

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 7327 of 2017(O&M)

Date of Decision: 24.5.2018

Reliance General Insurance Company Limited

---Appellant

versus

Dev Raj and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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

Rekha Mittal, J.

The present appeal directs challenge against award dated 19.9.2017 passed by the Motor Accidents Claims Tribunal, Patiala (in short “the Tribunal”) whereby compensation has been allowed on account of injuries sustained by Dev Raj in a motor vehicular accident that took place on 22.12.2015.

The sole submission made by counsel for the appellant is that with regard to occurrence dated 22.12.2015, FIR was registered on 25.12.2015. After due investigation, the police has prepared an untraced report but the same is yet to be filed in the Court. It is argued with vehemence that Jitender Singh, driver of the offending vehicle appeared in the witness box and stated on oath that accident is the result of negligence attributable to the injured-victim who suddenly appeared on the road without taking care of the traffic and struck against car of Jitender Singh. It is further argued that in view of materials on record i.e. delay in lodging the

FIR testimony of ASI Balwinder Singh examined to prove the factum of untraced report and statement of Jitender Singh RW2, findings recorded by the Tribunal on issue No. 1 attributing rashness and negligence to Jitender Singh while driving the alleged offending vehicle Maruti Alto car bearing No. PB-11-BA-5357 are liable to be set aside. In the alternative, it is argued that in any case, contributory negligence is liable to be attributable to the injured in the light of facts stated by Jitender Singh RW2.

I have heard counsel for the appellant, perused the paper book particularly the award and copy of testimony of Jitender Singh made available by counsel for the appellant during the course of hearing.

Before adverting to the submissions made by counsel for the appellant, it is appropriate to note that on November 14, 2017, order passed by this court, reads as follows:-

“Learned counsel for the appellant prays for and is granted time to place on record a copy of the order of the Illaqa Magistrate through which the untraced report filed by the police was not accepted. The present status of the proceedings in the FIR in question/criminal case shall also be placed on record.

Adjourned to 16.01.2018.”

Counsel for the appellant would inform that untraced report prepared by the police is yet to be submitted in the Court, therefore, the same has not attained finality.

Dev Raj injured-victim appeared in the witness box to substantiate his plea that accident happened on account of rash and negligent driving of offending vehicle by Jitender Singh. The Tribunal, in para 10 of the award has noticed that no tangible material has been elicited in cross examination of Dev Raj to shatter evidentiary value of his testimony or create dent in his version brought forth by him. Jitender Singh,

driver-cum-owner of the offending vehicle appeared in the witness box and admitted happening of the accident contrary to what was averred in the reply wherein he has altogether denied the accident. The very fact that Jitender Singh denied the accident and did not raise a plea that accident is the result of rashness and negligence attributable to the victim, his testimony in the Court cannot be considered being beyond pleadings. Conversely, testimony of Jitender Singh rather corroborates plea of the claimant that the accident took place with the offending vehicle in which Dev Raj sustained injuries. Jitender Singh has every reason to deny his liability for causing the accident in order to escape his civil and criminal liability. The mere fact that the police has prepared an untraced report is not sufficient to negate plea of Dev Raj that accident was caused by the offending vehicle due to rash and negligent driving of Jitender Singh. In this view of the matter, I do not find an error much less illegality in findings of the Tribunal on issue No. 1, warranting intervention.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. However, it is clarified that in case the injured files an appeal seeking enhancement of compensation, any observations made hereinbefore, shall not cause prejudice to his right of being heard on merits. No order as to costs.

(Rekha Mittal)
Judge

24.5.2018
PARAMJIT

Whether speaking/reasoned : Yes
Whether reportable : Yes/No