230 (6/10)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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1. **FAO No.1120 of 2016 (O&M)**
Date of Decision: 21.11.2018

Kulwant Singh

Appellant

Versus

Buta Singh and others

Respondents

2. **FAO No.1123 of 2016 (O&M)**

Kulwant Singh

Appellant

Versus

Amarjit Kaur and others

Respondents

3. **FAO No.1136 of 2016 (O&M)**

Kulwant Singh

Appellant

Versus

Joginder Singh and others

Respondents

4. **FAO No.1137 of 2016 (O&M)**

Kulwant Singh

Appellant

Versus

Darshan Singh and others

Respondents

5. **FAO No.1849 of 2016 (O&M)**

Kulwant Singh

Appellant

Versus

Gurcharan Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Dhirinder Chopra, Advocate
for the appellant.

Mr. Sanjeev Kodan, Advocate
for Reliance General Insurance Co. Ltd.

Mr. Vinod Gupta, Advocate
for United India Insurance Co. Ltd.

Mr. Pradeep Kumar, Advocate
for HDFC ERGO General Insurance Co. Ltd.

Mr. Sachin Ohri, Advocate
for M/s Bajaj Allianz General Insurance Co. Ltd.

Mr. J.S. Uppal, Advocate
for respondents No.5 and 6.

Mr. Aayush Gupta, Advocate
for respondents No.11 and 12.

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AVNEESH JHINGAN, J (Oral):

These are five appeals against award dated 24.11.2015 passed by the Motor Accident Claims Tribunal, Moga [for brevity 'the Tribunal'].

The brief facts of the case are that on the fateful day of 06.05.2012, Paramjit Kaur, Virpal Kaur, Balwinder Kaur @ Parwinder Kaur, Kulwinder Kaur and Harpal Kaur lost their lives in a motor vehicular accident while they were going to Ludhiana by Jeep bearing registration No. PB-29B-0726 (hereinafter referred to as 'Jeep'). The said Jeep was driven by Karnail Singh. When the Jeep reached near village Dhatt, on Moga-Ludhiana Road, the said Jeep was hit by a Scorpio (black colour) bearing registration No. PB-13N-0073. Thereafter, another Scorpio (white colour) bearing registration

No. PB-05K-4777 further hit the said Jeep. Then a Innova Car bearing registration No. PB-11AH-6565 (hereinafter referred to as 'Innova car') (though wrongly mentioned in the award as PB-11AN-6565 in para No.2) further hit the said jeep. As a result of the accident, all the aforementioned five occupants of Jeep suffered grievous injuries and lost their lives. Five claim petitions under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'] were filed. The Tribunal awarded compensation in accordance with the II Schedule of the Act. Equal liability qua all the four vehicles involved in the accident was attributed.

The present five appeals have been filed by owner and driver of the Innova car. Since there are common facts and the appeals arise from the same award, hence these are being dealt with by a single order.

The grievance raised by learned counsel for the appellant is that he was in possession of cover note of insurance produced (marked as 'X') before the Tribunal. As per the cover note issued by Reliance General Insurance Co. Ltd., there was an insurance cover for period between 05.12.2011 to 04.12.2012. He argued that the Tribunal erred in absolving the Insurance Company from paying the compensation.

Learned counsel for the insurer contended that the cover note was never issued by the Insurance Company and the Jeep in question was not insured. He contended that cover note was forged and fabricated. The book containing cover notes was lost by the

Sales Manager of the Insurance Company and DDR No. 345289, dated 09.10.2013 was registered at Police Station S.A.S. Nagar, Mohali.

It is not the case where Insurance Company has taken a stand that cover was not of the Company or was scanned copy rather by lodging DDR they have admitted the fact that cover note belonged to the Insurance Company. It is worthwhile to mention that said book containing the cover notes was in possession of a responsible senior officer of the Insurance Company i.e. Sales Manager. The policy was issued on 05.12.2011. It is strange that till October, 2013, the Insurance Company and its official i.e. Sales Manager were not aware that entire book containing cover notes has been lost. The insurer in order to avoid further investigation, has not registered FIR. It is only to take a stand before the Tribunal that a DDR was registered.

It is pertinent to note here that the person who was in possession of the book containing the cover notes and the person who reported the DDR were never produced before the Tribunal to avoid their cross-examination.

On the other hand, conduct of the appellant also does not appear above board. It is not the case where the payment for issuance of cover note was made by cheque. He has not disclosed the name of that person from whom he has got the insurance cover note. He never bothered for almost six months to enquire from the Insurance Company that no Insurance Policy has been issued to him in pursuance to the cover note.

In such circumstances, it would not be appropriate that the claimants should suffer because of litigation between the owner/driver and insurer of the jeep. To safeguard the interest of the claimants who lost their family members, it would be appropriate that the amount awarded by the Tribunal should be paid by the Insurance Company at present. Learned counsel for the appellant undertakes that the appellant shall furnish security to the satisfaction of the Executing Court for the said amount. The payment of compensation shall be subject to outcome of the present litigation.

The matter is remitted back to the Tribunal to go deep into the issue of liability. *Prima-facie,* it appears that it is a serious controversy in which the role of employees of the Insurance Company cannot be ruled out. If need be, the Tribunal shall be at liberty to get the matter investigated by Police to reach the root of the issue involved. The appellant and the insurer of Jeep concerned are directed to appear before the Tribunal on 10.01.2019.

[AVNEESH JHINGAN]
JUDGE

November 21, 2018
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No