

FAO-248-2013(O&M) and
FAO-249-2013(O&M)

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

(1) FAO-248-2013(O&M)

Reliance General Insurance Co. Ltd.

...Appellant

Versus

Smt.Neelam and others

...Respondents

(2) FAO-249-2013(O&M)

Reliance General Insurance Co. Ltd.

...Appellant

Versus

Smt.Neelam and others

...Respondents

Date of Decision:-14.3.2019

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

Present: Mr.Arun Sharma, Advocate
for the appellant(s).

Mr.S.P. Chahar, Advocate
for respondents No.1 to 5 in both appeals.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-248-2013(O&M) and FAO-249-2013(O&M) filed on behalf of appellant – Reliance General Insurance Co. Ltd., which have arisen out of the same accident.

Briefly stated, facts of the case are that on 15.7.2009

Sh.Kuldeep Singh son Sh.Ramehar along with Sh.Sombir son of Sh.Sukhbir was coming from Nangloi to their village Bhaproda on a scooter; that when they reached near Marino factory in the area of village Rohad, a truck trailer bearing registration No.HR-63-A-3926 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 - Ved Pal Sharma in a rash and negligent manner at a high speed came and dashed against the said scooter, resultantly both the riders of the scooter namely Sh.Kuldeep Singh and Sh.Sombir suffered injuries; that Sh. Kuldeep Singh succumbed to the injuries, whereas Sh.Sombir injured was shifted to Civil Hospital, Bahadurgarh but later on he too died as a result of injuries suffered by him in the accident; that the matter with regard to the accident was reported to the police of Police Station Sadar, Bahadurgarh by one Ranbir son of Devi Singh and an FIR No.258 dated 16.7.2009 was recorded there; that the post-mortem examination on the dead-bodies of both the deceased was conducted.

The legal representatives of deceased Sh.Kuldeep Singh namely Smt.Neelam – wife, Master Aman and Master Rohit – minor sons, Baby Kirti -minor daughter, Sh.Ramehar – father and Smt.Shanti - mother had brought a claim petition bearing No.37 of 2011 under Section 166 of the Motor Vehicles Act against the respondents i.e. Ved Pal Sharma – driver, Sombir – owner and Reliance General Insurance Company Ltd., Bahadurgar - insurer of the offending vehicle, claiming compensation of Rs.12 lacs along with interest. According to the claimants, deceased Sh.Kuldeep Singh was aged about 30 years at the time of accident and was running an electric shop at Modern Industrial Estate, Bahadurgarh

and earning Rs.10,000/- per month and the claimants were dependent upon his earnings.

The legal representatives of deceased Sh.Sombir namely Smt.Neelam – wife, Master Deepanshu and Master Kapil – minor sons, Sh.Sukhbir – father and Smt.Kamla - mother had also brought a claim petition bearing No.38 of 2011 under Section 166 of the Motor Vehicles Act against the above-said respondents, claiming compensation of Rs.10 lacs along with interest. According to the claimants, deceased Sh.Sombir was aged about 28 years at the time of accident and was running an electric shop at Modern Industrial Estate, Bahadurgarh and earning Rs.10,000/- per month and the claimants were dependent upon his earnings.

Since both the two claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Jhajjar.

On notice, defendants No.1 and 2 had filed joint written statement taking various legal objections denying the factum of accident in question stating that respondent No.1 had been wrongly involved in the criminal case by the local police in collusion with the petitioners; that respondent No.1 was having a valid and effective driving licence at the time of accident.

In the written statement filed on behalf of respondent No.3 – insurance company it also took up various legal objections, on merits denying involvement of the truck trailer in question in the accident stating that a wrong FIR has been got registered with the police involving the

truck trailer in question with a view to extract huge amount of compensation from the respondent No.3.

All the three respondents craved for dismissal of the claim petitions.

Subsequently respondents No.1 and 2 stopped putting in appearance before the Tribunal, as such they were proceeded against ex parte.

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

1. Whether the accident in question took place due to rash and negligent driving of vehicle No.HR-63-A-3926 by respondent No.1? OPP.
2. Whether the petitioners are entitled to get compensation amount for the death of Kuldeep and Sombir from the respondent, if so to what amount and from whom? OPP.
3. Whether respondent No.1 had no valid and effective driving licence at the time of alleged accident?OPR-3.
4. Whether respondent No.2 contravened the terms and conditions of the insurance policy? OPR-3.
5. Relief.

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

To prove their cases the petitioner No.1 in claim petition No.37 of 2011 namely Smt.Neelam had got his statement recorded as PW1 and petitioner No.1 in claim petition No.38 of 2011 namely

Smt.Neelam had got her statement recorded as PW3. The petitioners have further examined Sh.Ranbir Singh as PW2, Sh.Bijender Singh as PW4 and Sh.Prem Parkash, Addl.Ahlmad as PW5 besides tendering some documents.

On the other hand, respondents did not lead any evidence in support of their claim.

After hearing arguments, the Tribunal decided issue No.1 in favour of petitioners, issue No.2 in favour of the petitioners and against the respondents, issues No.3 and 4 against the respondents No.3 and in favour of the petitioners. Resultantly, the claim petitions were allowed by Motor Accidents Claims Tribunal, Jhajjar and compensation of Rs.7,35,000/- was awarded in each petition to the petitioners/claimants with interest and cost.

Being dissatisfied with the Award passed by the Tribunal, respondent No.3 – Insurance company has filed separate appeals before this Court.

Notice of the appeals was issued to the respondents. Respondents No.1 to 5 in both the appeals have put in appearance through counsel.

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

The first and foremost contention of learned counsel for the insurance company was that the involvement of the truck trailer in the accident was not established much less the fact that the accident, in which Sh.Kuldeep Singh and Sh.Sombir had suffered injuries, to which they had

succumbed had taken place due to rash and negligent driving of this very truck trailer by respondent No.1 – Ved Pal Sharma. Learned counsel for the appellant – Insurance company has further contended that the Tribunal has wrongly given verdict otherwise. It had not considered the fact that the alleged eye-witness PW2 Ranbir Singh had stated in his cross-examination that he was not the eye-witness of the accident and he had gone to the spot after the alleged accident. He had further stated that he did not give the registration number of the truck in the FIR and had not seen the truck at the spot. Counsel for the appellant further contended that even otherwise the compensation awarded in both the petitions is on the higher side. Therefore, the award be set aside.

Whereas learned counsel appearing for the claimants has vehemently contested such submissions pleading that the verdict given by the Tribunal is correct and does not call for any interference. The compensation is also not on higher side.

After hearing the rival contentions and going through the record, I find that the contentions of learned counsel for the appellants do not have any force. It has to be kept in mind that statement of witness is to be seen in entirety and a few lines from the statement of witness cannot be picked up and interpreted out of context. The Tribunal has given cogent and convincing reasons for coming to the conclusion that respondent No.1 Ved Pal Sharma was author of the accident by rash and negligent driving of the offending truck and Sh.Kuldeep Singh and Sh.Sombir had suffered injuries in the said mishap to which they had succumbed. For ready reference the relevant paras with regard to said discussion are reproduced

as under:

14. *After going through the rival contentions of learned counsel for the parties and going through the case file carefully, I think that there is no merit in the contentions of learned counsel for respondent No.3. It is not in dispute that respondent No.1 is facing a criminal trial for causing the accident in question and death of Kuldeep Singh & Sombir Singh therein. PW5 Prem Parkash, Addl. Ahlmad, in his statement, has proved on record that respondent No.1 has been charge-sheeted under Sections 279 and 304-A of IPC vide order dated 18.1.2010. There is a presumption of negligence against respondent No.1 as he is facing a criminal trial. Reference may be made to an authority reported as Girdhari Lal Vs. Radhey Shyam & others, 1993(2) PLR 109.*

15. *Arguments of learned counsel for respondent No.3 that respondents No.1 & 2 are in collusion with the petitioners, also cannot be sustained as the investigating agency which has no reason to take the side of the petitioners acting apparently impartially, investigated the matter and could locate the offending vehicle and its driver. After the investigations, respondent No.1 and the offending vehicle were found to be involved in the accident in question. Statement of PW2 Ranbir Singh is detailed and picturesque about causing of the accident. He has braved the cross-*

examination. More scrutinizing cross-examination has been more unfolding of the case of the petitioners. Nothing impeaching his credit has surfaced.

16. Merely because the name of respondent No.1 and registration number of the vehicle are not there in the FIR (Ex.P8), is not a circumstance to discredit the case of the petitioners. The police has its own role to play. Conducting investigation and collecting evidence is not the job of an informant or an eye-witness. If by dint of their investigational skill, the gaping holes have been filled in diligently by the investigation machinery by tracing the offending vehicle as also its driver, the investigations should not be castigated. Reference may be made to an authority reported as Pillathal and other Vs. R.S. Ganesan and others, II(2000) ACC 265(Madras).

17. Looking from another angle, had the driver been falsely implicated in the case, he could not have sat silent. He was to cry hoarse. He was to move from pillar to post proclaiming his innocence. Nothing such happened. He did not even enter the witness-box to repudiate the claim and the effect of the witnesses produced by the petitioners. The respondents even did not prefer to call for the investigating officer in the witness-box to raise their pointed finger against its truthfulness and veracity. Therefore, non-examination of respondent No.1 is fatal to the case of respondents in view of

the law laid down in Jagdish Rai Sharma Versus Kesho Devi and others 1984, ACJ, 104, Bhagwani Devi Vs. Krishan Kumar Saini and others 1986 A.C.J. 331, Lalita Malhotra & others Vs. Vijay Pal & Others, II(1995) A.C.C., 688(Delhi) and Vijay & others Vs. Laxmi Chand Jain and others, II(1995) A.C.C.165(DB, Allahabad).

18. *Statement of PW2 Ranbir Singh has spoken about the negligence of respondent No.1 for causing the accident in question and thus, has run in consonance with the averments in report under Section 173 Cr.P.C.(Ex.P23) and thus, has a corroborating circumstance in view of authority reported as Ram Parkash and another Vs. Kanta Suri and others, 1986 ACJ 471(P&H).*

19. *As far as the above mentioned evidence is concerned, at the very outset it is pertinent to mention that only an enquiry of civil nature is to be conducted in this case and it is settled proposition of law that the rights of the parties in the civil enquiry are to be decided on the basis of preponderance of probabilities.*

In this context, the Hon'ble High Court of Punjab and Haryana in the case of Lakhu Singh Vs. Uday Singh, 2008(1) LJR 209 has observed that in a petition under Section 166 of M.V. Act, the Tribunal is required to hold an enquiry and is not supposed to act as a criminal Court. That it is not for the tribunal to find out whether the petitioners

have proved the occurrence beyond the shadow of doubt and even if there is prima facie evidence of the occurrence, there is no reason to disbelieve the evidence of the petitioner. As per Hon'ble High Court, the registration of FIR and trial of the accused in criminal case is sufficient to prove that the accident had taken place.

20. *In the case of **Bansi Yadav and others Vs. Krishan Kumar 2004(3) LJR 599**, the Hon'ble High Court of Punjab and Haryana has observed that the FIR is a public document and in a proceeding under the Act where the Tortuous liability is to be fixed on preponderance of probability, it is admissible in evidence.*

21. *In view of my above detailed discussion, I have no hesitation to hold that the accident in question took place due to the rashness and negligence driving on the part of respondent No.1 i.e. the driver of the offending vehicle. Hence, this issue is hereby decided in favour of the petitioners.*

The reasoning given by the Tribunal is very convincing and no different view can be taken in the matter. The Tribunal was justified in deciding issue No.1 in favour of the claimants against the respondents. The compensation awarded is just and adequate and valid reasons had been given for arriving at the sum awarded.

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

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available on record. Therefore, there is no ground to set aside the award.

Finding no merit in the appeals, the same stand dismissed
accordingly.

14.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No