

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

(1) FAO No.9045 of 2014 (O&M)
Date of Decision: 30.10.2019

Bajaj Allianz General Insurance Company Limited
.....Appellant

Versus

Kanta Rani and another
.....Respondents

(2) FAO No.9046 of 2014 (O&M)

Bajaj Allianz General Insurance Company Limited
.....Appellant

Versus

Sunil Kumar and another
.....Respondents

(3) FAO No.9047 of 2014 (O&M)

Bajaj Allianz General Insurance Company Limited
.....Appellant

Versus

Parveen Rani and others
.....Respondents

(4) FAO No.9054 of 2014 (O&M)

Bajaj Allianz General Insurance Company Limited
.....Appellant

Versus

Sandhya Rani and another
.....Respondents

(5) FAO No.9055 of 2014 (O&M)

Bajaj Allianz General Insurance Company Limited
.....Appellant

Versus

Sanjeev Kumar and another
.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Sandeep Kumar Sharma, Advocate for
Mr. Sandeep Vermani, Advocate
for the respondent-Balkar Singh (Owner & Driver)

NIRMALJIT KAUR, J.

All the aforementioned appeal shall stand decided by this common order as the award and issue is identical. For convenience, the facts are being taken from FAO-9045-2014.

Learned counsel for the appellant-insurance company submitted that as per the case set up by the claimant, on 18.05.2013, the claimant alongwith Sunil Kumar, Sandhya Rani, Sanjeev Kumar and Mohan Lal (since deceased) were coming from Kaithal to Barara in the offending vehicle i.e. Scorpio Jeep bearing registration No.HR-37C-5452 after attending a shagun ceremony, which was being driven by respondent No.2-Balkar Singh. When offending vehicle reached near village turn on Thol Shahbad Road, respondent No.2 lost his control over the offending vehicle due to high speed, therefore, it turned turtle. Due to accident, all the occupants of the offending vehicle received injuries and one of injured also died.

The only argument raised by learned counsel for the appellant/insurance company is that at the time of accident, the vehicle was insured as a private vehicle but the same was used as commercial vehicle for Hire & Reward in violation of terms and conditions of the policy and it also violated the Section 149(2) of the Motor Vehicles Act, 1988. The appellant/insurance company is, therefore, not liable to pay compensation. In support of this contention, learned counsel for the appellant relied on the statement of RW1 who placed on record the investigation report Ex.R3 and statement of Sandeep Kumar as Mark RB (already exhibited as R1) by which it had been concluded that the respondent No.2 was using his vehicle

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who is said to have admitted the factum of hire and reward in his cross-examination. The relevant portion is as under:-

“xx xx xx

It is incorrect that my brother-in-law Sandeep Kumar had hired Scorpio Jeep No.HR-37C-5452 for the purpose of attending the Shagun Ceremony of sister-in-law at Kaithal but I cannot tell the exact amount paid by my bother-in-law to the owner of the said jeep.”

It was further contended that RW-1 got recorded the statement of said Sandeep Kumar which is part of the record and duly exhibited as R1 in which the said Sandeep Kumar admitted that he had paid Rs.2300/- as fare. Reliance was also placed on PW5 Smt. Parveen Rani wife of Late Shri Mohan Lal who stated in her cross examination that she had seen Exhibit R1 which bears signature of her son Sandeep Kumar as point-A.

It was, therefore, argued that despite the positive evidence in favour of the appellant insurance company as referred above, the learned Tribunal has not considered the same and so, in these circumstances, the appellant/insurance company was not liable to pay the compensation and hence, should be exonerated or in the alternative recovery rights from the owner and driver-Balkar Singh should be granted.

On the other hand, learned counsel for the respondent-Balkar Singh, while supporting the award dated 18.09.2014 passed by the Motor Accident Claims Tribunal, Ambala, submitted that there was no breach of terms and conditions of the insurance policy by respondent No.1 because he himself was an invitee to the function and this fact was admitted by PWs in their testimonies. Further, there was no proof that the said vehicle was hired.

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The statement of RW-1 Sachin Gulati, Investigator, cannot be relied as the same is hearsay evidence on the basis of statement of Sandeep Kumar, whereas, the said Sandeep Kumar never stepped into the witness box to confirm the said report of RW-1 Sachin Gulati. It was further submitted by learned counsel for the respondent-Balkar Singh that Balkar Singh, himself stepped into the witness box and that the statement was self speaking. As per the said statement, he was an invitee in the function and was not using the vehicle for commercial purposes.

Learned counsel for the respondent also relied on the statement of witnesses PW-1 Kanta Rani, PW-3 Sandhya Rani, PW-4 Sanjeev Kumar, PW-6 Sunil Kumar as well as RW-2 Balkar Singh to contend that there was sufficient evidence to prove that Balkar Singh was himself a guest in the function and known to the family, therefore, under no circumstances, the said vehicle can be said to have been hired.

Heard.

The deceased in the present case was Mohan Lal. The injured and the deceased were traveling in the jeep being driven and owned by Balkar Singh, who had gone to attend the shagun ceremony of daughter of Roshan Lal i.e. brother of Mohan Lal.

In order to adjudicate, it would be appropriate to go through the said statement of witnesses.

Kanta Rani appeared in the witness box as PW-1 and stated in no uncertain terms that she did not know whether the vehicle was hired or not and in her cross-examination, she admitted that Balkar Singh was close to Mohan Lal, the concerned host of the function in question.

Similarly, Sandhya Rani, PW-3, who is one of the injured and

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was traveling in the same offending vehicle and is daughter of Mohan Lal, admitted that Balkar Singh, the owner of the offending vehicle was also in that function.

Similarly, Sanjeev Kumar, PW-4, who had also gone to attend the shagun ceremony of daughter of Mohan Lal, stated that he did not know who had hired the Scorpio for the purpose of attending the function and in fact stated in no uncertain terms in his cross-examination that his uncle Roshan Lal was with him in the function at Kaithal alongwith Balkar Singh.

Similarly, Sunil Kumar, PW-6, who also received injuries in the said accident and was cross examined, admitted that Balkar Singh, owner of the offending vehicle was also attending the shagun ceremony of his sister-in-law at Kaithal.

In fact, Balkar Singh himself appeared in the witness box as RW-2. He was cross-examined by learned counsel for the appellant-insurance company and in his cross examination, he denied that he had ever received any amount from Sandeep Kumar for the purpose of the jeep on 18.05.2013 on hire and reward basis. It is necessary to produce the relevant part of said cross-examination, the same is reproduced as under:-

“I retired from defence in the year, 2005. I am having three children. Elder son is in army and my second son is serving in Hotel Management at Pune and my third younger son is living with me and studying in B.com final year at Pune. I had purchased jeep no.HR-37-C-5452 in the year, 2011. I had obtained loan from the bank for the purpose of purchasing the said jeep. The distance from the house of Mohan Lal and my house is about 7 kms. I know Mohan Lal for the last so many years. I had approximately driven

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the said jeep for about 50,000 kms. I had purchased the said jeep from Pune. It is incorrect to suggest that I used to ply my jeep on hire and reward basis. It is also incorrect to suggest that I had received Rs.2300/- from Sandeep Kumar for the purpose of my jeep on 18.05.2013 as hire and reward basis to attend the function at Kaithal. xx xx xx”

A perusal of the said statement shows the background of the respondent. The same in itself is sufficient to show that there is no reason to doubt that he too was one of the guest in the function. It appears that the appellant/insurance company has raised the issue of having hired the vehicle or objection only to defeat the claim. Moreover, the cross-examination of Balkar Singh further shows that the house of Mohan Lal was just 7 kms away from the house of Balkar Singh and therefore, there is no reason to doubt that they knew each other. Hence, attending the function as invitee is only natural. There is no evidence on record to hold that the said vehicle was being used for commercial purpose.

In view of the above, this Court does not find any reason to interfere in the award dated 18.09.2014, passed by the Tribunal.

Dismissed accordingly.

(NIRMALJIT KAUR)
JUDGE

30.10.2019
sandeep

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No