

(2014) 05 P&H CK 0321

In the Punjab And Haryana At Chandigarh

Case No : FAO-4078-2013, 3344-2014 (O&M) (MACT Case Nos. 99 and 106 of 2009)

Savitri Devi

APPELLANT

Vs

Sher Singh and Others
 United India Insurance
Company Limited Vs Krishan Kumar and Others

RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Citation : (2014) 3 RCR(Civil) 1015

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Ajit Sihag, Advocate for Savitri Devi, Owner of Max jeep offending vehicle and Mr. V. Ramsaroop, Advocate for United India Insurance Company, Kunal Garg, AAG, Haryana, Rajbir Singh, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—This judgment shall dispose of the aforementioned ten appeals, five filed by the owner of the offending Max jeep and five by the Insurer of the Max jeep, challenging the impugned Award dated 24.1.2013, passed by the learned Motor Accidents Claims Tribunal, Bhiwani (in short "the Tribunal").

2. Learned counsel for the appellants (owner as well as insurer of the offending Max jeep) submit in one voice that the learned Tribunal erred in holding the appellants liable to pay the compensation. Earlier the driver, owner and insurer of the Max jeep were not made party before the Tribunal and no issue was framed with regard to the driver of the Max jeep, having a valid and effective driving licence. The learned Tribunal ignored the statement of PW5 Narender Kumar, an eye witness, travelling in the Max jeep at the time of the accident, who has specifically stated that Chattar Singh, driver of the bus rashly and negligently came from the opposite side and struck with the Max jeep, as a result of that impact, the vehicle turned turtle and the occupants of the Max jeep suffered multiple injuries. The FIR was lodged against Chattar Singh, the driver of the

bus. Sham Sunder has already been acquitted by the trial Court on the ground that one Virender Singh was driving the Max jeep. The claimants as well as the injured also stated that the driver of the bus was rash and negligent in causing the accident. He further submits that Virender Singh was having a valid and effective driving licence at the time of the accident. Thus, the liability to pay the compensation should be on the Insurance Company of the offending bus.

3. Learned counsel for the State as well as Insurer of the Bus submit that vide order dated 5.6.2010, the driver of the bus was discharged and Sham Sunder, the driver of the Max jeep was charged in the criminal case for causing the accident. The learned Tribunal has rightly held the appellants liable to indemnify the award. They pray for the dismissal of the appeals.

4. I have heard the learned counsel for the parties and perused the case file.

5. From the perusal of the record, it emerges that vide order dated 3.4.2012, the learned Tribunal framed additional issue i.e. 5(a) "Whether on 1.7.2009 the date of accident, Max Jeep bearing registration No. HR-61-3820 was being driven by Virender son of Jagdish as alleged by respondent No. 7, Insurance Company or by Sham Sunder, respondent No. 5, as alleged by the petitioner? OP parties". In para No. 40 of the impugned Award, the learned Tribunal has observed as under:-

40. PW5 Narender Kumar filed his affidavit and deposed that the accident was caused due to rash and negligent driving of vehicle HR-61-2611 by Haryana Roadways Bus. The respondent No. 1 proved the statement of Narender Kumar made before the Court in criminal case in FIR No. 76 dated 1.7.2009 as Ex. RB and Ex. r2 before the SDJM, Loharu, wherein he deposed that there was no fault of driver of Haryana Roadways, respondent No. 1, hence, statement of Narender Singh is contradictory with each other and creates suspicion upon him and contents mentioned in petitions. The another material witness examined by the petitioners is PW7 Krishan who deposed that driver of Haryana Roadways bus was driven the vehicle in a very high speed, then struck the said Max jeep but the photocopy of photographs produced on file shows that the bus was going on left side and max jeep vehicle came to the extreme right side i.e. towards the bus.

6. There is no evidence that the Max jeep was being driven by Virender Kumar, not arrayed as respondent in the claim petitions, as stated by the appellant. The owner did not produce any document showing that Virender Singh was engaged by her as driver of the Max jeep. The offending Max jeep was being used for carrying passengers and not for personal use, which is against the terms and conditions of the insurance policy, issued by the insurer. The claimants did not produce any evidence against the driver of the bus. The learned Tribunal while holding liable the appellants has held as under:-

44. The dictum laid down in the authority referred by learned counsel for the petitioners are not disputed but the same are not applicable to the facts and circumstances of the present case as the petitioners failed to examine material

eye witnesses for proving the rash and negligent driving of respondent No. 1 and the respondent Nos. 5 and 6 have not challenged the orders of the criminal court dated 5.6.2010, in which respondent No. 1 Chattar Singh was discharged and charge was framed against respondent No. 5 in criminal case. The law laid down in the authority referred by learned counsel for the petitioners is not disputed that the standard of proof is not the same for assessing the civil liability but in the present petition, the petitioners failed to prove the rash and negligent driving of respondent No. 1, as the offending vehicle Max jeep was driven at the time of occurrence by respondent No. 5. The respondents No. 5 to 7 were impleaded as party later on have no effect to claim petitions, hence the dictum laid down in the authority titled *Birju K. Francis vs. Kerala State Road Transport Corporation* 2005 ACJ 1073 is applicable in the present case, wherein it was held that the driver of the vehicle against whom allegations of negligence are made, is not made party then claim petition is also maintainable. It is proved on the file by both the parties that the accident was taken place on 1.7.2009 in the area of Kural Ka Bas, P.S. Loharu due to rash and negligent driving of respondent No. 5 Shyam Sunder, driver of Max jeep, without having licence as no driving licence of Shyam Sunder produced on file. The respondent No. 6 being owner violated the terms and conditions of insurance policy and four persons were died and one person suffered injuries in the accident.

7. When Shyam Sunder, driver of the offending Max jeep was party before the Tribunal, the owner as well as the driver should be aware of their rights to take the defence with regard to the driving licence. The driving licence of Shyam Sunder, driver of the Max jeep was not produced before the Tribunal. The driving licence produced before this Court as Annexure A-1 is of no consequence, as it is not proved on record that Virender Singh was driving the vehicle at the time of the accident. A cumulative reading of the statements of the witnesses, shows material contradictions with regard to the accident i.e. driver of the vehicles and as to who was driving the offending Max jeep at the time of accident. Therefore, this Court is not inclined to substitute the view already taken by the learned Tribunal with another possible view.

8. Though, the driving licence was not produced by the owner and driver of the Max jeep, but the vehicle was insured at the time of the accident, thus, in the light of the judgment passed by the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, the Tribunal has rightly directed the United India Insurance Company Limited to pay and recover the same from the driver and owner of the offending Max jeep.

9. The argument of the learned counsel for the appellant-owner of the Max jeep that no specific issue was framed regarding the negligence of the driver of the Max jeep, is not of much help as all the parties were aware of the matter in controversy and led evidence after reading the pleadings of each other. So non-framing of an issue is not fatal, if it does not prejudice the case of any of the parties. Moreover, this point has been raised for the first time in the appeals, no

application was moved either of the parties before the Tribunal to frame this issue. The appellants themselves permitted the case to be decided and it can be said that they have waived this plea. The learned Tribunal rightly concluded that the accident was caused due to rash and negligent driving of Shyam Sunder, driver of Max jeep. Therefore, non-joining of Virender Singh as a respondent in the claim petition will not be fatal especially when it is held, as above, that Shyam Sunder, driver of the Max jeep, at the time of accident was guilty of rash and negligent in driving the Max jeep. The acquittal of Shyam Sunder, driver of Max jeep in the criminal case is of non consequence, as the judgment of a criminal Court is not always binding on the Tribunal in claim petition under the Motor Vehicles Act.

10. In view of the above, this Court finds no merits in these appeals and same are dismissed.

11. The statutory amount deposited by the appellants in all the appeals be sent to the Tribunal for disbursement to the claimants.

12. A copy of this judgment be placed on the files of the connected appeals.