

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

Date of decision: 21.05.2018

FAO No.1693 of 2012 (O&M)

Smt. Shital and others

... Appellants

Versus

Subhash and others

... Respondents

FAO No.1694 of 2012 (O&M)

Smt. Sunita Devi and others

... Appellants

Versus

Subhash and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sushil Bhardwaj, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1693 and 1694 of 2012 as these have emerged out of the same award dated 03.10.2011 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby applications for grant of compensation filed by Smt. Shital and others in regard to death of Parveen Kumar Sharma and Smt. Sunita Devi and other qua death of Parveen Kumar Gupta have been dismissed by the Tribunal.

The facts relevant for disposal of the appeals are that as per

case set up by the claimants, on 22.06.2009 at about 2.45 pm, Parveen Kumar Sharma, Mukesh and Parveen Kumar Gupta were travelling in Alto car bearing No.HR-16F-3392 from Haridwar to Saharanpur. When they reached Kameshpur village, a Zen Stelo car No.UP-12N-0464 came from Saharanpur side at a high speed, in a rash and negligent manner and struck against Alto car. All the occupants of Alto sustained injuries. Parveen Kumar Sharma and Parveen Kumar Gupta succumbed to the injuries. FIR was lodged against Parveen Kumar Gupta at the behest of Akshat Kumar. After investigation, challan was presented against Subhash, driver of Zen Stelo aforesaid.

Respondents No.1 and 2 before the Tribunal filed reply and in turn, controverted the allegations that accident took place because of rash and negligent driving of alleged Parveen Kumar Gupta. It is averred that respondent No.1 was not at fault and driver of the Alto car struck against their car by coming to the wrong side and at a high speed. FIR was lodged against driver of Alto car.

The insurance company also filed reply and raised similar defence plea as has been raised by respondents No.1 and 2 before the Tribunal. It has denied its liability to pay any compensation.

The pleadings led to framing following issues by the learned Tribunal :-

1. Whether the accident took place due to rash and negligent driving of Zen Stelo car bearing registration No.UP-12N-

0464 by respondent No.1 Subhash resulting into deaths of Parveen Kumar Sharma son of Ishwar Lal and Parveen Kumar son of Permanand, as alleged? OPP.

2. If issue No.1 is proved, whether claimants Shital etc. of claim petition No.191 of 2009 are entitled for compensation, if so, to what amount and from whom?OPP

3. If issue No.1 is proved, whether claimants Smt. Sunita etc. of claim petition No.192 of 2009 are entitled for compensation, if so, to what amount and from whom?OPP

4. Whether petitions are not maintainable in the present from?OPR

5. Whether respondent No.1 was not having a valid driving licence and offending vehicle was being driven in violation of the terms and conditions of the insurance policy at the time of accident?OPR-3

6. Relief.

The parties were permitted to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No.1 against the claimants and as a consequence, claim applications were dismissed.

The Tribunal in para 13 of the award has held, quoted thus:-

“I have gone through both the authorities. Each case has to be decided on its own facts and circumstances. A perusal of the statement of Mukesh would show that the affidavit contains the details as mentioned in the claim petition. It also refers to the registration number of the vehicles involved in the accident. But in the cross examination, the witness had a completely different statement to make. He had stated that he was sitting on the back seat of the Alto car. He stated that a Zen Stelo car came from the

opposite direction but he did not know its registration number nor he knew the name of the driver. He stated that he did not know as to which driver was negligent. He did not know who was facing trial for the accident. He had provided some more information in the cross examination and had stated that a truck was going ahead of the alto car. He had also stated that the accident took place before the Alto car over took the truck. A perusal of the affidavit and the claim petitions show that the manner of the accident has not been given. It merely states that a Zen car from the opposite side and stuck against the car. The witness also does not speak about the Zen car coming to the wrong side of the road and hitting the Alto car. The affidavit of Mukesh is silent. The statement of Mukesh is shaky. He does not know anything about the accident. He could not say as to which driver was responsible for the accident. He does not even know the registration number of the offending vehicle nor he knew the name of the driver of the Zen car. His statement is of no help to the claimants. Simply because Subhash has been challaned later is not enough. The claimant has failed to prove the negligence of respondent No.1. The issue is answered against the claimants.”

Counsel for the claimants would urge that taking advantage of death of occupants of Alto car including its driver namely Parveen Gupta, Akshat Kumar, one of the occupants of offending Zen Stelo lodged FIR against Parveen Kumar Gupta. It is further argued that during investigation, the police were able to extract the truth and accordingly chargesheet under Section 173 Cr.P.C. was filed against Subhash, driver of Zen Stelo. It is argued with vehemence that in view of statement of Mukesh, one of the

injured and occupant of Alto car coupled with that Subhash, driver of the offending vehicle was put to trial for causing the occurrence due to his rash and negligent driving, claimants have successfully discharged onus of issue No.1 that Subhash is author of the accident because of rash and negligent driving of Zen Stelo car.

Counsel representing the insurance company has supported findings of the Tribunal recorded in para 13 of the award to arrive at a conclusion that claimants have failed to establish that accident took place because of rash and negligent driving of Zen Stelo car.

Indisputably, Subhash, driver of alleged offending vehicle Zen Stelo car was put to trial after investigation by the police. Claimants did not examine the investigating officer as to on what basis, the police prima facie found culpability of Subhash for committing offence punishable under Sections 279 and 304-A IPC. Mukesh Kumar, one of the alleged eye witnesses to the occurrence and occupant of Alto car appeared in the witness box. He tendered into evidence his affidavit Ex.PW4/A by way of examination-in-chief. In para 1 of the affidavit, he has narrated about the occurrence which is almost verbatim reproduction of averments raised in the claim application. The witness was cross examined by counsel for the respondents before the Tribunal. A relevant extract from his cross examination reads as follows:-

“I was sitting on the back seat of the Alto. One Zen Stelo car came from the opposite direction and the number of

Zen Stelo car is not known to me. I also do not know the name of the driver of the Zen Stelo who was driving the same at the time of accident. I do not know who was negligent in causing the accident and who is facing the trial about the accident in question whether the driver of the Zen Stelo car or not. Parveen and myself had noticed the Zen Stelo car from a distance of about half or quarter to a kilometre. Police recorded my statement in the hospital as I was brought to the hospital at Saharanpur (UP) whereas Parveen Kumar Gupta and Parveen Sharma both had died at the spot and as such they were not taken to hospital at Saharanpur with me. Parveen Kumar Sharma was also occupant of Alto car. It is incorrect to suggest that the accident in question had occurred due to rash and negligent driving of Parveen Kumar Gupta himself because he was driving the car rashly and negligently and at a high speed as he could not control the speed of the alto car.”

The Tribunal has also noticed the aforesaid facts elicited in cross examination of Mukesh, the only witness examined by the claimants to establish their plea of accident being the result of rashness and negligence on the part of driver of Zen Stelo car. The facts narrated by Mukesh in his cross examination completely demolish his testimony in examination-in-chief that either the accident was caused because of rash and negligent driving of Zen Stelo car much less Zen Stelo car had registration No.UP-12N-0464. The mere fact that the police after investigation has presented challan against Subhash, driver of the alleged offending vehicle is not sufficient to establish plea of the claimants that accident occurred because of rash and negligent driving of Zen Stelo car.

On due consideration of testimony of Mukesh Kumar, at best, it can be held that two cars namely Zen Stelo and Alto were involved in the accident. But the same is not sufficient to record a finding that Subhash is the author of accident because of his rash and negligent driving. In this view of the matter, I do not find any reason to differ with findings recorded by the Tribunal negating plea of the claimants qua issue No.1. Accordingly, findings of the Tribunal on issue No.1 are affirmed. However, as Zen Stelo car was involved in the accident, insurance company shall be liable to pay compensation to each set of claimants to the tune of Rs.50,000/- each under No Fault Liability. In this context, reference can be made to judgments of this Court **National Insurance Company Ltd. Vs. Harjit Singh and another, 2016(1) PLR 735** and **National Insurance Company Ltd. Vs. Bimla Devi and others, FAO No.7901 of 2014, decided on 26.03.2018.**

For the foregoing reasons, the appeals are disposed of. Claimants shall be entitled to Rs.50,000/- each for the death of Parveen Kumar Sharma and Parveen Kumar Gupta with interest @ 7.5 % per annum from the date of petition till realization.

21.5.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No