

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2033 of 2015 (O&M)
Date of Decision: 13.12.2017

Bajaj Allianz General Insurance
Company Limited

... Appellant

Versus

Gurmukh Singh and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

Mr. Ashwani Arora, Advocate,
for respondent No.1.

RAJIV NARAIN RAINA, J.

1. This is an appeal by the Insurance Company against award of compensation in a case of injury. I have been persuaded by Mr. Talwar appearing for the Insurance Company to allow this appeal and set aside the award. The reasons are as follows:-

2. The accident could have only been a hit and run case. The claimant was on foot and claims he was hit by a speeding bus coming from behind him i.e. both moving in the same direction. He could have never seen the driver or recognise him in the circumstances and the height of the Bus; the FIR was lodged three days after the accident in which the registration number of the bus was given but it was registered against unknown driver.

The criminal trial concluded in acquittal before the case in the Motor

Accident Claims Tribunal, Mohali. During police investigation, Sukhwinder Singh was named the accused driver of the offending private bus which was allegedly involved in the accident.

3. In the Criminal Court the claimant deposed that the bus was not being driven by Sukhwinder Singh at the time of accident which led to his acquittal. There was no evidence of commission of cognizable offence. The claimant respondent turned turtle before the Tribunal deposing that it was Sukhwinder Singh who had caused the accident; claimant Gurmukh Singh was confronted with his statement recorded before the Criminal Court at Kharar. Claimant made a categorical statement in court that “the accused present in the Court did not cause the said accident and he was not driving the said Bus”.

4. Confronted with this statement, he spoke a blatant lie stating that he had identified the driver of the offending vehicle in the Criminal Court. He admitted he fell unconscious after the accident when hit by the Bus. He deposed that the offending vehicle hit him from “the backside”. In such a situation, it is hard to believe that face of the driver of the offending Bus could ever have been seen or imprinted on the mind of the claimant in the flash of a moment, given that the bus was driven rashly and negligently and at a high speed. The cumulative effect of these circumstances is what persuades me to allow this appeal and dismiss the claim application.

5. In the face of these facts and circumstances, the learned Tribunal failed to appreciate that this was not a case of acquittal simplicitor of the driver in the criminal case but the conduct and demeanour of the claimant himself, which was relevant. He spoke one language in the

Criminal Court and quite another before the Tribunal and, therefore, no reliance can be placed on his testimony. His testimony is in same category as that of a liar which should not be believed and relied upon to award compensation. It appears that the driver and the owner of the bus were arrayed in collusion with the claimant. The claim was false. Insurer cannot be held liable to pay compensation to the claimant on account of injury not attributable to the insured vehicle and insurer compelled to indemnify. This is a case of abuse of process of law. Fraud and justice never dwell together. Fraud unravels everything. The preponderance of probabilities lean in favour of the appellant-Company and it cannot be held liable to pay compensation. No occasion arises to go into the issue of quantum of compensation in the face of the accident not being proved.

6. I have no reason to believe the testimony of PW-5 Kuldeep Singh, an alleged eye-witness of the accident. The claimant must be pinned down to the statement he made voluntarily before the Criminal Court.

7. The appeal is allowed. The award is set aside.

(RAJIV NARAIN RAINA)
JUDGE

13.12.2017

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Whether speaking/reasoned Yes

Whether reportable No