

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

FAO No.202 of 2016 (O&M)

Date of Decision: 08.03.2019.

The Oriental Insurance Company Ltd. ...Appellant

Versus

Suresh Kumar and another.Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. R.N. Singal, Advocate for the appellant.

Respondent No.1 ex parte vide order dated 17.05.2016.

Mr. Pranav Chadha, Advocate for respondent No.2.

B.S.WALIA, J (Oral).

1. Appeal has been filed by the Insurance Company challenging award of compensation of ₹2,29,500/- by the learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') to respondent No.1 on account of injuries sustained by him in a motor vehicular accident on 19.01.2014.

2. Despite service none has put in appearance on behalf of respondent No.1, as a result of which, he was proceeded ex parte vide order dated 17.05.2016.

3. Mr. Pranav Chadha, Advocate appearing on behalf of respondent No.2 states that he is not opposing the appeal.

4. The short point argued by learned counsel for the appellant is that DDR Annexure A-1 was recorded at Police Station Sector-34, Chandigarh to the effect that both respondent Nos.1 and 2 met with an

accident on account of collision of their motorcycles while trying to save each other and thereby received injuries besides motorcycles were damaged and that the matter had been compromised amongst the parties and Akash Gupta, respondent No.2, had given expenses of treatment to respondent No.1 and none of them wanted any police action against each other. Learned counsel contends that once both the respondents agreed and got their statements recorded before the police that they had met with an accident while trying to save each other, then in that situation, it was established that there was no allegation of negligence levelled by respondent No.1 against respondent No.2, therefore, in the circumstances, respondent No.1 was bound by the admission made before the police and could not resile from the same and take up a contradictory stand before the learned Tribunal.

5. The Tribunal distinguished the decision in **Jagjiwan Singh vs Rajinder Singh and others FAO No.7304 of 2010 decided on 28.01.2015**, wherein the claim petition was dismissed on account of the fact that the matter had been compromised regarding which injured/claimant had executed affidavit that he had received a sum of ₹1,25,000/- from the respondent as compensation to meet the expenditure on his treatment.

6. In the case in hand, respondent No.2 herein i.e. driver and owner of offending motorcycle has opted not to contest the appeal. There is no dispute as regards DDR Annexure A-1, wherein it has been mentioned that respondent No.1 and respondent No.2 had admitted in the police station that while driving their respective motor cycles both of them while trying

to save each other met with an accident as a result of which they both received injuries besides damage to their motorcycles and that the matter had been compromised in the presence of family members besides respondent No.2 had given expenses of treatment to respondent No.1 and none of them wanted any police action against each other. There is no allegation of negligence leveled by respondent No.1 against respondent No.2 of respondent No.2 having driven the motorcycle rashly and negligently. Although respondent No.2 gave expenses of treatment to respondent No.1 but in the circumstances the statement made by both the respondents before the police which is attached along with the appeal as Annexure A-1 is to be read in entirety and reading of the same reveals that the accident occurred while both respondents were trying to save each other. Thus, in the absence of there being any allegation of negligence or rash driving by respondent No.2, the statement made before the police about the occurrence being an accident which each of the respondents were trying to avoid, it would not be possible for respondent No.1 to turn around and allege negligence to maintain a civil action for compensation in view of the decision of Hon'ble the Supreme Court in **Unique Motor and General Insurance Company Ltd. vs. The New India Assurance Company Ltd. 1967 ACJ 317**, **Mandi Kullu Road Transport Corporation vs. Janak Raj Singh 1968 (70) PLRD 367**, **Dharam Chand vs. Shiv Pat 1966 ACJ 319** as also the decision of this Court in **FAO No.38 of 1974** titled **Surinderjit Singh vs. Kuldip Rai and others** decided on 23.08.1982. Resultantly, on account of the statement made by respondent Nos.1 and 2 before the police, of the accident having taken

FAO No.202 of 2016

place while the respondents were trying to avoid each other and no allegation of rash and negligent driving having been made by respondent No.1 against respondent No.2, it is not open to respondent No.1 to have taken a contradictory stand in the proceedings before the learned Tribunal so as to seek compensation.

7. In the light of the position as noted above, the appeal is allowed. Award dated 04.09.2015, passed by the learned Tribunal, Chandigarh is set aside.

(B.S.WALIA)
JUDGE

08.03.2019.
rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No