

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5506 of 2017(O&M)

Date of Decision: 23.5.2018

IFFCO TOKIO General Insurance Company Limited

---Appellant

versus

Ashok and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ajay Singla, Advocate
for the appellant-insurance company**

Rekha Mittal, J.

The present appeal directs challenge against award dated 6.3.2017 passed by the Motor Accidents Claims Tribunal, Jind (in short “the Tribunal”) whereby compensation has been awarded to Ashok for sustaining injuries in a motor vehicular accident that took place on 9.2.2015.

The Tribunal has assessed compensation of Rs. 1,27,000/- ,detailed in para 19 of the award.

The sole submission made by counsel for the appellant is that Ashok did not have a driving licence, admitted as such in the opening lines of his cross examination, contributory negligence is liable to be attributed to Ashok, driver of the ill fated motor cycle on which Satish was travelling as a pillion rider and succumbed to the injuries. In addition, it is argued that Ashok had further admitted that they were in hurry to reach their house. According to counsel, the aforesaid facts are sufficient to attribute

contributory negligence to Ashok and the insurance company shall not be liable to pay compensation to the extent of negligence attributed to Ashok, driver of the motor cycle in question.

I have heard counsel for the appellant, perused the paper book particularly copy of affidavit of Ashok tendered by way of examination in chief and cross examination made available by counsel for the appellant during course of hearing.

A relevant extract from para 1 of the affidavit of Ashok, reads as follows:-

“When at about 7-00 p.m. deponent while driving his motor cycle reached at Bus Adda Shamdo then in the mean time one Tralla bearing Reg. No. HR-61B-5343 being driven by its driver i.e. respondent No. 1 in rash and negligent manner came from Naguran side and after coming on wrong side of the road, struck his tralla with motor cycle of Ashok bearing No. HR-07L-8952 and due to powerful strike, both fell down on the road and tralla passed over the head of Satish and due to crush head injury suffered by him in this accident, he died on the spot whereas deponent suffered multiple injuries on his person in this accident.”

In his cross examination, Ashok has admitted that he did not possess a driving licence nor he has obtained the licence from any licensing authority. He has further admitted that they were in hurry to reach their house. However counsel for the insurance company has not pointed out any facts elicited in cross examination of Ashok to challenge correctness of his

version that the trollea came on wrong side of the road and struck against the motor cycle driven by Ashok. The mere fact that Ashok was not possessing driving licence is not sufficient to attribute contributory negligence to Ashok. Ashok, at best, can be held liable for committing violation of provisions of the Motor Vehicles Act, 1988 as he was driving the vehicle without driving licence. This apart, another fact that Ashok was in hurry to reach home, also cannot be taken adversely against the claimant or to raise a presumption that he is guilty of contributory negligence in causing the accident. I would hasten to add that in the written statement filed by the driver and owner of the vehicle, they have altogether denied involvement of the vehicle in question in the occurrence, therefore, no such plea of contributory negligence has been raised by the respondent before the Tribunal. In the given scenario, contention raised by counsel for the appellant qua plea of contributory negligence is not available much less amenable to acceptance.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

(Rekha Mittal)
Judge

23.5.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No