

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

F.A.O. No. 228 of 2008 (O&M)

Date of Decision: 06.03.2019

Hans Raj Sachdeva

..... Appellant.

Versus

The New India Assurance Company Limited and others

..... Respondents.

AND

CR No. 1267 of 2008(O&M)

Hans Raj Sachdeva

.....Petitioner

Versus

The New India Assurance Company Limited and others

..... Respondents.

AND

CR No. 1268 of 2008(O&M)

Hans Raj Sachdeva

.....Petitioner

Versus

The New India Assurance Company Limited and others

..... Respondents.

AND

CR No. 1269 of 2008(O&M)

Hans Raj Sachdeva

.....Petitioner

Versus

The New India Assurance Company Limited and others

..... Respondents.

AND

CR No. 1270 of 2008(O&M)

Hans Raj Sachdeva

.....Petitioner

Versus

The New India Assurance Company Limited and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Arun Singla, Advocate
for the appellant-petitioner.

Mr.Suvir Dewan, Advocate
for respondent no.1-Insurance Company.

LISA GILL, J.

This order shall dispose of FAO No. 228 of 2008, CR No. 1267 of 2008, CR No. 1268 of 2008, CR No. 1269 of 2008 and CR No. 1270 of 2008 as all of them arise from a common award dated 14.06.2004 passed by the learned Motor Accident Claims Tribunal, Panchkula (for short 'tribunal').

Brief facts necessary for the adjudication of the case are that a motor vehicle accident took place on 07.07.2001 leading to the death of one Ranjana and injuries to four other claimants. Five separate claim petitions were initially filed under Section 166 of the Motor Vehicles Act (for short 'Act') seeking compensation on account of death of Ranjana @ Tara Devi and for injuries caused to her husband-Ravinder Kumar, son Sahil, one Asha Rani and Nishtha. The claimants however claimed relief under Section 163-A of the Act and not under Section 166 of the Act and the petitions were accordingly converted into those under Section 163-A of the Act. It was pleaded in the claim petitions that Ravinder Kumar along with his wife

Ranjana, daughter-Payal, son Sahil and relatives Kailash Rani, Asha Rani and Nishtha were coming back from Mata Vaishno Devi to his village Mallah, Tehsil Kalka, District Panchkula on a jeep bearing registration no. HR-49-3766. The jeep was driven by respondent no.1-Yashpal Singh @ Pappu in a rash and negligent manner. Despite requests of the occupants of the vehicle, he did not desist. At about, 7.30.a.m., when the jeep reached in the area of Village Singh, Tehsil Kharar, District Ropar on Kurali-Ropar road, a bus came from the opposite side. The jeep was being driven in a rash and negligent manner and it went towards the wrong side of the road. Front side of the jeep struck against the right side of the rear portion of the bus, due to which the jeep went off the road into the pits and ultimately struck against a tree. As a result thereof, all the occupants suffered grievous injuries. Ranjana, who suffered a head injury was taken to Punjab Health System Corporation, Kurali, from where she was referred to PGI, Chandigarh, but she was ultimately succumbed to her injuries on 09.07.2001. Claimants stated that the accident in question occurred due to the use of the offending jeep. Compensation was accordingly claimed.

Learned tribunal on consideration of the evidence on record and besides the facts and circumstances of the case concluded that the accident in question took place due to the use of the offending vehicle. Compensation to the claimants in all the claim petitions was afforded, the details of which are not being referred to as they are not relevant for the controversy in hand. It was further observed that as PW-1-Ravinder Kumar, in his cross-examination stated that they had hired the offending jeep, the insurance company was absolved of its liability as the jeep was insured as a private

vehicle, but it was used for commercial purposes.

Aggrieved from the said decision to the extent of fastening of liability upon him, the present appeal and the revision petitions have been filed by the owner of the offending jeep.

Learned counsel for the owner of the offending jeep submits that the learned tribunal has grossly erred in absolving the insurance company of its liability by reference to a stray sentence which has crept in the cross-examination of the claimant-Ravinder Kumar. It is submitted that the deceased-Ranjana @ Tara Devi was the real sister of the appellant-Hans Raj Sachdeva. Occupants of the jeep were none other, but the real sister of the owner, her husband i.e., brother-in-law of the owner, their children and other relatives. Furthermore, PW-2-Harbans Lal son of Munsu Ram i.e. the real brother of the present appellant specifically stated that the jeep in question had been taken from the present appellant on 02.07.2001 and that their sister-Ranjana had expressed her desire to go to Vaishno Devi on 03.07.2001. PW-2 in categorical terms has stated that they had started in the jeep at about 12.30.p.m., for going to Vaishno Devi. It is thus clear that the jeep in question had been given to the family members of the appellant. There is no question of the same being used for commercial purposes. It is thus prayed that the appeal and the revisions be thus allowed.

Learned counsel for the respondent-insurance Company however refutes the averments as above and submits that the claimant-Ravinder Kumar-PW-1 has categorically stated in his cross-examination that the vehicle in question was taken on hire from its owner-Hans Raj Sachdeva. Therefore, the learned tribunal has rightly absolved the insurance company

of its liability. It is thus prayed that the appeal and the revision petitions filed by the owner be dismissed.

I have heard learned counsel for the parties and have gone through the record of the case with their assistance.

Relationship between the parties, is a matter of record. The appellant-owner of the offending jeep is the real brother of the deceased-Ranjana. PW-1-Ravinder Kumar is his brother-in-law being the husband of the deceased-Ranjana. Learned counsel for the insurance company is unable to deny that all the other occupants of the jeep were close relatives of the owner of the jeep. PW-2-Harbans Lal, real brother of the deceased-Ranjana and the appellant specifically stated that the jeep in question is owned by Hans Raj Sachdeva, his elder brother and is used by Hans Raj Sachdeva for his personal use. PW-2-Harbans Lal had borrowed the jeep from his brother on 02.07.2001 for going to Vaishno Devi. It was on his request and without there being any rent etc, that the jeep was given to him for the trip to Vaishno Devi. Ranjana expressed her desire to accompany them to Vaishno Devi on the next day. Therefore, PW-2-Harbans Lal along with his wife, daughter, son, besides Asha Rani, Payal and Sahil as well as Ranjana @ Tara Devi proceeded to Vaishno Devi on the said jeep. All expenses of the tour, it was stated were borne by PW-2-Harbans Lal as he could not have asked for any amount from his sister. PW-2 further stated that all the medical expenses were incurred by their brother-Hans Raj Sachdeva i.e. the owner of the jeep.

Keeping in view the facts and circumstances of the case, it is apparent that the learned tribunal has erred in relying on a stray sentence in

the cross-examination of PW-1-Ravinder Kumar to conclusively hold that the vehicle in question was being used for commercial purposes. Once, it is proved on record that the offending jeep was being used by the family members of the owner for going to Vaishno Devi and there being no evidence on record to refute the same or to prove that the vehicle was taken on hire, said finding of the learned tribunal is set aside being erroneous and contrary to the evidence on record. The vehicle in question was admittedly insured with the insurance company. No breach or violation of the conditions of the insurance policy is proved. Therefore, insurance company is held liable to indemnify the insured and deposit the compensation awarded.

No other argument has been raised.

Appeal as well as the revision petitions are accordingly allowed in the terms as above.

06.03.2019
s.khan

[LISA GILL]
Judge

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