

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

FAO No. 666 of 2015 (O&M)

Date of decision : September 30, 2019

Shri Ram General Insurance Company Ltd.Appellant

Versus

Ishwar Singh and othersRespondents

FAO No. 881 of 2015 (O&M)

Shri Ram General Insurance Company Ltd.Appellant

Versus

Vikram and othersRespondents

FAO No. 4317 of 2016 (O&M)

Shri Ram General Insurance Company Ltd.Appellant

Versus

Mohit Kumar and othersRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajbir Singh, Advocate
for the appellant.

Mr. Onkar Rai, Advocate and
for respondent No. 1 (in FAO No. 4317 of 2016)

LISA GILL, J.

All the above said appeals, i.e. FAO Nos. 666, 881 of 2015 and 4317 of 2016 are taken up for hearing and decision together as they emanate from claim petitions arising out of the accident which took place on 08.07.2012. Three persons were injured in this motor vehicle accident. All of them filed separate claim petitions under Section 166 of the Motor Vehicles Act seeking compensation on account of injuries and permanent disability suffered by them. Learned Motor Accident Claims Tribunal,

Faridabad (hereinafter referred to 'the Tribunal') consolidated MACT No. 1 of 2013 filed by claimant - Ishwar Singh and MACT No. 77 of 2013 filed by claimant - Vikram and decided the same vide common award dated 02.09.2014. MACT No. 71 of 2015 filed by Mohit Kumar was decided by the learned Tribunal vide separate award dated 09.02.2016, which is the subject matter of FAO No. 4317 of 2016.

Present appeals have been filed by Shri Ram General Insurance Company Limited challenging awards dated 02.09.2014 and 09.02.2016 passed by the learned Tribunal primarily on the ground that the accident in question is not proved to have taken place with the offending truck, therefore, the insurance company is not liable to pay the compensation and in the alternate, it is contended, there is an element of contributory negligence on the part of the injured, which calls for commensurate apportionment of/reduction in the quantum of liability.

Brief facts as pleaded in the claim petitions are that the claimants – Ishwar, Vikram and Mohit were coming from Nangla Enclave to village Pali on a motorcycle bearing registration No. HR-51Z-4863 driven by Vikram. When they reached at village Nangla, offending truck bearing registration No. RJ-02/G-5715 came from opposite side in a rash and negligent manner and hit the motorcycle driven by Vikram. As a result thereof, they all fell on the road and sustained multiple greivous injuries. They were shifted to B.K. Hospital, Faridabad.

Claimant – Ishwar Singh claimed that he was admitted in B.K. Hospital in an unconscious condition and thereafter shifted to Central Hospital and Research Centre, Faridabad where he remained under treatment from 08.07.2012 to 22.08.2012. Claimant – Vikram also remained admitted in the hospital for the period as mentioned in the claim

petition. Discharge summaries of the said claimants are on record as Exs. P81 and P82. Vikram suffered permanent disability to the extent of 82.5% having suffered amputation of his right arm. Claimant – Mohit Kumar also remained admitted at B.K. Hospital at the first instance and thereafter at Surya Ortho and Trauma Centre, NIT, Faridabad. Discharge summary was placed on record and the Doctor who treated him was examined.

Learned Tribunal awarded a sum of ₹55,751/- to the claimant-injured/Mohit Kumar (in MACT No. 71 of 2015), a sum of ₹68,376/- to the claimant-injured/Ishwar (in MACT No. 1 of 2013) and a sum of ₹11,80,032/- to claimant-injured/Vikram, who suffered amputation of his right arm, (in MACT No. 77 of 2013) with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award.

Learned counsel for the appellant - insurance company vehemently argues that involvement of the offending truck in the motor vehicle accident in question, is not proved. It is contended that the claimants were unable to prove that the accident in question was caused due to the rash and negligent act of the driver of the offending truck in question. It is submitted that the accident in question took place on 08.07.2012 whereas FIR No. 263 under Sections 279, 337 IPC was registered on 11.07.2012. The details/registration number of the truck were not mentioned in the FIR. Therefore, it is proved that the truck in question was falsely involved at a later stage. It is further contended that even if the truck in question is proved to be involved in the accident in question, there is a definite element of contributory negligence inasmuch as all the three claimants were triple riding on the motor cycle in question. Therefore, the accident was caused

due to their own rash and negligent act. The insurance company in any case cannot be held liable in this matter. No serious argument has been raised regarding the quantum of compensation awarded to the claimants. It is, thus, prayed that these appeals be allowed and the insurance company be completely absolved of any liability in this case and in the alternate the liability of the insurance company be reduced by holding the claimants to be guilty of contributory negligence.

Learned counsel for the claimant/respondent No. 1 (in FAO No. 4317 of 2016) refutes the argument raised by learned counsel for the appellant and submits that the claimants have duly proved their case by leading sufficient, clear and cogent evidence on record. It is denied that there is any element of contributory negligence on the part of the claimants. It is, thus, prayed that all the appeals be dismissed.

It is noticed that respondents No. 2 and 3 did not appear in these proceedings despite service and they were proceeded exparte vide order dated 23.07.2015 in FAO No. 666 of 2015.

I have heard learned counsel for the parties and have gone the record with their able assistance.

It is a matter of record that the claimants were involved in a motor vehicle accident which took place on 08.07.2012. In the FIR (Ex.P39) which is recorded on 11.07.2012, on the statement of one of the injured Mohit (PW1), it is clearly mentioned that intimation regarding the accident was received by the police authorities on 08.07.2012 itself from the doctors at B.K. Hospital, Faridabad, upon which police official Kuldeep Singh reached B.K. Hospital. Medico Legal Reports of all the three injured were obtained by him. All the three injured were declared unfit to record their statement by the concerned doctor. The police official again went to the

different hospitals where the three injured were admitted but the doctor declared them unfit to record their statement and ultimately statement of Mohit was recorded on 11.07.2012 after he was declared fit to record his statement. In this view of the matter, there is no merit in the argument raised by learned counsel for the appellant that delay in lodging of the FIR is fatal to the case of the claimants. Intimation of the accident was sent to the police authorities on the day of the accident itself. FIR was formally registered on the statement of an injured as soon as he was declared fit to record his statement. Thus, it cannot be held that there is any delay in the lodging of the FIR which per se renders the account doubtful.

The claimants have examined PW6 Manoj Kumar who has categorically testified, that on 08.07.2012 he was going from his house to village Nangla Gujran at about 6.00 a.m. and he witnessed the accident in question. The said accident was stated to be caused due to the rash and negligent driving of the driver of the offending truck. PW6 further deposed that he brought the three injured persons to B.K. Hospital, Faridabad at about 6.45 a.m. The truck in question, it is stated, was abandoned at the side of the road by its driver, who fled from the spot. He further revealed that the truck driver's name was heard as Mubin at the spot itself. Registration number of the truck was noted down by him. PW6 has denied the suggestion that no accident took place with the offending truck. It is to be noted that PW6 is a summoned witness.

It has been held by the Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Company Ltd. and others, 2018 (5) SCC 656 and Sunita v. RSTRC, CA No. 1665 of 2019 (arising out of SLP (civil) No. 33757 of 2018, decided on 14.02.2019**, that even if the statement of the eye

witness has not been recorded by the police authorities in the criminal proceedings against the driver of the offending vehicle, the same cannot be sufficient to draw an adverse inference or to discard the statement of the said eye witness duly recorded before the learned Tribunal. There is indeed nothing on record to doubt the credibility of the witness – Manoj Kumar (PW6).

The injured witnesses - PW7 Ishwar Singh and PW8 Vikram besides PW1 Mohit (in MACT No. 71 of 2015) have clearly deposed before the learned Tribunal in respect to the accident being caused by the rash and negligent act of the driver of the offending truck. It is specifically stated that the offending truck which was coming from the opposite side came towards the wrong side of the road. They had taken the motorcycle to the extreme left side of the road on the unmetalled part (kacha road). The motor cycle was stopped on the said unmetalled portion of the road, still the offending truck struck against the motorcycle and all the claimants were injured. Moreover, the owner and the driver of the offending vehicle have not stepped in the witness box. It is to be noticed that the respondents/driver and owner had appeared at the first instance before the learned Tribunal but no written statement was filed on their behalf and they were proceeded ex parte. There is no allegation or even pleading in the written statement filed on behalf of the insurance company that there is any relation or collusion between the claimants and the owner or driver of the offending vehicle.

In this view of the matter, it cannot be held that there is any element of contributory negligence on the part of the claimants merely on the ground that they were indulging in triple riding, which in itself may be a

violation of the traffic rules and regulations, but in the absence of any categoric evidence it cannot be held that the same was the causative factor of the accident in question.

As noted earlier, no serious arguments have been addressed regarding the quantum of compensation awarded to the claimants. Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned awards dated 02.09.2014 and 09.02.2016 which call for any interference by this Court at the instance of the appellant.

No other argument has been raised.

FAO Nos. 666, 881 of 2015 and 4317 of 2016 are, accordingly, dismissed.

September 30, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No