

In the High Court of Punjab and Haryana, at Chandigarh

1. F.A.O. No. 2852 of 2019 (O&M)

Date of Decision: 25.02.2020

Reliance General Insurance Co. Ltd.

... Appellant(s)

Versus

Neelam Rani and Others

... Respondent(s)

AND

2. F.A.O. No. 3417 of 2019 (O&M)

Ajit Paul Singh Naphrey

... Appellant(s)

Versus

Neelam Rani and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Sunil Kumar, Advocate
for the appellant (In FAO-2852-2019).

Mr. Zorawar Singh Chauhan, Advocate
for the appellant (In FAO-3417-2019) and
respondent No.2 (In FAO-2852-2019).

Mr. Rajiv Joshi, Advocate
for respondent No.1.

Anil Kshetarpal, J.

By this order, this Court shall dispose of two appeals i.e. FAO-2852-2019 and FAO-3417-2019.

FAO No. 2852 of 2019 has been filed by the insurance company, whereas FAO No. 3417 of 2019 has been filed by the driver of the offending vehicle.

The claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation to the tune of ₹30,00,000/- on account of the injuries suffered by Neelam Rani (respondent) in a motor vehicular accident which took place on 06.11.2017. The claimant was driving Activa Scooter bearing registration No. PB-32-X-4540, whereas Ajit Pul Singh Naphrey, the driver, was driving Cruise car. The claimant suffered serious injuries. She was immediately shifted to the Government Hospital from where she was referred to Joshi Hospital, Kapurthala. She remained hospitalized from 06.11.2017 to 12.12.2017. She suffered fracture of shoulder as well as two fractures of the left leg. She had to undergo a number of surgeries so as to facilitate joining of bones. Hence, she filed a claim petition as noticed above.

In the written statement, filed by respondents No.1 & 2, the driver and the owner, accident was admitted, however, it was claimed that it was the claimant who was rash and negligent. Para 3 of the preliminary objections of the written statement, filed by respondents No.1 & 2 in the claim petition, is extracted as under:-

“3. That the claimant has got registered a false and frivolous case bearing FIR No. 168 dated 03.12.2017 in the PS Sadar, Phagwara and the investigation of the same is pending and the said case is totally false and frivolous. In fact, it was the claimant who was driving the activa scooter rashly and negligently and she struck the same in the car of the respondent while she was approaching the main road and it was the claimant who was responsible for the alleged accident”.

The claimant appeared in evidence and supported her case. She bravely faced the lengthy cross-examination successfully. Her evidence in examination-in-chief could not be impeached.

Thus, the learned Motor Accident Claims Tribunal (hereinafter referred to as “the Tribunal”), after appreciating the facts and evidence on record, held that respondent No.1, in the claim petition, was rash and negligent.

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

Learned counsel appearing for the insurance company and the driver have jointly submitted that in the present case, FIR was registered after a period of 28 days. They further submitted that from perusal of the photographs, it is the claimant who is proved to be rash and negligent.

This Court has considered the submissions, however, find no substance therein. The claimant herself has appeared in evidence and deposed about the rash and negligent driving of respondent No.1 in the claim petition. Respondent No.1 appeared in evidence but never stated that it was the claimant who was rash and negligent. In fact, the statement of respondent No.1 in the claim petition is only with respect to tendering of the documents.

With regard to arguments of learned counsel that from perusal of the photographs it is proved that the claimant was rash and negligent. It may be noted that the appellants i.e. insurance company as well as the driver, have not led any evidence to prove those photographs. Still further, a bare

look at the photographs would not be sufficient to record a finding that it was the claimant who was rash and negligent.

Once the driver-appellant appeared in evidence but still failed to even orally depose that it was the claimant who was rash and negligent and the insurance company has also failed to lead any evidence to prove that the claimant was rash and negligent, there is no ground to interfere with the finding of fact arrived at by the Tribunal.

Dismissed.

The miscellaneous application(s), if any, filed in both the revision petitions shall also stand disposed of.

**(Anil Kshetarpal)
Judge**

February 25, 2020
“DK”

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