IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-5763-2016(O&M)

Bharti AXA General Insurance Company Ltd.

...Appellant

Versus

Naresh Kumar and others

...Respondents

(2) FAO-5767-2016(O&M)

Bharti AXA General Insurance Company Ltd.

...Appellant

Versus

Nand Lal alias @ Nandu and others

...Respondents

Date of Decision:-28.5.2019

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

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

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-5763-2016(O&M) and FAO-5767-2016(O&M) filed on behalf of appellant – Bharti AXA General Insurance Company Ltd., which have arisen out of the same accident.

Briefly stated, facts of the case are that on 26.10.2013 deceased Sanjay along with Naresh Kumar had gone to the house of his cousin Meena at village Harita on a motorcycle bearing registration No.HR-20S/4457 and while they were returning in the evening and time was about 5:00/:5:30 p.m. and had reached near village Ratera Canal towards Toshan side, a motorcycle bearing registration No.HR-19F/1211(hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Rajesh in a rash and negligent manner and at a very high speed came from the opposite side and hit the motorcycle being driven by deceased Sanjay, on which Naresh was a pillion rider, as a result of being hit, both the riders namely Sanjay and Naresh fell down on the road and sustained multiple grievous injuries; that both of them became unconscious; that immediately after the accident, one Subhash, resident of village Bhurtana presently residing at Tosham informed at the house of deceased Sanjay and then his father Nand Lal along with Deepak and others reached at the spot; that both the motorcycles were lying there; that Naresh Kumar and Sanjay were found unconscious; that blood was oozing out of ears of injured Sanjay; that both the injured were being taken to Jindal Hospital, Hisar but on the way to hospital, Sanjay succumbed to the injuries, whereas Naresh Kumar was admitted in Jindal Hospital, Hisar; that deadbody of Sanjay was taken to General Hospital, Hisar; that formal FIR No.351 dated 27.10.2013 for the offences under Sections 279, 337 and 304-A IPC was got recorded on the statement of Nand Lal with Police Station Bawani Khera against respondent No.1 - Rajesh.

The legal representatives of deceased Sanjay namely Nand Lal alias Nandu – father and Smt.Reshma - mother had brought a claim petition bearing No.443 of 2014 under Section 166 of the Motor Vehicles Act against the respondents i.e. Rajesh – driver, Ombir Singh – owner and Bharti AXA Gneral Insurance Co. Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.40 lacs along with interest. According to the claimants, deceased Sanjay was aged about 23 years and he had studied upto 10+2 class and was a tractor driver at village Bhurtana thereby earning Rs.12,000/- plus diet per month; that an amount of Rs.45,000/- was spent on transportation of dead body and funeral, last rites ceremonies.

Whereas Naresh Kumar, who had suffered injuries in that very accident also brought a claim petition bearing No.444 of 2014 under Section 166 of the Motor Vehicles Act against the above-said respondents, claiming compensation of Rs.10 lacs along with interest. According to him soon after the accident, he was taken to Jindal Institute of Medical Science, Hisar where he was treated and operated upon by doctor; that he remained admitted there from 26.10.2013 to 5.11.2013; that during this period he was treated for his head injury; that he had also suffered permanent disability due to the injuries suffered in the accident. According to him a sum of Rs.1,50,000/- was spent on his treatment till date and Rs.50,000/- was more likely to be incurred.

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

Upon notice, all the respondents had appeared. Respondents No.1 and 2 filed joint written statement whereas respondent No.3 filed separate written statement. In the joint written statement filed on behalf of respondents No.1 and 2, they took several legal objections with regard to maintainability of the claim petition; locus standi and cause of action to the claimants to file the same; the claim petition being bad for non-joinder and mis-joinder of necessary parties; the claimants being guilty of suppression of material facts etc. On merits, the answering respondents denied material assertions in the claim petition. According to them, the accident had been caused solely due to rash and negligent driving on the part of deceased Sanjay but Nand Lal father of the deceased Sanjay managed to get false FIR registered against respondent No.1 in collusion with the police as the respondent No.1 and his family members were busy in his treatment. According to such respondents, in case if the Tribunal reached to any conclusion adverse to them, though not admitted, in that event also no liability can be fastened upon them and no compensation is payable by them because the motorcycle in question was insured with respondent No.3 and respondent No.1 was holding a valid driving licence at the time of plying the motorcycle and liability, if any, on behalf of answering respondents is to be indemnified by respondent No.3. In the end, such respondents prayed for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.3 – insurance company, it had also taken various legal objections on merits contending that the insured had violated the terms and conditions of the insurance policy inasmuch as he did not inform the answering respondent about the accident; moreover under Section 134(c) of the Motor Vehicles Act, it is the duty of the owner to inform the insurer about the accident but he had failed to do so and even if it is proved that the alleged accident had taken place, then also that the answering respondent is not liable to pay compensation since the insured had violated the terms and conditions of the insurance policy by allowing the motorcycle to be driven by a person, who was not holding any valid and effective driving licence; that respondent No.1 was not holding any valid and effective driving licence and his licence, if any was fake and forged; that the FIR was lodged belatedly and is a result of deliberations and afterthoughts. Refuting the remaining allegations in the claim petition, such respondent prayed for dismissal of the claim petition.

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

1. Whether the accident causing death of Sanjay Kumar son of Sh.Nand Lal and injury to Naresh Kumar son of Sh.Udey Singh had taken place on 26.10.2013 due to rash and negligent driving of motorcycle registration No.HR-19F/1211 by respondent no.1, as alleged? OPP.
2. If issue no.1 is proved, whether claimant Nand Lal of claim petition no.443 dated 20.10.2014, is entitled for compensation, if so, to what amount and from whom? OPP.
3. If issue No.1 is proved, whether the claimant Naresh Kumar of claim petition No.444, dated 20.10.2014 is entitled for compensation, if so, to what amount and from whom? OPP.
4. Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident, if so its effect? OPR.

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.443 of 2014 namely Sh.Nand Lal had got his statement recorded as PW1 and petitioner in claim petition No.444 of 2014 namely Sh.Naresh Kumar had got his statement recorded as PW4. The petitioners have further examined Sh.Subhash as PW2 and Sh.Pawan Kumar as PW3.

On the other hand, respondent No.1 had got his statement recorded as RW1 besides tendering documents i.e. driving licence as Mark R-1, copy of RC as Mark R-2, copy of insurance policy as Ex.R-1/Ex.R-2, copy of public information as Mark R-3 and copy of order dated 21.3.2014 of High Court as Mark R-4.

After hearing arguments, the Tribunal decided issue No.1 in favour of petitioners and against the respondents, issues No.2 and 3 in favour of petitioners and against the respondents, issue No.4 against respondent No.3 and in favour of petitioners. Resultantly, the claim petitions were allowed partly by Motor Accidents Claims Tribunal, Bhiwani and compensation of Rs.4,62,000/- along with interest at the rate of 9% per annum from the date of petition till the actual payment in equal shares was awarded to the claimants of claim petition No.443 of 2014, whereas compensation of Rs.75,000/- along with interest at the rate of 9% per annum from the date of petition till the actual payment was awarded to the petitioner of claim petition No.444 of 2014. Respondents No.1 to 3 were made liable to make the payment jointly and severally.

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. Respondent No.1 had earlier appeared through counsel, who absented from the Court later on.

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

The first and foremost argument advanced by learned counsel for the appellant – insurance company was that the offending vehicle was not involved in the accident and it was rather planted; that the date of accident is 26.10.2013, the FIR was lodged on the next day and father of deceased Sanjay had enough time to think over the matter and the offending vehicle was involved in the accident wrongly just to get compensation.

I do not find this argument to be worthy of acceptance.

Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. The Tribunal in this case has obviously done so, which has resulted in miscarriage of justice.

Furthermore, FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. It is only during investigation after registration of the FIR that the investigating agency probe the matter and find out as to whether any cognizable offence is disclosed against the accused.

The Tribunal considering the evidence adduced by the parties before it in light of the factual and legal position had come to the conclusion that respondent No.1 was author of the accident by his rash and negligent driving. The petitioners had examined Naresh Kumar injured as eye-witness to record his statement as PW4. He having suffered injuries in the accident is a stamped witness and his presence at the spot cannot be doubted. He having received injuries in the mishap would have been the last person to screen the actual culprit and involved respondent No.1 as driver of the offending vehicle in this case. Sh.Nand Lal PW1 author of the FIR had corroborated the version given by PW4 – Naresh Kumar. PW2 Subhash had also provided the eye-witness account of the accident. Though respondent No.1 appearing in the witness box had put the entire blame on the shoulders of the deceased but keeping in view the facts and circumstances of the case including that Nand Lal had got registered formal FIR with regard to accident in question and respondent No.1 is facing trial in the Court there, the version set up by such respondent was not acceptable. Therefore, this contention is rejected.

The second plea taken up by learned counsel for the appellant was that since it was a case of head on collision, it was a case of contributory negligence and deceased himself was at fault, therefore, the claimants are entitled to get the compensation proportionately after reducing the amount considering the part played by the deceased in the accident.

However, I do not find this plea to be worthy of acceptance. The respondents in the written statements filed by them had flatly denied the involvement of the offending vehicle in the accident. They had not taken up any plea regarding contributory negligence. The law is well settled that a fact should be first pleaded and then proved and any evidence led beyond the pleadings is not worth the paper on which it is written.

The FIR had been registered against respondent No.1 for causing accident by his rash and negligent driving. He was challaned and facing trial before the Court of Magistrate. The oral evidence adduced by the claimants that respondent No.1 was responsible for the accident by his rash and negligent driving is found to be cogent and convincing. Therefore, it can certainly be not taken as a case of contributory negligence.

Learned counsel for the appellants referred to certain authorities i.e. ***Hira Singh and others Versus Rajpal alias Raju and others, 2016(2) PLR 122***, ***Surender Singh and another Versus Prem Singh and others, 2015(15) RCR(Civil) 67***, ***Ishwar Devi and others Versus Darshan Singh and others, 2013(35) RCR(Civil) 485***, ***Anguri Devi and others Versus Lakhvinder Singh alias Lakha and others, 2017(3) PLR 86*** and ***Chand Singh Versus Rajinder Singh, 2018(3) RCR(Civil)357*** but those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

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

28.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No