

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

FAO-6983-2019 (O&M)

Date of pronouncement: 16.02.2023

Reliance General Insurance Company Ltd.

...Appellant

Versus

Krishan and another

...Respondents

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

Present: Mr. Paras Money Goyal, Advocate for the appellant.

Mr. Prashant Singh Chauhan, Advocate for respondent No.1.

H.S. MADAAN, J.

Briefly stated facts of the case are that petitioner/claimant Krishan, aged about 26 years had brought a claim petition under Sections 165, 166 and 147 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondents Dharampal-driver of motorcycle bearing registration No.HR-14L-4079 (for brevity 'offending vehicle') and its insurer i.e. Reliance General Insurance Company Ltd., Rohtak, claiming compensation on account of injuries suffered by him in a motor vehicular accident.

2. As per case of petitioner/claimant, on 18.01.2017, he had started from Power House of HSIIDC Bawal for going to his village as a pillion rider on the offending vehicle and when a dog abruptly came in front of the motorcycle, it slipped after striking the dog. It was a foggy

day with very low visibility. The accident had taken place on the turning of the road. The reason for the same was sudden arrival of a dog before the motorcycle as well as negligent driving of the motorcycle by respondent No.1. A DDR No.17 dated 14.01.2017 was lodged with regard to the accident. According to petitioner/claimant, he was aged about 26 years at the time of mishap and was working as a Shift Attendant in DHBVNL, HSIIDC, Industrial Area, Bawal and was earning Rs.11,000/- per month.

3. On getting notice, both the respondents put in appearance and filed written statements. In the written statement submitted by respondent No.1, he had admitted the happening of the accident in which petitioner/claimant had suffered injuries. He contended that the accident had taken place due to dense fog and sudden arrival of a dog before the motorcycle and not on account of any fault of the answering respondent. Whereas, respondent No.2-insurance company in the written statement filed by it took up preliminary objections that the claim petition was not maintainable, that no cause of action had arisen to the petitioner/claimant to bring the claim petition; the driver of the motorcycle was not holding a valid and effective driving license to drive the motorcycle at the time of alleged accident and that the vehicle was being driven in violation of terms & conditions of the insurance policy. On merits, such respondent contended that the accident was caused due to rash and negligent driving of the motorcycle by its driver as mentioned in the DDR. The petitioner cannot be permitted to take undue advantage of the wrongs committed by

the driver of the alleged motorcycle. Respondent No.2 denied the claim of the petitioner pleading that respondent No.2 is not liable to indemnify the award and the amount claimed as compensation is exorbitant and imaginary. In the end, such respondent prayed for dismissal of the claim petition.

4. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Rewari (for short 'the Tribunal') decided issue No.1 in favour of petitioner/claimant holding that the accident in which the petitioner/claimant had suffered injuries had been caused due to rash and negligent driving of the offending motorcycle. Issue No.2 was decided in favour of the petitioner/claimant and against the respondents holding that he was entitled to claim compensation of Rs.12,69,699/-; issue No.3 was decided against the respondents and vide award dated 19.08.2019, the claim petition was accepted and compensation of Rs.12,69,699/- was ordered to be paid to the claimant by both the respondents jointly and severally along with interest @ 9% p.a from the date of filing of claim petition till actual realization. Respondent No.2-Insurance Company was directed to deposit the amount directly in the account of the petitioner. Certain other terms and conditions were imposed with regard to disbursement and withdrawal of the compensation amount.

5. Feeling aggrieved by such award passed by the Tribunal, the insurance company has preferred an appeal before this Court, notice of

which was given to respondent No.1, who has put in appearance through counsel to offer a contest.

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

7. Learned counsel for the appellant-insurance company had contended that as a matter of fact, the accident in which the petitioner/claimant had suffered injuries had taken place on account of dog suddenly appearing before the motorcycle which was being driven by respondent No.1 on which petitioner/claimant was pillion rider and respondent No.1 was not guilty of any rash and negligent driving despite that the Tribunal went on to hold that respondent No.1 Dharampal was author of the accident by his rash and negligent driving of the motorcycle and ultimately, allowed the claim petition, therefore, such award be set aside.

8. Whereas, learned counsel appearing for respondent/claimant Krishan has vehemently countered the argument stating that the accident in which petitioner/claimant had suffered injuries had been caused solely on account of rashness and negligence on the part of respondent No.1 who was driving the motorcycle and this fact has been conceded by appellant-insurance company in the written statement filed by it before the tribunal, therefore, now it does not lie in the mouth of appellant-insurance company to state that respondent No.1 was not at fault in happening of the accident.

9. After hearing the rival contentions, I find that the submissions made by learned counsel for the appellant are without any

element of merit. If we see the written statement filed by appellant-insurance company before the tribunal, it is specifically pleaded therein that the accident in which petitioner/claimant had suffered injuries had taken place due to rash and negligent driving of the motorcycle by its driver as mentioned in the DDR. It being so, the appellant-insurance company cannot possibly change its stand now and come up with a plea that respondent No.1 Dharampal was not at fault in happening of the accident and rather it took place on account of a dog suddenly appearing before the motorcycle. In my view, the appeal so filed by the insurance company challenging the finding recorded by the tribunal that respondent No.1 Dharampal was author of the accident by his rash and negligent driving of the motorcycle itself is not maintainable. Nevertheless, if we see the record, it comes out that while deciding issue No.1 in favour of petitioner/claimant against the respondents, the tribunal has dealt with the aspect of delay in reporting the matter to the police in a very proper and appropriate manner while relying upon documents Ex.PW5/A, Ex.PW6/A wherein history of road side accident is mentioned qua the petitioner/claimant. It was observed that the vehicle in question is not a planted vehicle which fact is admitted by respondent No.2 insurance company in its written statement. Moreover, neither respondent No.1 had appeared nor he was summoned by the insurance company to state on oath before the tribunal that he was not responsible for the accident by his rash and negligent driving and furthermore, the insurance company had not placed its own investigation report in the matter in question.

10. The tribunal has relied upon testimony of petitioner/claimant appearing as PW-1 fully supporting his case, therefore, no fault can be found with the findings recorded by the tribunal that the accident had taken place on account of rash and negligent driving of the motorcycle by respondent No.1 Dharampal. It has to be taken note of that depositions of witnesses on oath in the Court are at much higher pedestal than entry made by the police in the DDR. In this case, the petitioner/claimant had deposed on oath that the accident in which he had suffered injuries had been caused on account of rash and negligent driving of the motorcycle by Dharampal. The delay in reporting the matter to the police is not of much significance in this case. The thrust of argument by learned counsel for the appellant was that the vehicle in question was planted and the accident had not caused by Dharampal, driver of the motorcycle, who is none else but maternal uncle of the petitioner/claimant and he was not at fault in happening of the accident which took place per chance on account of a dog suddenly coming in front of the motorcycle. However, in view of the detailed discussion, this argument has been found to be without any force.

11. As far as quantum of compensation awarded to the petitioner/claimant, considering the fact that he had suffered 25% disability which has been found to be functional disability for the reason that petitioner/claimant claims himself to be labourer, the amount spent by him on his medical treatment so far, the age of the injured, the compensation awarded cannot be said to be on higher side. I do not see

any reason to decrease the same. I do not find any merit in the appeal.

The same stands dismissed accordingly.

16.02.2023
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No