

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

FAO No. 291 of 2017 (O&M)

Date of decision:- March 14, 2017

KULDEEP AND ANOTHER

....APPELLANTS..

VERSUS

SHISH RAM YADAV AND ANOTHER

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Ms. Bhagyashri, Advocate for
Mr. Vipin Yadav, Advocate,
for the appellants.

JASPAL SINGH, J.

CM-975-CII-2017

Heard.

Delay of 171 days in filing the appeal is condoned.

CM stands disposed of.

Main case

The instant appeal has been directed by Kuldeep and Satender Kumar, driver and owner of Pick Up No.HR-55-C-7418 against award dated 25.03.2016 passed by Motor Accident Claims Tribunal, Narnaul (for short, "Tribunal") whereby they have been held liable to pay compensation to respondent No.1.

2. Respondent No.1-Shish Ram Yadav had filed a claim petition

seeking compensation on account of injuries suffered by him in a road side accident, which took place on 26.05.2013 due to rash and negligent driving of Pick Up No. HR-55-C-7418 by its driver appellant No.1-Kuldeep. On unfortunate day i.e. 26.05.2013, respondent No.1-claimant along with his son Roop Chand and daughter-in-law Vinakshi w/o Roop Chand were returning from village Chilothe (Rajasthan) to their village by riding Maruti Car No. HR-35-B-6001 being driven by respondent No.1-claimant. At about 7:00 p.m., when they reached Ateli-Narnaul Road in front of Partap Filling Station, a Pick-Up No. HR-55-C-7418 came which was being driven by appellant No.1-Kuldeep at a very high speed in a rash and negligent manner and gave a straight hit to Maruti Car. As a result of the impact, claimant-respondent No.1 sustained injuries on his right foot, thigh, chin, left ear whereas his son Roop Chand suffered injuries on his forehead and right knee. Subsequent to the sustaining of injuries, respondent No.1-claimant as well as his son Roop Chand were got admitted in Government Hospital, Narnaul where on seeing his condition to be precarious, he was referred to PGIMS, Rohtak and from there, respondent No.1-claimant was shifted to Kailash Hospital, Behror and therefrom, he was taken to Raj Hospital, Singhana and Durlabhji Hospital, Jaipur where he was treated and operated. The matter was also reported to the Police and FIR No.84, dated 03.06.2013, under Sections 279, 337 and 338 IPC was registered at Police Station Ateli.

3. After hearing learned counsel for the parties and appraisal of evidence, Id. Tribunal while passing award dated 25.03.2016 against appellant No.1-Driver made the following observations that appellant No.1-

driver was not holding a valid and effective driving license on the date of accident in question. As such, insurance company is not likely to indemnify the insured, which necessitated the filing of instant appeal.

4. Assailing the impugned award dated 25.03.2016, passed by Id. Tribunal, it has been argued with vehemence by learned counsel for the appellants that the same is absolutely against the settled canons of law. Mis-appreciation of evidence as well as legal proposition applicable to the facts and circumstances of the case has resulted into miscarriage of justice. While passing the impugned award, Id. Tribunal has failed to appreciate the evidence led by the appellants in order to prove the occurrence of the accident and the same having been caused by rash and negligent driving of respondent No.1-claimant while driving his Maruti Car bearing No.HR-35B-6001.

5. It has further been submitted by learned counsel for the appellants that Id. Tribunal has also committed an error while appreciating the settled proposition of law while fastening the liability upon the appellants (driver and owner). It is significant to point herein that appellant No.1-driver had a valid and genuine license authorizing him to drive the vehicle in question but Id. Tribunal totally overlooked this aspect, resulting into miscarriage of justice. Similarly, Id. Tribunal has also failed to appreciate that insurance company cannot be discharged from its admitted liability since the vehicle was fully insured with insurance company. Otherwise also, insurance policy is not in question/dispute at all, hence, the liability should have been fastened upon the insurance company and not on the appellants. It is also well settled proposition that if a driver is not

holding a valid and effective driving license still the insurance company cannot be exonerated from its liability especially in the circumstances when the offending vehicle was insured with it. Thus, the insurance company is jointly and vicariously liable to pay the compensation to respondent-claimant.

6. While relying upon the pronouncement of Hon'ble Apex Court captioned as “***Pepsu Road Transport v. National Insurance Company; 2013 (4) RLW 3273; 2013(5) Recent Apex Judgments (RAJ) 219***”, it has been submitted by learned counsel for the appellants that where the driver possessed fake driving licence at the time of causing accident, the insurance company is liable to pay the compensation instead of owner of the vehicle. Moreover, when an owner hires a driver, he has to satisfy that he had competency to drive and had a valid driving licence. Owner cannot go to extent of verifying the genuineness of the driving licence with the licensing authority, if such a driver caused accident, he is not liable. In the case in hand, Id. Tribunal has exonerated the insurance company, which is against the settled principles of law. As such, the findings recorded by Id. Tribunal with regard to the liability to pay compensation, on issue No.1 deserve to be reversed while making the insurance company liable to indemnify the insured/owner.

7. After bestowing due consideration to the submissions made by learned counsel for the appellants, scrutinizing the impugned award as well as appraisal of other documents available on file, this Court is of the considered view that the various submissions made by learned counsel for the appellants do not carry any legal and factual weight and deserves to be

ignored for the reasons recorded herein after.

8. It is a clear cut stand of respondent No.1-claimant that he sustained injuries in an accident occurred on 26.05.2013 at about 7 P.M. near Partap Filling Station, Ateli due to the rash and negligent driving of Pick Up No.HR-55-C-7418 and in order to prove it, respondent No.1-claimant himself stepped into the witness-box as PW-4 and has reiterated the contents of the petition. FIR No. 84, dated 03.06.2013 was also registered with regard to the accident and on conclusion of the investigation, report under Section 173 Cr.P.C. has also been presented, copy of which is exhibited as Ex.P1. The charge-sheet as well as presentation of report under Section 173 Cr.P.C., Ex.P2 have been proved by respondent No.1-claimant while examining Vikas, who is seizing of the criminal record. The submission of report under Section 173 Cr.P.C. as well as framing of charges under Sections 279, 337 and 338 IPC are the material documents, which proves the deposition of injured (PW-4)/respondent No.1-claimant.

9. Here, it would also be pertinent to mention that though, it has been alleged by the appellants that the accident solely took place due to rash and negligent driving of Maruti car by its driver i.e. respondent No.1 yet there is not an iota of evidence. Even the driver did not care to step into the witness-box to unfold the accident or that he was not responsible for causing the accident. Though, he contested the claim petition before the Id. Tribunal but remained away from the witness-box and did not examine himself as a witness to rebut the evidence of respondent No.1-claimant. Since, driver of the offending vehicle has failed to appear in person in

support of his version, the presumption of law goes against him. Since, the factum and manner of accident was solely in his personal knowledge, his non-appearance as a witness in the witness-box is a material circumstance which stops the case of the appellants/driver and owner. It leads to draw an adverse inference that the driver and owner of the offending vehicle have nothing to say in the matter. Thus, the findings arrived at by Id. Tribunal that respondent No.1-Claimant sustained injuries on account of rash and negligent driving of Pick up No. HR-55-C-7418 by its driver-appellant No.1 are based upon cogent and convincing evidence. As such, these do not call for any interference by this Court. Rather the same are upheld.

10. As far as the contention of learned counsel for the appellants that even if the driver of the offending vehicle possessed fake driving license at the time of accident, the insurance company is liable to pay the compensation is concerned, this Court does not find any merit therein. The judgment made by Hon'ble Apex Court in *Pepsu Road Transport's* case (supra) is not at all applicable in the facts and circumstances of the case in hand, it being distinguishable on facts. In the instant case neither the driver nor the owner has opted to appear in the witness-box to explain that the accident did not occur due to rash and negligent driving on the part of appellant No.1 or that it has occurred due to rash and negligent driving of Maruti car by its driver respondent No.1-claimant nor appellant No.2-appeared in the witness-box to depose that he had hired the driver of the offending vehicle namely Kuldeep after satisfying himself that the driver had a valid driving license and he is competent to drive. No doubt, the owner is not expected to go to the extent of verifying the genuineness of the

driving license with the licensing authority but at least, he is obliged to prove that at the time of employing the driver, he had satisfied himself that the driver had a valid driving licence and he is competent to drive the vehicle or his driving was tested. In case, ***Pepsu Road Transport's case*** (supra), the owner as well as the driver had appeared in the witness-box in addition of respective pleas. The owner had made deposition that the driver was employed by him after having satisfied his competency to drive the vehicle. Further, he was holding a valid driving licence but in the case in hand, all these evidence is missing. Moreover, in the aforesaid case, the driver has been in employment continuously for a period of 7 years prior to the date of accident and the deposition in this regard was also made by the owner of the offending vehicle. It was only due to the said reason, it was observed that the insurance company is liable to pay the compensation and to indemnify the third parties claim.

11. Adverting to the facts of the case in hand, it can be safely concluded on the basis of evidence available on record that it is amply proved on record that Kuldeep-driver of the offending vehicle i.e. Pick Up No.HR-55-C-7418 was not holding a valid and effective driving licence at the time of accident and in the absence of the proper and valid driving licence, the insurance company cannot be fastened upon with any liability. Thus, the findings recorded by the Id. Tribunal in this respect while deciding issue No.3 are not required to be meddle with by this Court. Thus, the findings on issue No.3 are also affirmed.

12. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. Accordingly, the same is dismissed

whereby the impugned award dated 25.03.2016, is upheld.

13. No order as to costs.

March 14, 2017
sonika

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No