

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. FAO-7388-2015 (O&M)
Date of decision : 12.02.2020

New India Assurance Company Limited

...Appellant

Versus

Raghubir Singh and others

...Respondents

2. FAO-7389-2015 (O&M)
Date of decision : 12.02.2020

New India Assurance Company Limited

...Appellant

Versus

Balwant Ram Garg and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. Rajinder Goyal, Advocate for respondent No.1.

Mr. Rajesh Gupta, Advocate for
Mr. V.S. Rana, Advocate for respondent Nos.2 and 3.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, two appeals bearing FAO Nos.7388 and
7389 of 2015, shall stand decided.

It is sad that practice of false involvement of insured motor

vehicles with a view to get compensation is on rise. In the considered view of this Court, this set of two appeals represent the aforesaid category.

As per case of the claimants (one each in two claim petitions), Raghbir Singh and Balwant Garg were travelling in a motorcycle when the alleged offending vehicle i.e. motor car driven by Kuldeep Singh bearing registration No.HR-01-W-5692, hit the motorcycle from behind on 16.05.2014.

Both the occupants of the motorcycle received injuries and were shifted to the Hospital. On the intimation given by the Hospital, DDR No.22 dated 16.05.2014 was registered wherein it was reported that two persons namely Raghbir and Balwant Garg have been admitted on account of the injuries received in a road side accident. FIR, in the present case, was registered on 19.07.2014 i.e. after a period of more than 2 months on the statement of Balwant Garg, one of the claimant. Two claim petitions were filed, one by Raghbir and second by Balwant Garg. The claim petitions were contested by the owner and the driver as also the Insurance Company. The owner and driver denied the accident and pleaded that the vehicle is insured with the appellant-Insurance Company and driver of the motor car was not at fault.

Learned Motor Accident Claims Tribunal, allowed the claim petitions and in the case filed by Raghbir Singh, compensation to the tune of ₹15,55,785/- has been awarded whereas in the case of Balwant Garg, compensation to the tune of ₹61,680/- has been awarded. That is how, two appeals have come up for disposal.

Learned counsel for the appellant-Insurance Company has submitted that in the present case, neither the accident is proved with vehicle bearing registration No.HR-01-W-5692 nor it is proved that Kuldeep Singh was driving the vehicle in a rash and negligent manner.

Learned counsel for the appellant has drawn attention of the Court to the statement of Balwant Garg-claimant in examination-in-chief, which reads as under:-

“The deponent was not in complete sense since accident and was under great mental shock, so was unable to depose and after getting sense and recovery from shock deponent disclosed the registration number of the offending vehicle and name of the respondent No.1 to the police. The accident took place due to negligence driving of respondent No.1.”

In cross-examination, Balwant Garg-claimant has stated as under:-

“We reached near temple at about 9.15 p.m. and we were on motorcycle. Motorcycle was being driven by Raghbir. It is correct that head light of motorcycle was on. It is correct that there was a side mirror on the motorcycle of Raghbir to see backwards. I do not know whether Raghbir Singh had seen the car in his mirror coming from backside. It is correct that Raghbir had come on one side of the road. Raghbir Singh fell on the pucca portion of the road while I fell down on the kacha portion of the road. Motorcycle fell down on the pucca portion of the road. I do not know exactly whether the car was damaged or not. It is correct that Raghbir and myself were wearing helmet at

that time. I do not know whether the police recovered two helmets from the spot or not. When I got up on the spot, the driver of the car was there with his car and after that he ran away with his car. The car never struck against any tree. The side light of the motorcycle of Raghbir was damaged. The family members of Raghbir brought us to Amar Hospital, Patiala. I do not know exactly on which vehicle we were brought to Amar Hospital. I do not know at what time we reached at hospital. It is correct that so many people gathered at the spot at that time. I do not know whether other vehicles were passing at that time or not. I do not know whether police reached at the spot or not. The family members of Raghbir might have informed the police. The alleged accident took place within the jurisdiction of Cheeka. The report regarding this alleged accident was reported in police station Cheeka. After the alleged accident I remained at my house at Cheeka but I used to go to Patiala for treatment. Police station is situated at the distance of about 1/2-3/4 k.m. from my house. There are two major sons in my family. I regained conscious at the spot and I recognized Kuldeep singh driver of the car. I also kept in my mind the registration number of the car. My statement was recorded by police after two months of the alleged occurrence. My statement was recorded in the police station. It is correct that after the alleged accident I remain in conscious some time and I do not remain in conscious some time. I do not have any certificate from any doctor that some times I do not remain in senses. Satish Kumar is my son. It is correct that Satish Kumar also gave a report to the police station but he gave a wrong report to the police. It is correct that myself and Satish are residing in the same house.”

Learned counsel for the Insurance Company has also informed the Court that criminal case registered against the driver-Kuldeep Singh under Section 279 IPC, has been dismissed resulting in his acquittal vide judgment dated 18.08.2015.

On the other hand, learned counsels for the claimants have submitted that on the statement of Balwant Garg and Suresh Kumar, it is proved that the accident occurred due to rash and negligent driving of the motor car being driven by Kuldeep Singh.

This Court has analyzed the arguments of learned counsel for the parties and with their able assistance gone through the award passed by the Motor Accident Claims Tribunal and the requisitioned record.

In the considered view of this Court, the Motor Accident Claims Tribunal has committed error while returning finding that Kuldeep Singh (respondent No.2 herein) was driving the vehicle in a rash and negligent manner, is proved. In examination-in-chief, Balwant Garg has stated that he was not in complete senses and under great mental shock, so he was unable to depose and disclose the registration number of the offending vehicle. In cross-examination, he has stated that he regained conscious at the spot and recognized the driver of the car i.e. Kuldeep Singh, who had stopped at the place when the accident took place. Balwant Garg remained hospitalized only for a period of 5 days i.e. 16.05.2014 to 20.05.2014. Dr. Arun Bansal, PW8 has admitted that at the time of discharge from the Hospital, Balwant Garg was conscious and stable. Suresh Kumar-PW7 has admitted that he was not present at the

place of accident.

There is unexplained delay of more than two months in registration of the FIR. Once Sh. Balwant Garg was discharged from the Hospital on 20.05.2014, there was no reason as to why he did not inform to the police about the registration number and the name of the driver who had caused accident.

Dr. Arun Bansal has admitted that Sh. Balwant Garg regained consciousness after three days. Balwant Garg has not suffered any permanent disability or fracture. Investigating Officer of the criminal case registered against respondent No.2-Kuldeep Singh, has also not been examined.

Before the Tribunal, constituted under the Motor Vehicles Act, 1988, proceeds to record a finding that the driver of the offending vehicle was rash and negligent, it is incumbent for the Court to examine the entire evidence and analyze the same in proper perspective. Such analysis has to be made having due regard to the evidence available on the file. It is the case of the claimants that the offending vehicle i.e. motor car came from behind. Balwant Garg was travelling as a pillion rider. He further claims that he was not in complete senses when the accident took place. However, when cross-examined, he stated that he regained consciousness at the spot and recognized driver-Kuldeep Singh at the place of occurrence itself. He claims that he remembered the registration number of the car. However, Balwant Garg do not choose to disclose the registration number of the offending vehicle or its driver to the police for a

period of two months. Let us exclude the period when Balwant Garg remained hospitalized till 20.05.2014. Still thereafter, there is no explanation as to why Balwant Garg did not choose to inform the police. Still further, apart from the statement of Balwant Garg, no evidence has been produced.

Further, as contended by learned counsel for the Insurance Company, Kuldeep Singh has already been acquitted in the criminal case arising from the accident in question.

Keeping in view the aforesaid facts, this Court is of the considered view that the Motor Accident Claims Tribunal has erred in recording a finding that the vehicle driven by respondent No.2-Kuldeep Singh was involved in the accident and was rash and negligent.

In view of the above, the award passed by the Motor Accident Claims Tribunal is set aside.

Accordingly, both the appeals are allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

12.02.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No