

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

FAO-7259 of 2011(O&M)
Date of decision:-13.3.2019

New India Assurance Co. Ltd.

...Appellant

Versus

Smt.Geeta Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vinod Gupta, Advocate
for the appellant.

Mr.Jitender Nara, Advocate
for respondents No.1 to 6.

Mr.Atul Yadav, Advocate
for respondent No.7.

Mr.Arvind Kumar Yadav, Advocate
for respondent No.9.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that claimants Smt.Geeta Devi and five other legal representatives of Sh.Birham Parkash – deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, on the averments that deceased Sh.Birham Parkash running a grocery shop at village Nanu Kalan on 3.4.2009 had gone to Rewari in a three wheeler auto rickshaw bearing registration No.HR-47A-3184

(hereinafter referred to as the offending vehicle); that at about 4:00 p.m. when he was returning in that very three wheeler after making purchases, then the said vehicle over turned due to its rash and negligent driving by its driver Sanjay – respondent No.2; that Sh.Birham Parkash had suffered injuries in that mishap; that he was shifted to Pushpanjali Hospital for treatment but he succumbed to the injuries on the next day i.e. on 4.4.2009; that an FIR No.136 dated 16.7.2009 for the offences under Sections 279, 304 and 120-B was registered at Police Station Pataudi, claiming compensation of Rs.20 lacs impleading owner, driver and insurer of the offending vehicle as respondents.

Notice of the claim petition was given to respondents. Respondents No.1, 1A, 1-B, 2 and 3 put in appearance and filed separate written statements contesting the claim petition praying for its dismissal.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident in question took place due to rash or negligent driving of vehicle No.HR-47-A-3184 by respondent No.2 resulting into death of Braham Parkash as alleged? OPP.
2. If issue No.1 is proved, whether the claimants are entitled to any compensation and if so to what extent and from whom? OPP.
3. Whether respondent No.2 was not holding valid and effective driving licence? OPR(3).
4. Whether the insured violated the terms and conditions of insurance policy? OPR(3).
5. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimant No.1 Geeta Devi appeared as PW1, Munish Kumar, Registration Clerk, Office of RTA, Rewari as PW2, ASI Sheetal Dass as PW3, Sh.Vikas as PW4, Sh.Tajul Haq as PW5 and Sh.Lokesh Bhati, Criminal Ahlmad as PW6.

On the other hand, the respondents have examined respondent No.1B Om Pal as RW1 and respondent No.2 – Sanjay as RW2 besides tendering documents.

After hearing arguments, the Tribunal allowed the claim petition and compensation of Rs.5,01,500/- was awarded to the claimants/petitioners payable by respondent No.1-A, 2 and 3 jointly and severally with interest @6% per annum from the date of filing of the petition till actual realization.

This award left the insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimant.

Notice of the appeal was given to respondents, who put in appearance through counsel except respondent No.8.

I have heard learned counsel for the parties besides going through the record.

The first and foremost argument advanced by learned counsel for the appellant was that the accident in this case had taken place on

3.4.2009, whereas the FIR was registered on 16.7.2009 i.e. after a period of more than three months; that the driver of the offending vehicle allegedly involved in the accident in the written reply filed by him had taken the stand that he had not remained as driver on the offending vehicle at any point of time under employment of respondent No.1 to 1B and had not caused any accident, therefore, the Tribunal has wrongly come to the conclusion that such driver had caused the accident by rash and negligent driving, rather the offending vehicle in question and respondent No.2 as its alleged driver were wrongly introduced by the claimants just to get compensation.

It may be mentioned here that this very contention was raised by the insurance company before the Tribunal. However, the Tribunal had referred to testimony of PW4 Vikas, who had provided the ocular version of the accident giving detailed manner of accident in affidavit Ex.PW4/A stating that the accident in question had taken place due to rash and negligent driving of offending vehicle by respondent No.2, further stating that the police had not lodged the FIR as name of driver was not disclosed by respondent No.1 and then he filed a criminal complaint under Sections 279 and 304-A IPC, which was sent to Police Station Pataudi under Section 156(3) Cr.P.C. by the Court whereupon FIR No.136 was registered and name of driver came to be known as Sanjay son of Shishpal – respondent No.2. The Tribunal has further referred to testimony of PW3 ASI Sheetal Dass, who deposed about registration of FIR No.136 dated 16.7.2009 for the offences under Sections 279 and 304-A IPC as per orders of the Court stating that he was Investigating Officer in the said

case proving copy of FIR as Ex.P1 stating that non-bailable warrants had been issued against accused Sanjay. Reference to the testimony of PW6 Lokesh Bhati, Criminal Ahlmad in the Court of JMIC, Gurgaon has also been made, who had brought the case file titled 'State Versus Sanjay' stating that case was fixed for consideration on charge, whereas PW5 Sh.Tajul Haq, Record Keeper, Pushpanjali Hospital, Gurgaon on the basis of record had proved final bill Ex.PW5/1, copy of MLR Ex.PW5/2, death summary Ex.PW5/3 and ruqa in respect of deceased Brahim Parkash Ex.PW5/4. The Tribunal has dealt with these aspects in detail in para Nos.14 and 15 of the Award, which for ready reference are being reproduced as under:

14. I have given my anxious consideration to the arguments advanced by learned counsel for respondent No.2 besides going through the case file and authority (supra) very carefully. The authority (supra) had its own facts. In the said case a tempo Trax was collided with the truck. Registration number of the truck could not be noticed. The truck also could not be traced. A first information report was lodged by one of the occupants of the Tempo Trax. As during investigation the truck could not be traced the case was closed. However, in the present case doctor of Pushpanjali Hospital, Gurgaon sent Ruqqa Ex.PW5/A to the SHO, P.S. Pataudi regarding the death of deceased at 1.05 p.m. on 4.4.2009. The said Ruqqa was received in the police station at 3.40 p.m. on the same day. However, the police did not

take any action. Thereafter, PW4 Vikash filed complaint in the court of learned Illaqua Magistrate. His prayer for lodging the FIR u/s 156(3) Cr.P.C. was declined. Then PW4 Vikash filed criminal revision which was allowed vide judgment dated 10.7.2009, Ex.P2 and the Illaqua Magistrate was directed to send the complaint to the concerned police station by passing appropriate order directing the police to register FIR and to investigate the case. Thereafter, on the order of the Magistrate u/s 156(3) the FIR was registered in this case.

15. During investigation the police found that respondent No.2 had caused the accident in question by driving the offending vehicle in rash and negligent manner and charge sheet u/s 279, 304-A IPC was filed against him. Now he is facing trial before learned Illaqua Magistrate for causing the accident in question by driving the offending vehicle in a rash and negligent manner in which Birham Parkash deceased received injuries and died. There is nothing on record that respondent No.2 had moved any application before the high ups in the police department that he was falsely challaned by the police. Since respondent No.2 is facing trial for causing the accident in question by driving the offending vehicle in a rash and negligent manner, it is prima-facie safe to conclude that the accident in question had taken place due to rash and negligent driving of the

*offending vehicle by respondent No.2. Here, reliance can be placed on the authorities reported as **Girdhari Lal Vs. Radhey Sham and others, 1993-2 PLR 109, Lakhu Singh Vs. Uday Singh 2009(1) AICJ 693 and Sadma Devi and others Vs. Kewal Ram and others 2009(1) AICJ 697.** This issue is decided accordingly in favour of the petitioners and against the respondents.*

This is good enough reasoning for arriving at the conclusion that respondent No.2 – Sanjay was author of the accident by his rash and negligent driving of the offending vehicle on the fateful day resulting in causing injuries to Birham Parkash to which he succumbed on the next day in the hospital. The contentions raised on behalf of the insurance company that the delay in lodging of FIR goes to show that the vehicle in question and respondent No.2 being its driver were roped in wrongly are devoid of any merit.

The next argument advanced by learned counsel for the appellant – insurance company was that respondent No.2 – Sanjay had not placed on file copy of his driving licence, therefore, the insurance company could not get the same examined so as to find out whether it was genuine or not. Again I am not convinced by such contention. The Tribunal has dealt with that aspect in para Nos.21 and 22 of the Award, which are being reproduced for ready reference as under:

21. Learned counsel for respondent No.3 raised the contention that respondent No.2 did not produce on record

his driving licence and a presumption would be raised that he was not holding any driving licence and the insured by allowing respondent No.2 to drive the offending vehicle had violated the terms and conditions of the insurance policy and insurance company was not liable to pay any compensation.

*22. I have given my anxious consideration to the contention raised by learned counsel for respondent No.3 and I regret my inability to accept his arguments. By now it is well settled that non production of the driving licence by the driver would not exonerate the insurance company from its liability to pay compensation to the claimants. The onus is on the insurance company to prove that the driver was not holding a valid driving licence. In this case no evidence has been led by the insurance company to prove this fact. Hence, insurance company cannot escape from its liability to pay the compensation. Here reliance can be placed on the authority reported as **National Insurance Co. Ltd. Vs. Shainder Kumar and others 2007 ACJ 1181 (DB)(Punjab).***

Though in the written statement filed by the insurance company an objection had been taken that respondent No.2 was not having a valid and effective driving licence at the time of accident and issue No.3 in that regard has been struck, which is as under:

“Whether respondent No.2 was not holding valid and effective driving licence? OPR(3).”

The onus of proving this issue was upon respondent No.3 – insurance company. Such insurance company could have called upon respondent No.2 to produce copy of his driving licence and if he had not produced then the insurance company could have brought on record other evidence. After registration of FIR in motor vehicular accident cases, on arrest of the driver of the offending vehicle, copy of driving licence is taken from him, which is then made part of the challan. No effort seems to have been made by the insurance company to get that record summoned. The claimants had summoned PW6 Lokesh Bhati, Criminal Ahlmad in the Court of JMIC, Gurgaon with record relating to criminal case titled 'State Versus Sanjay', FIR No.136 dated 16.7.2009 under Sections 279 and 304-A IPC, who had deposed about filing of challan and availability of RC of the vehicle in question on the record. During his cross-examination, no question was asked from him on behalf of the insurance company as to whether driving licence of the accused was available on challan file or not. Furthermore, the Investigating Officer of the criminal case namely ASI Sheetal Dass had been examined by the claimants. No question was asked from him as to whether he had taken into possession the driving licence of Sanjay accused in the criminal case or not. Therefore, the Insurance Company had failed to discharge the burden of proof placed upon it and it cannot take advantage of the fact that copy of driving licence was not placed on file by respondent No.2 – driver.

No other point was argued.

The finding recorded by the Tribunal is well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence

available on record.

Finding no merit in the appeal, the same stands dismissed accordingly.

13.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No