

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 5787 of 2014 (O&M)
Date of decision : 14.10.2019

Partap Singh
.....Appellant

VS.

Raju and others Respondents

2) FAO No. 5244 of 2017 (O&M)
Date of decision : 14.10.2019

VijayAppellant

VS.

M/s Shri Ram General Insurance Company Ltd.
and others
.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Shiv Kumar, Advocate for the appellant
in FAO 5787-2014.

Mr. Jai Bhagwan Sharma, Advocate for the appellant
in FAO 5244-2017.

Mr. Punit Jain, Advocate for the Insurance company
respondent No.3 in FAO 5787-2014 and
for respondent No.1 in FAO 5244-2017.

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H. S. Madaan, J. (Oral)

Vide this judgment, I intend to dispose of two appeals, bearing FAO No. 5787 of 2014 titled as 'Partap Singh vs. Raju and

others' and FAO No. 5244 of 2017 titled as 'Vijay vs. M/s Shri Ram General Insurance Company Ltd. and others', as both these appeals have arisen out of the same award.

Petitioner – Partap Singh, alleging that he had suffered injuries in a motor vehicular accident, which took place on 4.10.2010 at about 1.45 P.M. in the area near HUDA Sector at village Keli, statedly on account of rash and negligent driving of TATA 407 bearing registration No. HR 55H-1282 (hereinafter to be referred to as 'the offending vehicle') by respondent No.1- Raju, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, before Motor Accident Claims Tribunal, Faridabad, against respondents i.e. Raju – driver, Vijay – owner and M/s Shri Ram General Insurance Company Limited, Faridabad – Insurer of TATA 407 – the offending vehicle, claiming compensation of Rs.10 lacs.

On being put to notice, all the three respondents appeared and offered a contest. Following issues were framed by the Tribunal:-

1. whether the present accident had taken place due to rash and negligent driving of TATA 407 bearing No. HR-55H-1282 by respondent No.1? OPP.
2. If issue No.1 is proved, whether the claimant is entitled for any amount of compensation, if so to what amount and from whom? OPP
3. Whether the petitioner has no locus standi and cause of action to file the present petition? OPR
4. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident and insured

had also violated the other terms and conditions of the policy and as such respondent No.3 is not liable to make payment of compensation, if any? OPR 3.

5. Relief.

Parties were given opportunities to lead the evidence. On conclusion of trial, the Motor Accident Claims Tribunal, Faridabad, accepted the claim petition and granted compensation of Rs.3,10,500/- to the petitioner- claimant, payable by respondents No. 1 and 2, jointly and severally with interest @ 7.5% per annum from the date of filing of claim petition till actual realisation, vide award dated 21.12.2013.

Since the Tribunal had observed that the driving license possessed by respondent No.1 – Raju driver authorized him to drive motorcycle and light motor vehicles (private) only, whereas he was driving TATA 407 vehicle, as such he was not having a legal and valid driving license to drive the offending vehicle, on account of absence of endorsement on the driving license authorizing him to drive the transport vehicle, which resulted in violation of the terms and conditions of the insurance policy. Although respondent – Insurance company was directed to pay the compensation amount to the claimant at the first instance, however, recovery rights were granted to recover it from respondent No.2 – insured owner.

Partap Singh- claimant was not satisfied with the amount of compensation awarded to him by the Tribunal. Whereas Vijay – owner of the vehicle was aggrieved by the recovery rights granted to the Insurance company. Both of them have filed separate appeals,

which are being decided together since, they have arisen out of the same award, relating to one accident.

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

On behalf of the claimant, an application has been filed to place on record the disability certificate by way of additional evidence, contending that this certificate showing that the petitioner-claimant has suffered 75% of permanent disability, on account of the accident, is very much necessary for proper adjudication of the case. It could not be proved in evidence before the Tribunal since the certificate has been issued later on.

Of course this certificate is an important piece of evidence to determine the quantum of compensation payable to the petitioner – claimant. However, the certificate is not admissible per se and the doctor concerned who has issued the certificate is required to be examined to prove the same, granting the respondents an opportunity to cross examine him with regard to the manner of examination and as to whether the disability is qua the entire body or specific part thereof. Furthermore, the respondents may have to be given an opportunity to rebut that evidence.

Learned counsel for respondent No.2- Insured, has referred to Apex Court judgment **Mukund Dewangan vs. Oriental Insurance Company Limited, 2017 (4) RCR (Civil) 111**, wherein it was observed that when a driver is holding a license to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle. Though

learned counsel for the Insurance company states that a different view has been taken by the Apex Court and that this issue has been referred to in the larger Bench in case *M/s Bajaj Alliance General Insurance Co. Ltd. vs. Rambha Devi and others in Civil Appeal No. 841/2018*, vide order dated 3.5.2018. But it has been agreed by the counsel for the parties that the award in question be set aside and the case be remanded to the Tribunal for fresh decision. It is ordered accordingly.

The Tribunal shall fix a date for offering an opportunity to the claimant to summon the concerned doctor for the purpose of getting his statement recorded to prove the disability certificate and after the needful is done the respondents would be given an opportunity to produce evidence in rebuttal. Then after hearing the counsel, a fresh award be passed by giving issue wise findings including the aspect as to whether respondent No.1 was holding a legal and valid driving license at the time of accident, in view of the latest law on the topic. Since the case is quite old, the entire exercise be completed within three months from the date of receipt of a copy of this order in the Tribunal.

Parties through counsel are directed to appear before the Tribunal on 7.11.2019.

In that way, both the appeals stand disposed of.

14.10.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No