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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: May31, 2023

National Insurance Company Ltd.

....Appellant

versus

Nitin and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Deepak Suri, Advocate for appellant.

Mr. Anil Chaudhary, Advocate for respondent No.1.

Ms. Pooja Chhabra, Advocate for

Mr. Rahul Deswal, Advocate for respondents No.2 and 3.

ARUN MONGA, J. (ORAL)

Appellant before this Court is Insurance Company seeking to set aside the impugned Award dated 23.01.2017 rendered by learned Motor Accidents Claims Tribunal, Kurukshetra (for brevity, "Tribunal").

2. Succinct facts, as noted by learned Tribunal, are as below:

"2. *Brief facts of the petition are that on 12.11.2013 at about 5.00 p.m., when petitioner Nitin along with his father Shri Gokarn was waiting for a bus for Yamuna Nagar and was standing on the kacha berm of the road near ITI Chowk, Karnal, the offending Tractor bearing registration No.HR75-0569 to which a tanker was attached and was being driven by respondent No.1 in a rash and negligent manner and at a high speed in violation of the traffic rules, came from the side of Panipat and hit the petitioner after coming on the wrong side. Resultantly, the petitioner fell down and received multiple serious and grievous injuries on various parts of his body. After causing the accident, respondent No.1 fled from the spot leaving behind the offending vehicle. It is alleged that accident in question had taken place due to the sole negligence and rash driving of respondent No.1 and a criminal case bearing FIR No.943 dated 16.11.2013 was registered at Police Station, Civil Line, Karnal, under Sections 279 and 337 IPC against respondent No.1 for causing the said accident and he was facing the trial before the learned Area Magistrate. It is alleged that as the accident had taken place due to sole negligence and rash driving of respondent No.1, therefore, all the respondents being driver, owner and insurer of offending vehicle, were jointly and severally liable to pay a sum of Rs.30 lacs as*

compensation to the petitioner on account of injuries sustained by him in the present accident, with interest @ 12% per annum from the date of accident till payment, as claimed.”

3. Upon notice, respondents No.2 and 3 herein filed written statement by raising preliminary objections *inter alia* regarding locus standi; maintainability and claim being falsely filed by claimant. It was stated that respondent No.2-driver was having a valid and effective driving licence at the relevant time and vehicle of respondent No.3 was insured with appellant and so, the answering respondents were not liable to pay any compensation.

3.1. On merits, material contents of the petition with regard to date, time, place and manner of accident, age, income of the injured and expenses incurred by the petitioner on his treatment etc. were denied. It was claimed that neither any accident was caused by respondent No.2 nor by the vehicle of respondent No.3 and they were falsely involved to procure a false claim as the vehicle of respondent No.3 was insured with appellant. It was also claimed that a false criminal case had been registered in collusion with the police. Denying the other material averments of the petition, prayer for dismissal of claim was made.

4. Appellant-Insurance Company filed separate written statement raising preliminary objections *inter alia* with regard to locus-standi; maintainability; delay in lodging the FIR; collusion; respondent No.2-Bunti not holding a valid and effective driving licence; contravention of provisions of the Act and terms and conditions of the policy of insurance and vehicle in question not having a valid registration and other relevant documents at the time of alleged accident.

4.1. On merits, material contents of the claim petition with regard to date, time, place and manner of accident, age, income and injuries suffered by claimant/respondent No.1 herein as well as expenses incurred on his treatment etc. were denied. It was alleged that no accident had occurred with tractor-tanker bearing registration No.HR75-0569 and claim petition was filed by claimant in

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collusion with respondents No.2 and 3 herein and the police just to extort money from appellant-Insurance Company. It was also alleged that as per MLR dated 12.11.2013, claimant had suffered injuries due to fall from the tractor which fact was also clear from the medical memo sent to the police on the same day. Appellant has no liability at all. Denying the other material averments of the petition, prayer for dismissal of claim petition was made.

5. Learned Tribunal framed the following issues:

- “1. *Whether the accident in question took place on 12.11.2013 at about 5.00 p.m. near I.T.I. Chowk, Karnal, under jurisdiction of Police Station, Karnal, leading to injuries upon Nitin due to rash and negligent driving of the Tractor-Tanker bearing registration No. HR75-0569, by respondent No.1? OPP*
2. *If issue No.1 is proved in affirmative, what extent of compensation the petitioner would be entitled to and from whom? OPP*
3. *Whether the respondent No.1 was not holding valid and effective driving licence and the terms and conditions of insurance policy were violated? OPR-3.*
4. *Relief.”*

6. On appraisal of record/ evidence, learned Tribunal decided issues No.1 and 2 in favour of claimant. Issue No.3 was decided against appellant. Consequently, compensation to the tune of Rs.11,21,583/- along with interest at the rate of 9% per annum from the date of institution of claim petition till the realization was awarded in favour of claimant.

7. I have heard learned counsel for the parties and gone through the case file.

8. Learned counsel appearing on behalf of appellant-Insurance Company contends that there was clear evidence on record that no accident had taken place due to negligence of driver of tractor bearing registration No.HR-75-0569. He contends that FIR in question was lodged four days after the accident in question. MLR Ex.P5 shows that claimant had received injuries by falling from the tractor. Injured was sitting on the mudguard of the tractor and had fallen down. Person

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travelling on the tractor cannot be said to be entitled for compensation from Insurance Company since tractor is not meant for carrying passenger. There was no clear evidence that driver of the tractor was holding a valid driving licence. As per licence Ex.R-2 of the driver, he was authorized to drive LTV and HTV w.e.f. 10.12.2014 and the accident in question took place on 12.11.2013.

9. Learned counsel for the appellant-Insurance Company vociferously contends that in view of statement of friend of accident victim (claimant), namely Bunty, who had accompanied him at the first instance in the Hospital that he was in fact, sitting on the tractor and was not hit by the tractor, same could not have been ignored by learned Tribunal below.

9.1. I am unable to persuade myself with the insipidity of the argument as neither Bunty respondent/ driver of the tractor appeared as own witness nor was he summoned by the Insurance Company before learned Tribunal to prove as to what has been stated in the MLR nor even otherwise it transpires as to how in the light of unimpeachable testimony of other witnesses, which remained unshaken in their cross-examination, importance can be given to the statement ascribed to him (Bunty) as mentioned in the MLR. Furthermore, learned counsel for respondent No.1-claimant rightly points out that even neither driver nor owner of the tractor, which was the offending vehicle, had stepped into the witness-box to controvert the version of claimant that deceased was hit by the tractor and that he was not sitting on the same.

9.2. Inquiries in compensation claims under Motor Vehicles Act are civil proceedings. In such inquiries, proof of disputed facts by preponderance of probabilities is sufficient. As against this, in criminal trials a higher degree of proof is required and the prosecution has to prove its case beyond any reasonable doubt.

In present case, the evidence led by the claimant/respondent shows that the offending vehicle was indeed involved in the accident, which was caused by its

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rash and negligent driving by respondent No.2 causing injuries to the claimant. No evidence has been led by the appellant or by the owner and driver of the tractor to refute the claimants’ version as aforesaid. I am of the opinion that evidence led by the claimant was sufficient to prove by preponderance of probabilities that the offending vehicle was indeed involved in the accident, which was caused by its rash and negligent driving by respondent No. 2 causing injuries to the claimant and has been rightly accepted by the learned Tribunal.

10. In view of the totality of circumstances as well as unimpeachable testimony of witnesses, which was rightly believed by learned Tribunal, I find no ground to interfere.

11. Dismissed.

12. Compensation along with interest awarded by learned Tribunal be disbursed to claimant/respondent No.1 within a period of 60 days from today, failing which additional 3% compensatory interest will be leviable.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 31, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No