bearing registration No.HR-46-7000, which was parked on the road without any indicator and signal and in this manner, fastening of liability on the insurance company of the truck i.e. the appellant-Bharti Axa General Insurance Co. Ltd. instead of the driver of the motor cycle, who was equally negligent, is wholly perverse and fallacious. In support of his contentions, relies upon the judgments of Hon'ble Supreme Court in **Raj Rani and others Vs. Oriental Insurance Co. Ltd. And others 2009 ACJ 2003; Sri Krishna Visheshwar Hegde Vs. General Manager, Karnataka State Road Transport Corporation 2008 ACJ 1617** and judgment of this Court rendered in **The New India Assurance Company Ltd. Vs. Smt. Harbans Kaur and others (2010-4) Vol. CLX PLR 422**. In the aforementioned judgments the contributory negligence was assessed in the ratio of 50:50, 50:50 and 60:40 respectively between the insurance company and the claimant.

On the other hand, learned counsel appearing on behalf of the claimant-respondent in the appeal of the insurance company and appellant in FAO No.6575 of 2012 submits that the Tribunal has committed illegality and perversity in awarding an amount of ₹10,000/- on account of pain and suffering as the claimant was hospitalized for a period of about 40 days and thereafter, subsequent follow up treatment on account of multiple injuries received in the aforementioned accident. No doubt the claimant has been provided the expenditure incurred on the medicines but no compensation provided on account of transportation, attendant charges and special diet, thus, there is further scope of enhancement.

The accident had taken place at about 10.30 PM on 16.08.2010 and in the absence of any blinkers or any sign boards/reflectors, the truck parked could not be seen, resulting into aforementioned accident. Had the truck driver been taken the appropriate measures, the accident could have been avoided, even at the last minute. Even the FIR had also been registered against the driver of the truck. All these factors show that there was a sheer negligence of the truck driver, therefore, the award of the Tribunal *viz-a-viz* the apportioning of the liability cannot be tinkered with.

During the course of arguments, learned counsel appearing on behalf of the insurance company also submits that the liability could not be fastened upon the insurance company as the scanned report of the Licensing Authority, Mathura was brought on record as Ex.R7 reporting the driving licence Ex.R5 of the driver of the truck to be a fake one, thus, the insurance company ought to have been given the recovery rights against the owner and driver of the truck.

In rebuttal, Mr. Saini, learned counsel appearing on behalf of the owner and driver of the truck submits that the scanned copy of the report of the Licensing Authority was not proved on record through the testimony of any witness from the Licensing Authority, Mathura. Mere exhibition of the document does not dispense with its proof. In support of his contention, relies upon the judgment of Hon'ble Supreme Court in *Sait Tarajee Khimchand And Ors. vs Yelamarti Satyam Alias Satteyya and others AIR 1971 SC 1865*, thus, rightly so the liability was fastened upon the insurance company.

I have heard learned counsel for the parties, appraised the paper book and of the view that the appeal of the insurance company is liable to

be accepted in part. The driver of the motor cycle had to drive at a moderate speed so that he could avoid the collision even at the last minute. Thus, an irresistible conclusion is that his speed was little higher than the moderate, which resulted into collision and sustaining of multiple injuries. The factum of stationary truck parking on the road without any indication/blinker has also remained uncontroverted. In my view, the Tribunal ought to have apportioned the liability in the ratio of 75:25 between the truck and the motor cycle. Resultantly, the award of Tribunal to the extent of fastening the liability wholly upon the insurance company is hereby modified.

Now coming to the argument of giving recovery rights owing the driving licence to be found fake, I am of the view that the finding rendered by the Tribunal in this regard cannot be interfered with for want of proving the scanned report Ex.R7. No witness from the concerned Licensing Authority, Mathura has been examined, in essence, driver and owner of the vehicle have been prevented from cross-examining the aforementioned witness with regard to authenticity/genuity of the driving licence, thus, the argument aforementioned is not tenable.

As regards the quantum of compensation, I am of the view that owing to the fact that expenses incurred on the medicines were to the tune of ₹2,18,500/- and the period of hospitalization from 16.08.2010 to 26.09.2010, the amount of ₹10,000/- towards pain and suffering is too meager. I will increase the same from ₹10,000/- to ₹35,000/-. I will also provide ₹25,000/- towards loss of amenities of life, ₹5,000/- towards special diet, ₹5000/- towards attendant charges and ₹2500/- for transportation. Rest of heads of claims are upheld i.e. ₹2,18,500/- towards medical bills and ₹20,000/- for stay in hospital. In total, the compensation payable shall be

₹3,11,000/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. However, 25% of the total compensation shall be deducted towards negligence attributed to the claimant-appellant, in essence, the liability of the insurance company to satisfy the amount of compensation shall be to the extent of 75% only.

The award passed by the Tribunal is modified to the above extent and both the appeals are disposed of in the above terms.

(AMIT RAWAL)
JUDGE

November 15, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes