

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 1424 of 2018 (O&M)

Date of decision : March 19, 2018

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Reliance General Insurance Co. Ltd. through Manager,
SCO- 147-48, Sector -9, Madhya Marg, Chd.

.....Appellant

Versus

Amod Singh and another

.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sanjeev Kodan, Advocate for the appellant.

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RITU BAHRI, J.

Reliance General Insurance Company Ltd. (hereinafter referred to as 'the Insurance Company) has come up in this appeal against the award dated 16.2.2018 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as 'the Tribunal'), whereby the claim petition filed by claimant-respondent no.1 (hereinafter referred to as 'the claimant') has been allowed and he was held entitled to a compensation of Rs.2,60,000/- on account of injuries sustained by him in the accident.

Briefly stated the facts of the case are that on 14.8.2014, Amod Singh son of Amar Bahadur Singh was riding on motor cycle no. HR-02-U-9994 along with one Ashok Kumar son of Rajinder Kumar as pillion rider. They were on their way from Jhanda Chowk, Jagadhri to Naraingarh Majri.

At about 9:30 p.m, when they reached near Chhabra Hospital located on Jagadhri-Bilaspur road and were on kacha berm of the road, then a car bearing registration no. HR-71-C-0500 being driven by Sohan Lal (hereinafter referred to as respondent no.1) at a high speed in a rash and negligent manner came from the side of Bilaspur and hit their motorcycle. Due to the impact, Amod Singh and Ashok Kumar fell down on the road along with their motor cycle and sustained multiple and grievous injuries. As per the claim petition both the injured were taken to Civil Hospital, Jagadhari from where after first aid, he was shifted to Gaba Hospital, Yamuna Nagar, where he underwent medical treatment including surgery and remained hospitalized for considerable period. In this background, FIR No. 483 dated 15.8.2015 under Sections 279, 337 and 338 IPC was registered in Police Station City Jagadhri.

Claimant filed claim petition seeking compensation on account of injuries suffered by him in the accident which occurred due to rash and negligent driving of the offending vehicle by respondent no.1.

Upon notice, respondents appeared and contested the claim petition. Replication was not filed by the claimant.

The claimant reiterated his version while appearing as PW-1 and this was further strengthened with the statement of eye witness, namely, Ashok Kumar, who stepped into the witness box as PW-2. Chanchal Kumar also produced the file of criminal case registered against respondent no.1 and deposed that respondent no.1 is facing the criminal rial for causing the accident in question. In FIR, the manner in which the accident had taken place was specifically mentioned and registration number of the offending vehicle was also given.

Counsel for the respondents argued that the claimant failed to prove the essential ingredients i.e rashness and negligence on the part of respondent no.1 while driving the offending car. As per MLR of the injured Ex.R-5, there was smell of alcohol/liquor from the breath of the injured. Hence, he was not in a position to drive the motorcycle in a moderate manner. Moreover, as per site plan Ex.R-8, accident had taken place on metaled portion of the road. Since the claimant-injured was approaching from a link road to main road, that too, a national highway, it was his duty to take care of the traffic in motion on the national highway. However, as regards this argument raised by the counsel for the respondents, the Tribunal observed that no doubt while coming from a link road to main road, a rider of the vehicle has to take much care of the traffic in motion on main road, but that does not give a licence to the drivers of the vehicles running on the main road to accelerate their vehicles as per their whims, that too when there appears to be a crossing or junction leading to link roads. In the present case, the driver was required to take care that any vehicle may appear on the main road from the link road and hence respondent no.1 was negligent in causing the accident in question. Reference was made to a judgment of Hon'ble the Supreme Court of India in **Jiju Kuruvila and others vs. Kunjuamma Mohan and others 2013(2) Apex Court Judgments 442 (SC)** wherein it was held that the mere position of the vehicles after accident cannot give substantial proof as to the rash and negligent driving on the part of one or the other. The suggestion given in the site plan would not be in itself sufficient to give a finding as to who was negligent in driving. The fact that respondent no.1-driver was negligent in driving the offending vehicle has also been narrated in the FIR which was

registered immediately after the accident and the eye witness Ashok Kumar, PW-2 also reiterated the version of the claimant.

After hearing counsel for the parties and going through the evidence placed on the record, a finding was given by the Tribunal that the accident resulting into the multiple and grievous injuries to claimant Amod Singh took place due to rash and negligent driving of Car No. HR-71-C-0500 by respondent no.1. Claim petition was allowed and the claimant was held entitled to a compensation of Rs.2,60,000/- on account of injuries sustained by him in the accident. Both the respondents i.e the driver of the vehicle and Insurance Company were held liable to pay the compensation with interest @8% per annum from the date of filing of the petition till the realization . However, the first charge of the payment of compensation was given to the Insurance Company.

Aggrieved with the award of the Tribunal, Insurance Company filed appeal before this Court.

Heard counsel for the parties and gone through the records of the case. The argument of the counsel for the insurance Company that the award of the Tribunal is liable to be rejected as in the opinion of the doctor, injured was drowsy, unconscious and under the effect of alcohol. However, no sample of the blood or urine was taken to assess the presence of percentage of alcohol in blood. Merely by placing on the record the copy of MLR, the respondents cannot be said to be able to prove the fact that the claimant was unable to drive a vehicle under the influence of liquor. As per the provisions of Section 185 of the Motor Vehicles Act, if the driver is found driving the vehicle and has an alcohol exceeding 30 mg per 100 ml of the blood, the driver is liable for drunken driving. However in the present

case, no such evidence was placed on record.

The ratio of the judgment in the case of Jiju Kuruvila and others' (supra) has been rightly followed in the present case to return a finding that the accident had been caused on account of negligent driving of the offending vehicle by respondent no.1.

There is no illegality or infirmity in the award passed by the Tribunal. Hence, no ground is made out to interfere in the award. Appeal is dismissed.

March 19, 2018

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No