

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.829 of 2017 (O&M)

Date of Order:16.08.2021

Sohan Lal

..Appellant

Versus

Dhanna Ram (deceased) through LRs
and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sushil Bhardwaj, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing
on account of restricted functioning of the Courts.

C.M.No.2579-CII of 2017

For the reasons stated in the application which is supported by
an affidavit, the delay of 35 days in filing the appeal is condoned.

The application stands disposed of.

MAIN

The owner of the offending vehicle assails the correctness of
the award passed by the Motor Accident Claims Tribunal, Karnal
(hereinafter referred to as 'the Tribunal') absolving the insurer from the
liability to honour the award.

Undoubtedly, the appellant was the owner of motorcycle (two
wheeler) bearing Registration No.HR05R-2870. At the time of the accident

i.e. 22.05.2013, the aforesaid motorcycle was being driven by minor Gulab Singh-respondent no.2 herein. Dhanna Ram along with his son Krishan was going on a bicycle when Gulab Singh caused the accident, resulting in grievous injuries to Dhanna Ram. FIR No.13 dated 23.05.2013 was registered against respondent no.2. Dhanna Ram was taken to Arvind Hospital, Karnal, where he had to undergo a surgery. Dhanna Ram died on 22.08.2015 i.e during the pendency of the claim petition. The appellant as well as respondent no.2 contested the claim petition on the ground that no accident as alleged ever took place.

The claimant examined himself as PW1, whereas Krishan, his son, deposed as PW2.

On the other hand, neither the appellant nor respondent no.2 entered into the witness box. Respondent no.1 and 2 did not lead any oral evidence.

The Tribunal, after appreciating the presented evidence, allowed the claim petition while assessing the compensation at Rs.2,27,441/- payable by the appellant.

The learned counsel representing the appellant contends that the Tribunal erred in absolving the Insurance Company as it is not proved that the appellant knowingly and deliberately committed breach of the policy. He contends that in the absence of such evidence the appellant could not be made liable. He places reliance on the judgment passed in **Rakesh Kumar Arora vs. Balwant Singh, 2001(1) PLR 862** and **SKIndia Insurance Co. Ltd. vs. Kokliaben Chandravadan, (1987) 2 SCC 654.**

As already noticed, the appellant has not led any evidence apart from producing a copy of the order passed by the Juvenile Justice Board

giving the driver (minor) the benefit of doubt. It was for the appellant to prove that he did not deliberately hand over the vehicle to the minor or he had no knowledge that the vehicle was being driven by the minor. The claimants have led their evidence. Furthermore, it is well settled that whenever a party to the litigation asserts a positive fact which is in his exclusive knowledge, he is required to prove the same. The primary onus is on the person who asserts a positive fact. No doubt, once the primary onus stand/discharged, the onus in such case may shift. However, initial onus is required to be discharged by the party who asserts it. In such circumstances, the argument of the learned counsel representing the appellant does not deserve acceptance.

This Bench has carefully gone through the judgment passed in **Rakesh Kumar Arora (Supra)**. The Court while appreciating the facts held that the owner of the vehicle had no knowledge as it has been shown in the evidence that the deceased broke open the lock and drove away the car. In those circumstances, the Court held that as the owner has not committed any fundamental breach of the policy, as a result, the Insurance Company is liable to pay the compensation amount to the insured.

In **Skindia Insurance Co. Ltd. (supra)**, the Hon'ble Supreme Court held that if the owner had handed over the vehicle to the duly licenced driver but the driver had kept the engine of the vehicle running and allowed the cleaner/conductor to drive the vehicle, then in those circumstances, the owner cannot be held guilty of breach of the insurance contract. It is obvious that both the judgments relied upon by learned counsel are not applicable in the facts of the case.

In view of the aforesaid discussion, the conclusion is

inescapable. There is no merit in the appeal.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

16th August, 2021
nt

(ANIL KSHETARPAL)
JUDGE

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