

(108) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision:11.01.2019

**1. CM No.392-CII of 2019 and
FAO No.09 of 2019**

National Insurance Company Ltd.

.... Appellant

Versus

Ranjna and others

..... Respondents

**2. CM No.393-CII of 2019 and
FAO No.10 of 2019**

National Insurance Company Ltd.

..... Appellant

Versus

Baby Devi and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. V. Ramswaroop, Advocate for the applicant(s)/appellant(s).

B.S. WALIA, J. (ORAL)

CM Nos.392-393-CII of 2019

For the reasons as are given in the application(s) for setting aside of order(s) dismissing appeal(s) in default, the application(s) is allowed. Main appeal(s) is restored to its original number.

Main Appeal(s)

[1] Heard learned counsel for the appellant(s).

[2] This order will decide FAO No.09 of 2019 titled as National Insurance Company Limited v. Ranjna and others and FAO No.10 of 2019 titled as National Insurance Company Limited v. Baby Devi and others in which Harmesh Kumar and Satish Kumar riders of motorcycle No.PB-11Z-4914 died as a result of injuries sustained in an accident with offending vehicle i.e. Pajero bearing registration No.PJV-167.

[3] For the reasons as are mentioned below, I do not find any merit in the appeal(s). The only point argued by learned counsel for the appellant(s) is that the offending vehicle i.e. Pajero bearing No.PJV-167 had been falsely involved in the accident leading to the death of driver and pillion rider of motorcycle No.PB-11Z-4914.

[4] A perusal of paragraph No.11 of the Award reveals that in order to prove their case, the respondents/claimants examined PW-2 Sheeshpal, an eye-witness of the occurrence as well as author of the FIR who tendered into evidence his duly sworn affidavit Ex.PW-2/A along with documents i.e. copy of FIR Ex.P8 and copy of MLR Ex.P9 of deceased Harmesh Kumar wherein he testified the manner in which the accident took place at Ramnagar Balbera Road. He further testified that on 13.05.2017 at about 10.20 p.m. deceased Harmesh Kumar along with Satish Kumar was returning to village Panjola from village Bhedpuri, Tehsil Samana on motorcycle No.PB-11Z-4914 and when they reached ahead of village Ramnagar towards Balbera, then offending Pajero No.PJV 167 came from opposite side while being driven by respondent No.6 in a rash and negligent manner at very high speed and struck against the motorcycle of the deceased as a result of which deceased Harmesh Kumar and Satish Kumar fell on the road and were shifted to Rajindra Hospital, Patiala where Harmesh Kumar (died). PW-2 Sheeshpal further testified that the offending vehicle after

hitting the motorcycle of the deceased also struck against a Bullet motorcycle and overturned in the fields whereafter respondent No.6 fled away from the spot leaving the vehicle at the spot. PW-2 further testified that the accident took place on account of rash and negligent driving of offending vehicle No.PJV-167 and that he had witnessed the occurrence and that FIR Ex.P8 was lodged on his statement at Police Station Samana. During cross-examination, PW-2 Sheeshpal stated that he had noticed the offending vehicle when it struck against motorcycle and at the time of the accident, he did not know anything about the whereabouts or particulars of the driver of the offending vehicle but voluntarily stated that he had seen the offending vehicle at the time of the accident and further that he came to know about the name and particulars of the driver later on from the police when he went to the Police Station to identify the driver. He also stated that he had noted the number of the offending vehicle at the spot as PJV-67 but in fact it was PJV-167 and he had wrongly noted the number because the number plate had broken into pieces at the time of accident. Despite being cross-examined at length by learned counsel for the respondents including the Insurance Company, no material discrepancy cropped up in his version so as to create any doubt regarding the genuineness of his version. Besides, respondent No.6 is facing a criminal prosecution in respect of the aforementioned accident in which not only deceased Harmesh Kumar but also Satish Kumar who were riding on motorcycle bearing No. PB-11Z-4914 lost their lives and after hitting motorcycle No.PB-11Z-4914, offending Pajero vehicle No. PJV-167 also struck against another motorcycle bearing No. PB-11BV-1222 resulting in injuries to Manjinder Singh (i.e. the driver of the said motorcycle) in respect of which notice of motion has been issued

ground that the same was a huge amount and had not been proved by the claimants in the said case.

[5] On query, learned counsel for the appellant(s) frankly conceded that no questions had been put by the counsel for the Insurance Company to the eye-witness PW-2 Sheeshpal.

In the absence of any questions having been put to the eye-witness i.e. PW-2 Sheeshpal who witnessed the occurrence and on whose statement, the FIR was lodged, I find no infirmity whatsoever with the Award passed by the learned Motor Accidents Claims Tribunal.

[6] No other point has been argued.

[7] Accordingly, finding no infirmity with the Award passed by the learned Motor Accidents Claims Tribunal, Patiala, FAO Nos. 09 and 10 of 2019 are dismissed in limine.

(B.S. Walia)
Judge

11.01.2019
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No