

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

FAO No. 6320 of 2012 (O&M)

Date of Decision:- 07.12.2017

Mohan Singh

....Appellant

Versus

Oriental Insurance Co. Ltd. & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. H.S.Saggu, Advocate, for the appellant.

Ms. Madhu Sharma, Advocate, for respondent No.1.

None for respondent Nos. 2 to 4.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed by owner of the tractor bearing registration No. PB-11P-4743 (for short, 'the offending vehicle') against the award dated 01.06.2010 passed by Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal').

On 07.06.2006, Baldev Singh was going on his scooter bearing registration No. CH-010H/4765. The scooter was struck by rashly and negligently driven offending vehicle. As a result of the accident, he suffered multiple injuries and died instantly. FIR No. 72, dated 07.06.2006 (wrongly mentioned as 07.06.2000 in the award) was registered.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased. The Tribunal after appreciating the facts and considering the evidence produced awarded a sum of Rs.5,10,000/- along with interest @6% per annum.

In the award it was held that the driver of the offending vehicle was not holding a valid licence and hence recovery rights were given to the insurance company.

Aggrieved of the said award, the present appeal has been filed by the owner of the offending vehicle.

I have heard learned counsel for the parties; perused the paper-book and the record.

There is no dispute raised on the facts by either of the parties i.e. involvement of the offending vehicle, rash and negligent driving of the offending vehicle and calculation of loss of dependency.

Learned counsel for the appellant argued that the accident occurred on 07.06.2006 and the driving licence was renewed on 04.07.2006. Earlier this licence was valid from 13.01.1988 to 12.01.1991. He contends that since this licence was never suspended therefore it was valid at the time of the accident. He further relied upon the fact that the driver has been acquitted in the criminal proceedings to prove that the vehicle was not involved in the accident.

Learned counsel for the insurance company has argued that there was no valid licence with driver of the offending vehicle at the time of accident. It has further been argued that it has been proved by deposition of eye-witness and other evidence that the said tractor was the offending vehicle in the accident.

The contentions raised by learned counsel for the appellant have no substance and deserve rejection.

The Apex Court in case of **Kamlesh and Ors. Vs. Attar Singh**

and Ors, 2015(15) SCC 364 had held that registration of the case by the police against the driver and filing of the charge-sheet cannot be said to be conclusive. The Supreme Court held as under :-

“8. We have heard learned counsel for the parties and perused, inter alia, the evidence on record of Ram Parshad PW2 and Devender PW.3. The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the vehicles, that is the driver of Maruti car and driver of tempo. Though Police has registered a case against driver of the tempo Attar Singh and has filed a chargesheet but the same cannot be said to be conclusive. Though, Attar Singh has stated that it was in order to oblige the driver of the Maruti car, a case was registered against him. Be that as it may. It appears both the drivers have tried to save their liability. In such circumstances, the version of eye-witnesses, PW.2 and PW.3 assumes significance. The fact remains that car had dashed the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High Court to appreciate the evidence and method and manner in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were clearly negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of

composite negligence. Both the drivers were joint ‘tort-feasors’, thus, liable to make payment of compensation.”

Similarly, this Court in ***Anguri Devi and others vs. Lakhvinder Singh alias Lakha and others, 2017(3) PLR 86*** has held as under :-

“16. It is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the driver as the Tribunal is required to act upon the evidence adduced before it. To support this view reference can be made to case Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) 582. In a latest judgment titled as Kamlesh and others Vs. Attar Singh and others 2016(1) RCR (Civil) 24 the Hon'ble Apex Court has laid down that though the police has registered a case against the driver of the Tempo and filed the charge sheet but the same cannot be said to be conclusive.”

In the above decision it has been held that the evidence of the criminal proceedings will not be of any help in the claim petitions under the Act.

In the present case, perusal of order passed by Judicial Magistrate Ist Class, Patiala (Annexure P/2), shows that the driver was acquitted only on the basis of doubt as the prosecution had failed to connect the driver with the death of Baldev Singh. There is no finding in the said acquittal order that the said vehicle was not involved in the accident.

The contention raised by the learned counsel that there was a valid licence with the driver of the offending vehicle on the date of the accident also cannot be accepted. It has not been disputed that the

driver was having a licence which was valid from 13.01.1988 to 12.01.1991. Thereafter the said licence was not renewed for almost a period of fifteen and a half years. In other words from 13.01.1991 to 03.07.2006 there was no valid licence. The said licence was renewed only on 04.07.2006 i.e. almost a month after the accident. In such circumstances, it cannot be held that on 07.06.2006, there was a valid licence held by the driver.

In such circumstances, no fault can be found in award passed by the Tribunal awarding recovery rights to the insurance company. The appeal is devoid of any merit and hence dismissed.

December 07, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No