IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1233-2001(O&M)
Reserved on:-17.4.2023
Date of Pronouncement:-20.4.2023

Shri Kishan

...Appellant

Versus

Smt.Rajo alias Rajpati and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Mr.N.C. Kinra, Advocate
for respondents No.1 to 5.

Mr.Vinod Chaudhari, Advocate
for the Insurance Company.

Mr.M.S. Rana, Advocate
for respondent No.6.

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H.S. MADAAN, J.

1. Briefly stated, the facts of the case are that Smt.Rajo alias Rajpati – widow, Mukesh, Rakesh, Vikas – minor sons and Sudesh – minor daughter of Shri Kiraru, an unfortunate victim of a road side accident had brought a petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Shri Bhagwan alias Chhotan – driver, Shri Kishan – owner, United India Insurance Company Ltd., Rohtak – insurer of jeep bearing registration

No.HR12P/0358 as well as Subhash Chander – driver, Haryana Roadways Delhi Depot through its General Manager and State of Haryana – owners of Haryana Roadways bus bearing registration No.HR26A/1342 before Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the Tribunal).

2. As per the case of the claimants, on 4.7.1999, Kiraru deceased had boarded a jeep bearing registration No.HR12P/0358 for going from Bahadurgarh to Rohtak; the jeep was being driven by respondent No.1 Shri Bhagwan alias Chhotan in a rash and negligent manner and when the jeep reached near village Kasar turn, a scooterist was seen coming from the opposite direction; the jeep however struck against the scooter and thereafter the jeep got swerved in such a manner that it had hit against Haryana Roadways bus bearing registration No.HR-26A/1342 being driven by Subhash Chander – respondent No.4; in that mishap a lady had died, whereas Kiraru travelling in the jeep had suffered multiple injuries and while being taken to hospital, he had also died on the way.

A formal FIR with regard to the accident was registered against respondent No.1 Shri Bhagwan for the offences under Sections 279, 304-A IPC with Police Station City, Bahadurgarh.

3. According to the claimants, Kiraru deceased was engaged in doing work of greasing and painting the vehicles at Hisar Road, Rohtak; in addition to that he worked as a Mechanic also, in that away, his total earning was Rs.10,000/- per month. The claimants sought compensation of Rs.10 lakhs along with interest @ 18% per annum.

4. On being put to notice, the respondents had appeared and five sets of separate written statements were filed contesting the claim petition.

In the written statement filed by respondent No.1 Shri Bhagwan @ Chhotan, he raised various legal objections, on merits denying that he had caused the accident by rash and negligent driving of the jeep in question, rather he contended that he was not driving the jeep on the date of alleged accident and he was not in employment of respondent No.2 Shri Kishan. According to such respondent No.1, Sunil son of Dharam Singh, resident of Paksma was driver of the jeep and the answering respondent was travelling as a passenger in the jeep at the time of accident and further he has been falsely involved in the criminal case due to mischief made by driver Sunil. The answering respondent pleaded that the accident had taken place due to fault of driver of bus bearing No.HR26A/1342.

In the written statement filed on behalf of respondent No.2 Shri Kishan owner of the jeep, he had also raked up various legal objections contending that Shri Bhagwan was/is not employee of the answering respondent and in fact the answering respondent had employed Sunil son of Dharam Singh, resident of Paksma as a driver on the jeep and it is a conspiracy to substitute Shri Bhagwan as driver of the jeep in place of Sunil. On merits, the answering respondent also offered a denial to the assertion in the claim petition.

In the written statement filed on behalf of respondent No.3 insurance company, it had pleaded that respondent No.1 Shri Bhagwan – driver of the jeep was not holding a valid driving licence, therefore, such respondent is not liable to pay any compensation to the petitioners and respondents No.1 and 2 have violated the terms and conditions of the insurance policy by not disclosing the details of the accident, therefore, no liability can be fastened upon the answering respondent. On merits, all the averments in the claim petition were controverted pleading that accident was outcome of rash and negligent driving of the scooterist and bus driver and not on the part of the respondent No.1 – Shri Bhagwan.

Respondent No.4 Subhash Chander driver of the bus in the written statement filed by him denied all the allegations in the claim petition, whereas respondents No.5 and 6 had also filed separate written statement, which was on the similar lines as that of written statement submitted on behalf of respondent No.4.

All the respondents had prayed for dismissal of the claim petition.

5. In view of the stand taken by respondents No.1 and 2 in their written statements, petitioners had filed an application for amendment of the claim petition so as to implead Sunil son of Dharam Singh resident of Paksma as a respondent. That application was allowed and Sunil was impleaded as respondent No.1A.

6. Notice of the claim petition was given to such Sunil impleaded as respondent No.1A but he did not appear despite service and as such was proceeded against ex-parte.

7. On the pleadings of the parties, following issues were framed:-

1. Whether present accident is the outcome of rash and negligent

driving of respondent No.1 or respondent No.1A, while driving jeep No.HR-12P/0358 on 4.7.1999 around 4 P.M. who dashed his jeep into bus No.HR26A/1342 which resulted into the death of Kiraru, as alleged? OPP.

2. Whether respondent No.1 & 4 were holding valid driving licence on the date of accident? OPR.
3. If issue No.1 is proved in affirmative, to what amount and from whom the petitioners are entitled to recover? OPP.
4. Whether respondent No.1 was not driving the jeep on the date of alleged accident? OPR.
5. Relief.

8. The the parties led evidence in support of their respective claims.

9. After hearing arguments, the Tribunal vide award dated 6.2.2001 accepted the the claim petition and granted compensation of Rs.3,07,200/- to the petitioners/claimants, payable by respondents No.1 and 2 jointly and severally along with interest @ 9% per annum from the date of filing of the claim petition till its realization. However, the claim petition against respondents No.1A, 3 to 6 stood dismissed.

10. This award left the respondent No.2 Shri Kishan aggrieved and he has approached this Court by filing the present appeal.

11. Notice of the appeal was given to the respondents, who put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. I find that the conclusion arrived at by the Tribunal that the jeep was being driven by Shri Bhagwan without permission or authority of owner Shri Kishan is wrong and erroneous. Sufficient evidence was available on the record that the jeep was being driven by respondent No.1 Shri Bhagwan inasmuch FIR with regard to the accident was registered against him and eye witness PW4 Wazir Singh author of the FIR Ex.P1 had categorically stated that the accident had taken place because of rash and negligent driving of the jeep by respondent No.1 – Shri Bhagwan. PW1 SI Ram Kumar, Investigating Officer of the case had testified that on 4.7.1999 on the basis of statement of PW4 Wazir Singh, he had recorded FIR No.310 dated 4.7.1999 under Sections 279, 304-A, 337 IPC with regard to the mishap against Shri Bhagwan, driver of the jeep. He had categorically stated that Sunil was ill on 4.7.1999 and he was found present in the village. Both the witnesses had no reason to depose falsely so as to wrongly involve Shri Bhagwan being driver of the jeep and to save Sunil. Furthermore RW2 Subhash Chander, driver of the bus had also lent corroboration to the depositions of PW1 SI Ram Kumar and PW4 Wazir Singh.

14. On the other hand, respondent No.2 Shri Kishan did not examine Sunil Kumar, who according to his version was driving the jeep on the fateful day. The Tribunal has rightly come to the conclusion that the jeep was being driven by Shri Bhagwan but then gave a strange finding that he was doing so without authority of the owner. For some strange unknown reasons, Shri Kishan had been denying that Shri Bhagwan was driving the jeep at the time of accident and rather claiming

that it was Sunil, who was the driver. His such claim was found to be false by the police during investigation of the case. It seems that appellant for some reasons wants to screen Shri Bhagwan alias Chhotan from the criminal proceedings and in that way tried to substitute him with Sunil but the evidence on the record pointed out otherwise. Shri Bhagwan in the written statement filed by him has admitted that he was travelling in the jeep though according to him he was a passenger but then this stand taken by him does not come out to be plausible and convincing. The version presented by Shri Kishan cannot be taken to gospel truth, rather it comes out that he stood falsified from the evidence available on the record. One thing stands proved on the record that it was Shri Bhagwan alias Chhotan, who was driving the jeep and had caused the accident by rash and negligent driving of the said jeep.

15. Now it is to be seen whether he was driving the jeep without permission and consent of Shri Kishan. There is nothing to show that Shri Bhagwan had taken the jeep or was driving it without authority or consent of Shri Kishan owner in an unauthorized manner. Interestingly, the insurance company in the written statement filed by it had also mentioned Shri Bhagwan to be driver of the jeep. It has come on the record that he was possessing a valid driving licence on the date of accident. The Tribunal while deciding issue No.2 has categorically observed so. Then how the Tribunal went on to exonerate the insurance company of the jeep is something, which is difficult to understand. The liability of the insurance company towards a third party could not be eliminated in such a manner. Lets take that Shri Kishan owner of the jeep is telling lies with

regard to the person, who was driving his jeep at the time of accident but such lie cannot result in making everything topsy turvey finishing liability of the insurance company towards a third party. The liability of the insurance company towards third party certainly remains although in case violation of any terms and conditions of the insurance policy if shown to be there at the most the insurance company can recover the same from the insured. Here except for some misinformation propagated by the insured, no flouting of any terms and conditions of the insurance policy comes out to be there so as to exonerate the insurance company. The insurance company remains liable to indemnify the insured for the liability to pay compensation towards the claimants.

16. Under the circumstances, the impugned award requires modification with regard to the liability to pay the compensation. The portion of the award exonerating the insurance company is set aside and it is directed that the liability to pay the compensation to the claimants would be joint and several of respondents No.1 to 3.

17. With such modification, the present appeal is disposed of accordingly.

Since the main appeal stands disposed of, the miscellaneous application(s), if any, stand disposed of accordingly.

20.4.2023. **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No