

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.8266 of 2017 (O&M)
Date of Decision:20.02.2019

ICICI Lombard General Insurance Company Limited

...Appellant(s)

Versus

Simranjeet Kaur and others

...Respondent(s)

FAO No.8268 of 2017 (O&M)

ICICI Lombard General Insurance Company Limited

...Appellant(s)

Versus

Nanak Chand Thakur and others

...Respondent(s)

FAO No.8341 of 2017 (O&M)

ICICI Lombard General Insurance Company Limited

...Appellant(s)

Versus

Nanak Chand Thakur and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sanjeev Goyal, Advocate for the appellant.
Mr.Anil Kumar Spehia, Advocate for respondents No.1 to 4
in FAO No.8266 of 2017 and for respondents No.1 and 2 in
FAO No.8341 of 2017 and for respondent No.1 in
FAO No.8268 of 2017.

Mr.Bhupinder Bagga, Advocate for respondents No.5 and 6 in FAO No.8266 of 2017.

Mr.Ashwani Arora, Advocate for respondent No.8 in FAO No.8266 of 2017.

Ms.Amandeep Kaur, Advocate for respondent No.5 in FAO No.8268 of 2017 and for respondent No.6 in FAO No.8341 of 2017.

ANIL KSHETARPAL, J.

By this judgment, FAO Nos.8266, 8268 and 8341 of 2017 shall stand disposed of.

The only issue which has been pressed at the time of argument by the learned counsel for the appellant-Insurance Company is with respect to the extent of negligence of each vehicle and consequent percentage of contributory negligence which would in turn determine the inter se liability to pay compensation.

In these appeals, which are arising from one accident, three vehicles were involved. One was Car bearing registration No.PB-06-K-9559 (hereinafter referred to as “passenger's car”) in which late Smt. Shashi Bala along with her son (who also died) and daughter were travelling, driven by Late Sh. Attar Singh, the driver, who also died. His heirs have also filed a separate claim petition out of which FAO No.8266 of 2017 has been filed. 2nd vehicle driven by Shri Murid who was driving a TATA Ace bearing registration No. PB-06V-4078 was involved in the accident. 3rd vehicle involved was also a light commercial vehicle PB-32P-2530 driven by Santokh Singh insured with the appellant-Insurance Company. Learned Tribunal has held that Murid and Santokh Singh, drivers of Vehicle Nos. PB-06V-4078 and PB-32P-2530, respectively, were equally negligent.

Hence, the Tribunal held that the respondents are jointly and severally liable.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the award passed by the learned Tribunal and the record.

As per the First Information Report which was got recorded by Smt.Uma Jaggi, vehicles No.PB-06V-4078 i.e. TATA Ace driven by Murid was coming from opposite direction to the passenger's car and he was in the process of over taking another vehicle (4th vehicle) and, therefore, came on the wrong side and hit the vehicle i.e. Car No.PB-06-K-9559, a passenger car, in which Late Smt. Shashi Bala along with her children were travelling. It was further mentioned that it is vehicle bearing registration No.PB-06V-4078 which first hit the car and because of that impact, the car went out of control towards wrong side i.e. right hand side when another vehicle i.e. PB-32P-2530 driven by Santokh Singh, who was also driving in a rash and negligent manner hit the passenger's car from the front side. In the accident, late Smt. Shashi Bala died on the spot and the son died later on. One claim petition is also filed by Murid, the driver of vehicle No.PB-06V-4078.

In the claim petition filed, claimants (Nanak Chand and Varnika Thakur) have pleaded that at about 11.00 AM when vehicle No. PB-06V-4078 driven by Murid was in the process of overtaking another vehicle, the driver lost his control on the vehicle and brought it to the extreme right hand side of the road and struck against rear portion of the passenger's car in which the deceased alongwith her children was travelling, and therefore, car went towards right hand side of the road and got hit from

another vehicle i.e. TATA Ace bearing registration No. PB-32P-2530. In support of the claim petition, Varnika Thakur (daughter of deceased Smt.Shashi Bala), who was also one of the claimant travelling in the said passenger car has also deposed on the similar lines in her evidence.

It has been argued by learned counsel for the appellant that in view of this evidence, the driver of Vehicle PB-32P-2530 was not negligent and the learned Tribunal was wrong in assessing the contributory negligence to equal extent. It has further been submitted that an effort has been made to change the stand as vehicle No.PB-06V-4078 was not insured. Varnika Thakur, one of the claimant-daughter of Late Smt.Shashi Bala, recorded in the criminal case arising from the accident in question, wherein she has stated the same thing as is recorded in the FIR. He has further submitted that Uma Jaggi, who was author of the FIR, has not been examined/produced in evidence.

On the other hand learned counsel for the respondents including claimants have submitted that Murid, the driver of Vehicle PB-06V-4078 was challaned by the police but he has been acquitted by the Court. Hence, it is submitted that the finding of the Tribunal with regard to equal contributory negligence of both the offending vehicles is correct.

As regard argument of learned counsel for the appellant that the driver of vehicle No.PB-32P-2530 driven by Santokh Singh was not at all negligent, cannot be accepted. It is not in dispute that two vehicles i.e. PB-06V-4078 and PB-32P-2530 were coming from opposite direction of the passenger's car. It is the positive case that Vehicle No.PB-06V-4078 was in the process of overtaking another vehicle when it hit the passenger's car

toward its rear portion which resulted into going out of control of passenger's car and got hit with another vehicle i.e. TATA Ace bearing registration No. PB-32P-2530. One can safely visualise that had the vehicle No.PB-32P-2530 maintained a good distance from vehicle going ahead, it would have been able to control its speed and apply breaks particularly when the driver of PB-32P-2530 had seen the vehicle going ahead of him i.e. PB-06V-4078 had hit the passenger's car. Therefore, the driver of Vehicle No.32P2530 cannot be completely absolved from the liability.

Now let us examine whether the contributory negligence to the equal extent is correct or not?

In the considered view of this Court, such apportionment by the learned Tribunal was not correct. It is not in dispute that the police after investigation did not find that the driver of vehicle PB-32P-2530 was rash and negligent in driving. No criminal case was registered by the police after investigation. A criminal case was registered only against Murid, i.e. driver of vehicle bearing registration No.PB-06V-4078. In the FIR, Smt.Uma Jaggi, sister of Late Smt.Shashi Bala, who was travelling in another vehicle following the ill-fated car in which her sister was travelling, also stated that it was Murid, driver of vehicle No. PB-06V-4078, who was in the process of overtaking another vehicle which resulted in rash and negligent driving, and therefore he came on the wrong side and hit the passenger's car. Still further, in the claim petition also, same facts as asserted in the FIR were given. Ms.Varnika Thakur, who was traveling with her mother in the same vehicle, appeared in evidence and has tried to improve upon her statement so as to prove that both the offending vehicles were equally negligent.

However, in cross examination, she has admitted that because of the fact

that driver of vehicle PB-06V-4078 had first hit the car in which they were travelling therefore, the car went out of control towards right hand side and got hit by vehicle No.PB-32P-2530.

As regards argument of learned counsel that Murid has been exonerated by the criminal court dealing with FIR, that judgment is not binding on the Tribunal. Still further, standard of evidence/proof required for convicting some one for having committed criminal offence is at much higher pedestal as compared to standard of proof required for deciding a case by the learned Tribunal. Hence, the judgment passed by the court dealing with a criminal case should not have any impact on the conclusion to be arrived at by the Court.

In view of the aforesaid evidence, learned Tribunal erred while returning a finding that both the drivers were equally negligent. The learned Tribunal should have critically analysed the evidence and arrived at a conclusion accordingly. On a reading of the award passed by the learned Tribunal, it is apparent that the learned Tribunal assumed that Ms.Varnica Thakur has stated that the accident took place due to rash and negligent driving of both the respondents i.e. drivers Murid and Santokh Singh. The evidence has already been discussed by this Court and it is not correct.

Accordingly, the finding of the learned Tribunal with respect to fastening of liability of both the vehicles equally, is neither reasonable nor appropriate. Liability to pay compensation regarding apportionment will be decided to the extent they contributed to the cause of accident. Therefore liability to pay is re-apportioned between two offending vehicles in the manner that the owner and driver of vehicle PB-06V-4078 shall be liable to

the extent of 80% of the total compensation payable, whereas driver, owner and insured of PB-32P-2530 shall be liable to pay compensation to the extent of 20% of the total compensation.

Accordingly, all these three appeals are partly allowed. The award of the learned Tribunal is modified to the extent indicated above. Pending application(s), if any, shall also stand disposed of, in terms thereof.

20.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No