

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5998 of 2017 (O&M)

Date of Decision: 14.09.2017

Iffco Tokio General Insurance Co.Ltd.

.....appellant

Vs.

Jaswant Kaur and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ajay Singla, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

CM No.19420-CII of 2017

For the reasons stated in the application, delay of 48 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

The appellant/insurance Company has come in appeal against the Award dated 29.03.2017 whereby, the compensation of Rs.8,93,000/- has been awarded to the claimants on account of death of Manjit Singh who died in a road accident on 10.11.2015.

The Insurance Company is challenging this award on the finding of issued No.2 with regard to the liability whereby, the insurance company has been held liable to make payment of compensation. As per DDR the author Gurcharan Singh had made a statement that the care became out of control and hit into the Kikar tree. He also stated that due to the said accident, both Manjit Singh and Varinder Singh had received the injuries. It had been mentioned that when injured was brought to the with the remarks “

going in car and had accident with a tree. Patient was under the effect of alcohol.” Varinder Singh was driver of the car and as per his discharge summary issued by DMC, Ludhiana, it was mentioned that when the patient was brought to the hospital, he was under the effect of alcohol.

Learned counsel for the respondent-Insurance Company submits that this evidence is sufficient to absolve the liability of the insurance company to make the payment of compensation. He further submits that, when the driver was found under the influence of liquor, it would amount to violation of the terms of the insurance policy.

Learned Tribunal had examined the stand taken by respondent No.1 and has held in para 20 of the Award, the driver had taken inconsistent stand in different stage of the case such it was held that in order to disconcert the right of the claimants to the claim, he had made every effort by taking unrealistic and unbelievable stands in this petition. In the written statement, respondents No.1 and 2 had made a statement that deceased was not traveling in the car, rather the respondent No.1 was the sole person in the car and the accident had taken place due to worst condition of the road. He lost control of his care and the car struck into the tree and even in the DDR, it has been stated that respondent No.1 had lost control over the vehicle. Even this aspect was found to be false as father of the deceased Gurcharan Singh had made an application to initiate action against the driver i.e. respondent No.1-Varinder Singh and thereafter the DSP had conducted the inquiry. As per inquiry report submitted by DSP, statements were recorded and discharge summary of Varinder Singh-driver issued by DMC Ludhiana and copy of insurance policy was collected. Hence, the finding i.e. accident took

Singh has been rightly given by the learned Tribunal.

Now with respect to the observations that Varinder Singh was under the effect of alcohol and it was disclosed in the discharge summary issued by DMC Ludhiana, the question would be arisen whether, being a person under the influence of liquor as per discharge summary issued by DMC Ludhiana, liability of insurance company can be avoided.

Learned Tribunal had referred to the judgment in the case of **Khuswinder Singh and another vs. Ram Chander and another 2015 (3) PLR 839** whereby, patient has consumed the alcohol but not under the effect of alcohol, as such, that way, though driver Varinder Singh had consumed the liquor but he was not under the effect of alcohol and composition of liquor within permissible limit is not an offence even it is complied with. Section 185 of Motor Vehicle Act is being reproduced as under:-

“Driving by a drunken person or by a person under the influence of drugs.—Whoever, while driving, or attempting to drive, a motor vehicle,

- a. has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or*
 - b. is under this influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.*
- Explanation.—For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a*

person incapable of exercising proper control over a motor vehicle.”

In the aforesaid case, reference has been made by the judgment of Hon'ble Supreme Court in the case of **Jiju Kuruvila and others Vs. Kunjamma Mohan and others, 2013 Legal Eagle(SC) 439,** wherein as per medical evidence, the deceased was not under the influence of liquor, even he had consumed liquor because the some does not raise presumption that accident had taken place because of negligence on the part of the deceased.

In the present case, it is observed that driver Varinder Singh was under the influence of liquor as per his discharge summary, cannot be said that he was under the influence of alcohol as per Section 185 of Motor Vehicles Act. Therefore, the appeal filed by the appellant/Insurance Company is not accepted and the same is hereby dismissed.

(RITU BAHRI)
JUDGE

14.09.2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>