

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

**FAO No.3126 of 2011
Date of decision : 20.04.2022**

Kreshan and another

....Appellants

Versus

Anoop alias Noopa and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Akshay Jindal, Advocate
for the appellants.

Mr. Sandeep Singal, Advocate
for respondents No.1 to 3.

Mr. Suman Jain, Advocate
for respondent No.4/Insurance Company

PANKAJ JAIN, J. (ORAL)

Claimants are in appeal against the Award dated 13th December, 2010 passed by the Motor Accident Claims Tribunal, Karnal whereby their claim petition filed under Section 166 of the Motor Vehicle Act, 1988 has been dismissed.

2. As per claim petition, on 24th December, 2008, one Wazir son of Shri Krishan Chand, caste Jat, resident of village Nindana Tigri, District Rohtak informed to the police through telephone that near Bus Stand, Nindana, one unknown person is lying. After receiving the telephone message, the police visited the spot where aforesaid Wazir was found present, whose statement was recorded by the police. As per statement of Wazir, at about 9.00 PM he was going from Bus Stand Nindana to his house

and when he reached near the house of Suraj Mal at about 9.10 PM, he saw that one person is lying on the main road. It is further stated by said Wazir Singh that he and other villagers checked that person and found the accidental injuries on his head, right hand and left. The said person died at the spot. At the instance of aforesaid Wazir, a case FIR No.303 dated 24th December, 2008 under Section 279/304-A of the Indian Penal Code was registered with Police Station, Meham. It is further case of the claimants that later on the Police investigated the matter and found that respondent No.1 had caused the accident by driving Tractor bearing No.HR-15-A-2344 and the dead body was identified by Neetu and Dharambir as that of Sonu son of Kreshan.

3. On the basis of the pleadings, Tribunal framed the following issues :-

- “(1) Whether the accident took place due to sole rash and negligent driving of respondent no.1 as alleged? OPP*
- (2) Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident? OPR*
- (3) Whether the tractor in question was being driven in violation of the terms and conditions of the insurance policy? OPR*
- (4) Whether the claim petition has been filed by the claimants in collusion with respondent no.1 to 3? OPR-4*
- (5) Whether the claimants are entitled to compensation, if so, how much and from whom? OPP*
- (6) Relief.”*

4. Ld. Tribunal dismissed the petition holding that the claimants have failed to prove that respondent No.1 has caused the accident in question. The Tribunal also returned finding on Issue Nos. 2 and 3 in favour of the Insurer and against respondents No.1 to 3.

5. Ld. Counsel for the appellants contends that the findings recorded by the Ld. Tribunal are erroneous and have been returned while ignoring overwhelming evidence on record in form of FIR (Exhibit P-1) and Report submitted by the Police Authorities under Section 173 Cr.P.C. (Exhibit P-3), on the basis of which, respondent No.1 was put to trial. Ld. Counsel contends that trite it is that the Tribunal cannot hold respondent No.1 as tortfeasor merely for the reason that the FIR has been registered but at the same time the Tribunal ought to have analyzed the same as a valid and cogent piece of evidence to prove the accident. Further, Counsel for the appellant has invited attention of this Court towards finding recorded on Issue Nos.2 and 3 whereby Insurer i.e. Respondent No.4 has been absolved of liability for fake licence of respondent No.1.

6. Per contra, Ld. Counsel for respondent No.4 contends that the Tribunal has rightly decided Issue No.1. He submits that it is in fact a case of hit & run and respondent No.1 has colluded with the claimants. Ld. Counsel for respondent No.4 is not in a position to support findings returned on Issue Nos.2 and 3 in the light of law laid down by Apex Court in the case of **Pepsu Road Transport Corporation vs. National Insurance Company, (2013) 10 SCC 217** and that in **Ram Chandra**

Singh vs. Rajaram and others, 2018 (8) SCC 799.

7. Having heard Ld. Counsel for the parties and after going through the records of the case, this Court is of the considered opinion that the Tribunal has misread the evidence on record in form of Exhibit P-1 and Exhibit P-3 i.e. FIR and Report under Section 173 Cr.P.C. filed by the Investigating Agency. The finding recorded by the Tribunal to the extent that the Report under Section 173 Cr.P.C. does not mention the number of tractor and also does not mention that Anoop alias Noopa was driving Tractor at the relevant time, is result of misreading of evidence on record. The fact that respondent No.1 has been challaned vide Exhibit P-3 has been ignored. Similarly finding on Issue Nos.2 and 3 is in teeth of the law settled by the Apex Court w.r.t. liability of an Insurer where driving licence possessed by the driver of the offending vehicle, is found to be fake. In

Ram Chandra Singh's case (supra), Apex Court held that -

*“11. Suffice it to observe that it is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the **insurer** would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the **insurer**. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the **insurer**.”*

(emphasis supplied)

8. Further, since Issue Nos.5 and 6 are consequential to the finding on Issue No.1, the same also deserves to be set aside.

9. As a sequel of the discussion held herein-above, the Award passed by the Tribunal is set aside. The matter is remanded back to the Motor Accident Claims Tribunal, Karnal to decide the same afresh after evaluating entire evidence on record.

10. The parties are directed to appear before the Tribunal on 7th of July, 2022.

11. Keeping in view the fact that the family in distress is litigating for last more than 13 years, the Tribunal is directed to decide the matter expeditiously preferably within a period of 6 months from the date of receipt of certified copy of this order.

12. The instant appeal is accordingly disposed off.

April 20, 2022

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No