IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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(PROCEEDINGS THROUGH V.C.)

DATE OF DECISION: SEPTEMBER 17, 2020

(1) CMS-8576 TO 8578-CII OF 2020 & FAO-2868-2020

IFFCO TOKIO General Insurance Co. Ltd.
.....Appellant

VERSUS

Saurabh and others
....Respondents

(2) CMS-8579 & 8580-CII OF 2020 & FAO-2869-2020

IFFCO TOKIO General Insurance Co. Ltd.
.....Appellant

VERSUS

Smt.Balkisha and others
....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Swati Batra, Advocate,
for the appellant.

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AUGUSTINE GEORGE MASIH, J.

CM-8576-CII-2020 IN FAO-2868-2020

Prayer in the present application is for condonation of delay of 5 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and delay of 5 days in filing the appeal stands condoned.

CM-8577-CII-2020 IN FAO-2868-2020 & CM-8577-CII-2020 IN FAO-2868-2020

Applications are allowed as prayed for subject to all exceptions.

Documents, Annexures A-1 to A-4, are taken on record.

<u>CM-8578-CII-2020 & FAO-2868-2020 AND CM-8580-CII-2020 & FAO-2868-2020</u>

By this order, I propose to decide abovesaid two appeals preferred by IFFCO TOKIO General Insurance Company Limited, challenging the common award passed by the Motor Accident Claims Tribunal, Narnaul, dated 10.12.2019, deciding two claim petitions i.e. one being Claim Petition No.08 RT of 2017 preferred by Smt.Balkisha and Yamin, parents of deceased Somin and Claim Petition No.09 RT of 2017 preferred by Saurabh, injured in the accident.

Briefly, the facts are that on 02.03.2017 at about 08.30 P.M., Somin (deceased) and his two friends Saurabh and Golu were talking with each other near Radhaswami Satsang Vyas, Village Sisoth, falling in Police Station Mohindergarh, when a Maruti car bearing Registration No.HR-34B-9637 came at a fast speed, which was driven by Rakesh in a rash and negligent manner and hit Somin and his friends, because of which they fell on the road. Somin and Saurabh received injuries in the accident. Injuries on the person of Somin were serious and while he was being taken to the hospital he succumbed to his injuries whereas Saurabh became permanently disabled to the extent of 42% and had been admittedly initially in Civil Hospital, Mohindergarh from where he was taken to Amandeep Hospital, Amritsar. He spent an amount of ₹11 lacs on his treatment, medicines, transportation, special diet etc. This incident was witnessed by Balwant son of Manphool Singh. FIR No.89 was registered on 03.03.2017 under Sections 279, 337 and 304A IPC at Police Station Mohindergarh on the statement of Salim, brother-in-law of deceased Somin.

Parents of Somin claimed that Somin was 20 years of age and was working as a Barber on a shop and earning ₹20,000/- per month. Both

Balkisha and Yamin, parents of deceased Somin, were dependent upon the income of Somin. They had claimed an amount of ₹50 lacs as compensation alongwith interest @ 18% per annum on account of death of their son Somin. As regards Saurabh, it was asserted that he was fit in all respect and was studying in Central University, Pali. After the accident, he is not in a position to maintain himself and has become permanently disabled to the extent of 42%, leaving him unable to earn his livelihood. The amount spent by him on his treatment and other expenses amounting to ₹11 lacs has been claimed, apart from other benefits. Compensation claimed in this petition is again ₹50 lacs alongwith interest @ 18% per annum.

Notice was issued to respondent No.1, Rakesh-Driver, respondent No.2, Beer Singh Yadav, owner of Maruti Car and IFFCO TAKIO General Insurance Company Limited, respondent No.3.

Despite service, none appeared for respondent Nos.1 and 2 and, therefore, they were proceeded against exparte.

Respondent No.3-Insurance Company appeared and had taken a plea that Rakesh, driver of the vehicle, was not having a valid effective licence and, therefore, had intentionally violated the condition of insurance policy and, thus, it was not liable to pay the compensation. Assertion was also made that the driver and the owner of the vehicle were under an obligation to inform about the accident to the Insurance Company, which has not been done, thus, absolving the Insurance Company of its liability.

On the basis of the pleadings, issues were framed on 08.02.2018, which reads as under:-

"*1. Whether Somin son of Yamin died and Saurabh sustained injuries in a road accident which took place on 2.3.2017 in the* *area of village Sisoth (Police Station Mohindergarh) due to rash and negligent driving on the part of respondent No.1 the driver of Car No.HR-34B-9637? OPP*

2. To what amount of compensation, if any, and from whom the claimants are entitled?OPP

3. Whether the respondent No.1 did not hold a valid and effective driving licence and the insured has violated the terms and conditions of insurance policy as alleged?OPR

4. Relief."

The Tribunal, on the basis of the evidence led by the parties, returned findings in favour of the claimants on Issue Nos.1 and 2. As regards Issue No.3, the same was decided against the Insurance Company-respondent No.3 (Appellant herein). On the basis of the findings returned in Claim Petition No.8 RT of 2017 titled as Smt.Balkisha and another Vs. Rakesh and others, an amount of ₹12,39,600/- alongwith interest @ 7% per annum from the date of petition till actual payment was awarded while in Claim Petition No.9 RT of 2017 titled as Saurabh Vs. Rakesh etc., an amount of ₹7,75,000/- alongwith interest @ 7.5% per annum from the date of petition till the actual payment was awarded as compensation. The award amount was liable to be recovered from the respondents jointly and severally with the Insurance Company making full payment of the amount of compensation to the claimants being insurer of the offending Maruti car. The amount was required to be paid within a period of three months from the date of award with costs assessed at ₹1000/- and counsel fee at ₹2,000/-.

This award dated 10.12.2019 passed by the Motor Accident Claims Tribunal, Narnaul, has been challenged by the Insurance Company by way of these two appeals on the ground that there is an unexplained delay of one day in registration of FIR as the incident is of 02.03.2017 whereas the FIR has been lodged on 03.03.2017. It is asserted that the FIR has been lodged by Salim PW3/2, brother-in-law of the deceased. In his cross-examination, he has stated that he is not an eye witness of the incident and Manphool told him about the accident, whereas Manphool has not been examined by the claimants. Balwant, who is the eye witness, appeared as PW3 in the criminal case and has not supported the prosecution version and, therefore, the evidence given by him before the Tribunal could not be relied on. In the claim petition, it is stated that the deceased and injured were standing at the road side when the car, which was driven in a rash and negligent manner, hit them. However, in the Aditya Hospital Rewari OPD summary, the story recorded is different where it is stated that they were travelling in a two wheeler and they were hit by a four wheeler. The driver, in the criminal case, which was registered by way of a FIR, stands acquitted as the witnesses did not support the prosecution version. It is, thus, asserted that involvement of the offending vehicle has not been clearly established. Accordingly the award has wrongly been passed by the Tribunal and, therefore, the same deserves to be set-aside.

Counsel for the appellant has argued the appeals on the same terms.

I have considered the submissions made by learned counsel for the appellant and with her assistance have gone through the impugned award and the documents placed on record but do not find myself in a position to accept what has been put forth by the appellant in the appeals.

Learned Tribunal has gone in detail in the evidence, which has been produced before it and dealt with all the pleas, which are now being taken by the appellant. The plea relating to delay of 1 day in lodging the FIR as the incident took place on 02.03.2017 and the FIR was lodged on 03.03.2017 cannot be said to be fatal for the simple reason that the incident took place on 02.03.2017 at 08.30 P.M. whereas the FIR has been registered on 03.03.2017, which cannot be said to be delayed as the first priority in an accident is to take the injured to the hospital for saving their lives. This is exactly what was done by the friends of the deceased. The said delay, therefore, cannot be said to be fatal to the case of the claimants.

As regards the plea that the FIR has been registered by Salim, who is not an eye witness, has also no force as it could not make much of difference especially when PW3 Balwant, an eye witness has supported the version of the claimants. Perusal of the cross-examination of Balwant Singh would show that he has actually supported the version of the claimants. Nothing adverse can be read from the cross-examination of the said witness, which would go to falsify the claim as made in the petitions.

Plea with regard to the acquittal of Rakesh, Driver of the Maruti Car, in the criminal case, has been projected as a ground for false implication, which again is not sustainable in the light of the fact that in the criminal case, benefit of doubt was given to the Driver of the vehicle as the prosecution has not been able to prove the case against the accused beyond reasonable doubt. The Court has not given a finding that the vehicle was not involved in the accident. It is the settled proposition of law that in criminal cases, the onus is on the prosecution to prove beyond doubt the offence against an accused and the Courts are always leaning in favour of the accused where the prosecution has failed to prove the case beyond reasonable doubt the commission of offence by an accused, which is not the case in instant claim petitions.

In any case, in the present case, apart from the eye witness, Balwant, the star witness would be Saurabh, who has also filed a claim petition and has appeared as PW4 before the Motor Accident Claims Tribunal. His statement as well as cross-examination leaves no doubt with regard to the accident having taken place with the vehicle in question i.e. HR-34B-9637. Documentary evidence has also been produced by the claimants to substantiate that Rakesh had a valid and effective driving licence on the date of accident (Ex.P67), copy of registration certificate Ex.P68, which also establish that vehicle was in the name of Beer Singh Yadav, who was respondent No.2 in the claim petition. That apart, copy of certificate of insurance Ex.P69 of the offending vehicle in the name of Beer Singh Yadav with the validity of insurance being from 03.05.2016 to 02.05.2017, has also been placed on record. These documents have not been denied by the Insurance Company, which clearly establish not only the factum of accident having taken place but also the liability of the appellant-Insurance Company.

In view of the above, finding no merit in the present appeals, the same are dismissed. As the main appeals stands dismissed, the applications for stay in both the appeals also stand dismissed.

September 17, 2020 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No