

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 222

FAO-6535-2016

Date of decision : 18.01.2019

Amit Kumar

..... Appellant

VERSUS

Cholamandalam M. S. General
Insurance Company Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ajay Chaudhary, Advocate, for the appellant.

Mr. Rajneesh Malhotra, Advocate, for respondent No. 1.

Mr. Ajay Vijarania, Advocate, for
Mr. Sumit Sangwan, Advocate, for respondent No. 2.

Mr. Manoj Chahal, Advocate, for respondent No. 3.

DEEPAK SIBAL, J. (ORAL)

Respondent No. 3-Vinod Kumar filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act) before the Motor Accident Claims Tribunal, Bhiwani (for short, the Tribunal) in which the case set up by him was that on 18.11.2013 he and Sandeep were going on a tractor with Sandeep driving the same and he sitting on its mudguard when a Canter Truck bearing Registration No. HR-61A-8277 (for short, the offending vehicle) which was being driven by Pawan in a rash and negligent manner hit the tractor as a result of which he received several injuries leading to amputation of his left leg.

Vinod Kumar was taken to General Hospital, Dadri for treatment from where he was referred to PGIMS, Rohtak after which he was taken to Ranvir Hospital, Bhiwani where he remained admitted till 01.12.2013. On 02.12.2013 he was taken to Raj Hospital and Fracture Clinic, Singhana, Rajasthan where he remained admitted for nine days. A

FIR with regard to the afore accident was also lodged against the driver of the offending vehicle at Police Station Badhra.

Vinod Kumar filed a claim petition under Section 166 of the Act, seeking therein compensation to the tune of ₹20 lakhs alongwith interest. Notice in the claim petition was issued to the owner and driver of the offending vehicle as also the Insurance Company which had insured the offending vehicle. On being served, the respondents appeared before the Trial Court and filed their separate written statements denying Vinod Kumar's claim. After concluding that the accident in question had been caused due to rash and negligent driving of the offending vehicle by its driver, the Tribunal determined the payable compensation with a further direction that because Vinod Kumar was sitting on the mudguard of the tractor the Insurance Company was not liable to indemnify his claim and resultantly, directed the appellant and the driver of the offending vehicle to pay the assessed compensation to the claimant. The owner of the offending vehicle has filed instant appeal seeking therein to set aside the direction of the Tribunal through which respondent No. 1-Insurance Company has been absolved of its liability and the appellant as also the driver of the offending vehicle have been directed to pay the assessed compensation.

Learned counsel for the parties have been heard.

The accident in question took place between a tractor which was bring driven by Sandeep and on whose mudguard the claimant-Vinod was sitting when the offending vehicle hit the tractor. The only reason given by the Tribunal to absolve respondent No. 1- Insurance Company of its liability is that the claimant was sitting on the mudguard of the tractor. That

in itself could not be a reason to absolve the Insurance Company of its liability as sitting of the claimant on the mudguard of the tractor was not in violation of any of the terms of the insurance policy of the offending vehicle.

It is not disputed that the driver of the offending vehicle held a valid driving licence.

In view of the above, the findings of the Tribunal only to the extent that it absolves respondent No.1-Insurance Company's liability to pay the awarded compensation and imposes the same upon the appellant and the driver of the offending vehicle are set aside. Accordingly, the compensation assessed by the Tribunal is directed to be paid by respondent No. 1-Insurance Company jointly and severally with the appellant and driver of the offending vehicle.

The present appeal is allowed in the above terms.

18.01.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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