

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.883 of 2015 (O&M)

Date of Decision:06.02.2019

National Insurance Company Limited

...Appellant(s)

Versus

Ram Kumar and others

...Respondent(s)

FAO No.887 of 2015 (O&M)

National Insurance Company Limited

...Appellant(s)

Versus

Geeta Devi and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Harsh Aggarwal, Advocate for the appellant.
Mr.Mani Ram Verma, Advocate with
Mr.Nipun Verma, Advocate for
respondents No.1 and 2.
Ms.Bhawna Thakur, Advocate for
respondents No.3 and 4 in FAO No.883 of 2015
and for respondents No.9 and 10 in FAO No.887 of 2015.

ANIL KSHETARPAL, J.

The insurance company has filed two appeals bearing FAO Nos.883 and 887 of 2015 against the award passed by the learned Motor Accident Claims Tribunal, Jhajjar (for short 'the Tribunal'), awarding compensation to the claimants on account of deaths of Raj Kumar, aged 37 years and Nitin aged about 19 years in a road accident.

The learned Tribunal has found that the driver of the offending vehicle, i.e. tractor with trolley No.HR-14H-4014 to be rash and negligent

and therefore, fastened the liability on the Insurance Company. The accident took place on 22.12.2011 at 6.30 PM near Jharli Power Plant, Jhajjar. FIR was got registered by Rajender Singh on 23.12.2011, i.e. next day. He is the author of FIR, but not an eye witness. In the FIR, he did not give any information about the offending vehicle involved in the accident.

On 4.1.2012 Shri Ram Avtar, who was working as Security Supervisor at the Power Plant, made a statement before the police, pointing out that the tractor owned by respondent No.4 and driven by respondent No.3 was involved in the accident. On the basis thereof, the police after investigation also came to same finding and thus presented the challan. Of course, the judgment of the criminal court is not part of the file, however, a photocopy thereof has been produced wherein Dharambir, the alleged driver, has been convicted vide judgment dated 11.8.2015.

Learned counsel for the appellant-Insurance Company has submitted that the vehicle was involved only to get compensation and in fact no accident took place with the vehicle owned by respondent No.4 and driven by respondent No.3. In support thereof, he has read the oral evidence of Clerk of the Private Security Agency of Jharli Power Plant, who has stated that the duty of Ram Avtar, the alleged eye witness, was from 7.00 AM to 7.00 PM and, therefore, he could not be present at the time of accident which took place at 6.30 PM. The statement of Naresh Kumar, Clerk in the Private Security Agency, is available on the record, wherein he has stated that next Supervisor came before 7.00 PM and the first Supervisor left his duty when the first Supervisor Shri R.C.Kadian came. Obviously it leads to a conclusion that Shri Ram Avtar, who is an Ex-Army man, had left the duty before 7.00 PM on that day.

Learned counsel for the appellant has further referred to the statement of Dharambir, driver of the offending vehicle, who has been examined as RW-2. The aforesaid driver has stated that relationship between Ram Avtar and his family are strained, because his mother fought election of Sarpanch and he belongs to other group. It has been admitted by the driver that two days after the accident took place, tractor was possessed by the police. He goes on to admit that a criminal case is pending.

Learned counsel for the appellant has further referred to the statement of Ramavtar, (incidentally name is common with eye witness) who is investigating officer with the Police Department in the present case. He has deposed that he did not meet Ram Avtar, the alleged eye witness and only three persons were present when he reached at the spot. He has admitted that there is a hotel near the place of occurrence but hotel owner was not joined as a witness. In such circumstances, the evidence of Investigating Officer does not help the Insurance Company. No doubt the Investigating Officer has stated that when he reached at the spot only three person were there. However, he admitted that he did not reach the spot immediately. He has stated that he reached the spot at 7.10 AM on the next day, i.e. after registration of the FIR. Therefore, his evidence on the question as to whether driver of the offending vehicle was involved or not or Ram Avtar had seen the accident or not would be of no relevance.

In the present case, the claimants have examined Ram Avtar, the alleged eye witness, who has stated that he left the power plant at 6.00 PM and when he was proceeding towards his house, he saw the accident. The driver of the offending vehicle suddenly turned towards Samrat Hotel, and thus directly hit the motor cycle which was coming. Ram

Avtar has been cross-examined at length by the counsels appearing for the respondents and he withstood the cross-examination.

Learned counsel for the appellant has further submitted that once duty of Ram Avtar, the alleged eye witness, was up to 7.00 PM, he could not be expected to be at the spot at 6.30 PM. The argument does not have any substance, because if the Insurance Company was wanting to prove that the statement of Naresh Kumar, the clerk of the Private Security Agency, was incorrect, Mr. R.C. Kadian, who had replaced the alleged eye witness, should have been examined.

In view of the above, both these appeals are dismissed, being devoid of any merit. Pending application(s), if any, shall also stand disposed of, in terms thereof.

06.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No