

In the High Court of Punjab and Haryana, at Chandigarh

1. F.A.O. No. 341 of 2021 (O&M)

National Insurance Company Limited

... Appellant(s)

Versus

Jasmer Singh Kadian and Others

... Respondent(s)

AND

2. F.A.O. No. 343 of 2021 (O&M)

National Insurance Company Limited

... Appellant(s)

Versus

Monika and Others

... Respondent(s)

DATE OF DECISION: 07.04.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sandeep Suri, Advocate
for the appellant.

Anil Kshetarpal, J.

Two first appeals filed by the insurance company assailing the correctness of a common award passed by the Motor Accident Claims Tribunal (hereinafter referred to as “the Tribunal”) while deciding two claim petitions, arising from a motor vehicular accident shall stand decided.

Two claim petitions were filed. The first claim petition was filed by Ms. Monika daughter of Jasmer Singh Kadian claiming that she suffered serious and grave injuries in the motor vehicular accident, whereas the second petition was filed by Jasmer Singh Kadian, his daughter-Monika and son-Sumit claiming compensation on account of death of Smt. Kanta

Monika along with her mother Smt. Kanta Devi (since deceased) and her cousin Sanjeev were travelling from village Majra (Dubaldhan) to Delhi in Maruti Swift car, which was being driven by respondent No.5-Manoj son of Sh. Zile Singh. At about 6.30 A.M., when they reached near village Lahli, Manoj, who was driving the car in a rash and negligent manner, rammed the car in a tractor trolley loaded with sugarcane on its backside. It is also alleged that respondent No.1-Somvir, the driver of the tractor trolley, applied brakes in a negligent manner without giving any indication to the vehicles behind and hence, the claimants sustained multiple grievous injuries. The learned Tribunal, after appreciating the evidence, has found that the driver of the tractor trolley was not rash and negligent and it was Manoj, who was driving the car at a very high speed in a rash and negligent manner. Thus, the Tribunal has assessed the compensation payable. That is how these two appeals have been filed.

Learned counsel for the appellant has submitted that the learned Tribunal has erred in deciding the case against the case pleaded by the claimants. While elaborating, he submits that the claimants had pleaded that Manoj, the driver of the car and Somvir, the driver of the tractor trolley, were negligent, however, the Tribunal held that it was only Manoj, who was rash and negligent in driving the car. He further contends that Manoj had, in fact, colluded with the claimants and therefore, did not appear in evidence. He, hence, prayed for acceptance of the appeals.

This Bench has analyzed the arguments of learned counsel for the appellants and with his able assistance, perused the paper-book.

Learned counsel for the appellant has also produced a copy of

the FIR, statements of Ms. Monica, Smt. Kaushalya, Smt. Samundro Devi, Dr. Mayank Gupta, Rakesh Kumar and Somvir. The appellant has also produced a copy of judgment passed by the learned Additional Chief Judicial Magistrate, Rohtak in case titled “*State v. Somvir*”.

No doubt, the claimants have pleaded that Manoj and Somvir were driving their respective vehicles in a rash and negligent manner, however, the Tribunal, on appreciation, found that Somvir, the driver of the tractor trolley, was neither rash nor negligent while driving tractor trolley. It is not in dispute that Manoj had rammed his car into the rear side of the tractor trolley. Thus, the tractor trolley was going at its own speed. No doubt, it has been alleged that Somvir, the driver of the tractor, had suddenly applied brakes, however, the aforesaid plea does not stand substantiated. Still further, the manner in which the accident had taken place leaves no doubt about the rash and negligent driving of the driver of the car. It is well settled that the Court, on appreciation of the evidence, is expected to give its finding. The Court is not bound by the pleadings of one of the party. Such pleadings have to be proved by the party. The Court is entitled to give finding after disbelieving the facts pleaded. Hence, there is no substance in the argument of learned counsel for the appellant.

Next argument of learned counsel is that Manoj, the driver of the car, had not appeared in evidence before the Tribunal and therefore, the Court must draw an inference that he had colluded with the claimants. It is significant to note here that Manoj had appeared in the criminal trial against Somvir. Still further, the insurance company could have summoned Manoj and got him examined. Merely because Manoj has not appeared in the

evidence does not necessarily lead the Court to draw an inference that Manoj had colluded with the claimants. Still further, Somvir, the driver of the tractor, has been acquitted in a criminal trial as the prosecution has failed to prove its case against Somvir. Still further, the deposition of Manoj in the criminal case has been produced as Ex.R3.

Keeping in view the aforesaid facts, this bench does not find it appropriate to interfere with the award passed by the Tribunal. Hence, both the appeals are dismissed.

The miscellaneous application(s) pending in both the cases, if any, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

April 07, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No