

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

Date of decision: 03.09.2019

FAO No.3406 of 2015 (O&M)

Dheeraj ... Appellant

Versus

Nitin and others ... Respondents

FAO No.3413 of 2015 (O&M)

Dheeraj ... Appellant

Versus

Vijay Pal Singh and others ... Respondents

FAO No.3414 of 2015 (O&M)

Dheeraj ... Appellant

Versus

Devender and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Randhir S. Hooda, Advocate
for the appellant.

Mr. Parveen Gaur, Advocate
for the claimant in FAO No.3406 of 2015
for the claimants in FAO No.3413 of 2015.

Mr. Akash Sridhar, Advocate for
Mr. Ashwani Talwar, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3406, 3413 and 3414 of

2015 as identical questions of law and fact are involved for adjudication.

For facility of reference, facts are taken from FAO No.3413 of 2015.

Counsel for the appellant would apprise that the appellant is driver of alleged offending vehicle i.e. three wheeler No.HR-74-0143 and liability to pay compensation has wrongly been fastened against him. It is argued that if owner of the vehicle has not obtained a valid insurance policy in compliance with the provisions of Section 146/147 of the Motor Vehicles Act, 1988 (in short 'the Act'), driver of the vehicle cannot be put to disadvantage by fastening liability to pay compensation. In addition, it is argued that registered owner of the vehicle namely Ishak is wrongly exonerated of liability to pay compensation and liability to pay compensation has been fastened against the appellant and subsequent purchaser of the vehicle namely Parveen Kumar.

Another submission made by counsel is that Pammu @ Pawan Kumar (since deceased), driver of motorcycle bearing No.HR-50-C-0539 is liable to be attributed contributory negligence for the unfortunate occurrence and claimants are not entitled to compensation to the extent of negligence attributable to him. To bring home his contention, it is argued that as the accident was head on collision between the motorcycle driven by Pammu @ Pawan Kumar and three wheeler No.HR-74-0143 driven by Dheeraj (appellant herein), 50% negligence may be attributed to the deceased.

Counsel representing respondents/claimants has refuted contention of the appellant that findings of the Tribunal on issue No.1

suffer from an error much less negligence to any extent is liable to be attributed to Pammu @ Pawan Kumar (since deceased).

Sanjay, one of the injured and rider of ill-fated motorcycle driven by Pammu @ Pawan Kumar appeared in the witness box to support cause of the claimant that accident is the result of rash and negligent driving of offending vehicle by Dheeraj. He tendered into evidence his duly sworn affidavit Ex.PW1/A and reiterated that when they reached near Godhota Chowk, NH-2 Hodal, in the mean time offending three wheeler bearing No.HR-74/0143 driven in a rash and negligent manner, fast speed, without obeying traffic rules, without blowing horn came from Godhota side and hit the motorcycle on front side and as a result the deponent along with Pammu @ Pawan Kumar and Nitin minor fell down on the road and sustained multiple and fatal injuries in this accident. In his cross examination, he has stated that the occurrence was head on collision. However, there is no such fact put to the witness that driver of the motorcycle was rash or negligent or he had not taken reasonable care to avoid the accident. In the given circumstances, the mere fact that occurrence was head on collision *ipso facto* is not sufficient to attribute negligence to the deceased.

Dheeraj (appellant herein) and driver of offending vehicle examined himself and tendered into evidence his affidavit Ex.RW2/A.

A relevant extract from his affidavit, reads as follows:-

That the deponent has been falsely implicated in a road side accident case by the complainant with collusion of police and

a case has been registered against the deponent.

Testimony of Dheeraj is conspicuously silent, if the offending vehicle was involved in the occurrence much less that the present is a case of contributory negligence of the motorcyclist. Dheeraj faced criminal proceeding on the basis of FIR registered by Sanjay. In view of the materials on record, it is difficult to accept contention of the appellant that negligence to any extent is liable to be attributed to deceased Pammu @ Pawan Kumar, driver of motorcycle No.HR-50-C-0539.

So far as contention of the appellant that liability is wrongly fastened against him, the same is patently misconceived and liable to be rejected. The appellant being the driver of offending vehicle and held responsible for causing the accident due to rash and negligent driving cannot escape his liability. The owner of the vehicle would be vicariously liable for the negligent act of the appellant and if the vehicle is insured, insurance company shall be obligated to indemnify the insured in discharge of its liability under a contract of insurance. If the insured has not obtained a valid insurance policy, driver of the vehicle cannot escape his liability to pay compensation.

Ishak respondent No.2 before the Tribunal is the registered owner of vehicle whereas Parveen Kumar is subsequent purchaser of offending vehicle. Ishak being registered owner cannot escape liability to pay compensation. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Naveen Kumar Vs Vijay Kumar and Ors, 2018 (2) Scale 263**. That being so, respondents No.1, 2 and 2A before the

Tribunal shall be jointly and severally liable to pay compensation to the claimants.

In view of what has been discussed hereinbefore, the appeals are partly allowed in the aforesaid terms.

03.09.2019

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No