

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 894 of 2014(O&M)

Date of Decision: September 26 , 2018.

United India Insurance Company Ltd.

..... APPELLANT (s)

Versus

Maya Devi and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant.

Ms. Preeti Sharma, Advocate
for respondents No.2 and 3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by the United India Insurance Company Limited challenging award dated 01.10.2013 passed by the learned Motor Accident Claims Tribunal, Pathankot (hereinafter referred to as, the 'Tribunal').

Brief facts necessary for adjudication of the case are that, the claimant/respondent No.1 filed a petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') seeking compensation on account of the death of Shiv Dayal. It was averred that Shiv Dayal lost his life in

a motor vehicle accident which took place on 09.03.2012 due to the rash and negligent driving of TVS Apache motorcycle bearing registration No.PB-35-P-6678 being driven by respondent No.2-Veeru Lal. Claim petition filed by the claimant/respondent No.1 was resisted by the appellant-Insurance Company as well as respondents No.2 and 3, the driver and owner of the offending vehicle by filing separate written statements.

From pleadings of the parties, the learned Tribunal framed the following issues on 15.10.2014:-

- “1. Whether deceased Shiv Dayal died on 09.03.2012 at about 11.45 a.m. in the area of Jugial Barrier No.4 in a road side accident due to rash and negligent driving of motorcycle bearing registration No.PB-35-P-6678 by its driver respondent no.1? OPP
2. Whether the claimant is entitled to compensation, if so to what extent and from whom? OPP
3. Whether the the claim petition is bad for non joinder of necessary parties? OPR
4. Whether the driver of the offending vehicle was not holding valid and effective driving license at the time of alleged accident? OPR
5. Relief.”

The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the TVS Apache motorcycle bearing registration No. PB-35-P-6678 by respondent No.2 – Veeru Lal. The learned Tribunal further held that the driving licence (Ex.R2) produced by respondent No.2-driver of the offending vehicle is legal and valid. Accordingly, Issue No.4 was decided against the appellant-Insurance company.

The learned Tribunal awarded a sum of ₹4,08,000/- as compensation to the appellants vide impugned award dated 13.05.2013. Income of the

deceased was assessed as ₹4,000/- per month. Deduction to the extent of 50% on account of personal expenses was effected and multiplier of 17 was applied. The appellant-Insurance company as well as respondents No.2 and 3 were held jointly and severally liable to pay the compensation to the claimant/respondent No.1.

Learned counsel for the appellant-Insurance company vehemently argues that Ex.R2 i.e., the driving licence produced by the respondent-driver himself reveals that the same is in respect to Light Motor Vehicle (LMV). Driving licence has not been issued in respect to a two-wheeler, which the said respondent was admittedly driving at the time of the accident. The learned Tribunal has rendered a finding of the accident being caused by the rash and negligent driving of the said two-wheeler by respondent No.2-Veeru Lal son of Som Raj. Respondent No.2-Som Raj is the owner of the TVS Apache motorcycle i.e., offending vehicle. In this situation, it is contended that the learned Tribunal has wrongly decided Issue No.4 against the Insurance company. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in **Oriental Insurance Company Ltd. v. Zaharulnisha and others, 2008 ACJ 1928.**

Learned counsel for respondents No.2 and 3 is unable to deny that Ex.R2 i.e., the licence held by respondent No.2-driver of the offending motorcycle is in respect to Light Motor Vehicle (LMV) and not in respect to a two wheeler. Learned counsel for respondents No.2 and 3 is unable to deny that respondent No.2 at the time of the occurrence was not holding any valid licence to drive a two-wheeler.

I have heard learned counsel for the parties and have gone through the record.

It has been specifically held by the Hon'ble Supreme Court in Zaharulnisha's case (supra) that in a situation where the driver was driving a different class of vehicle in violation of Section 10(2) of the Act, the Insurance company would have a right to recover the amount from the owner. There is merit in the argument raised by learned counsel for the appellant-Insurance company to the extent that the class of vehicle mentioned in driving Licence of respondent No.2 at the time of the accident is totally different. Licence to drive a Light Motor Vehicle does not necessarily ensure the fitness of the driver or his expertise in driving a two-wheeler which admittedly requires separate skills.

In the facts and circumstances as above, it is directed that the awarded amount in question shall be satisfied by the appellant-Insurance company who shall have a right to recover the said amount from the owner of the offending vehicle in question.

Appeal is accordingly disposed of.

September 26 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No