(2012) 12 P&H CK 0148

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 5482 of 2012 (O and M)

Reliance General Insurance Co. Ltd.		APPELLANT
	Vs	
Smt. Anita Devi and Others		RESPONDENT

Date of Decision: Dec. 4, 2012

Citation: (2012) 12 P&H CK 0148

Hon'ble Judges: M. Jeyapaul, J

Bench: Single Bench

Advocate: Suman Jain, for the Appellant;

Final Decision: Dismissed

Judgement

M. Jeyapaul, J.

C.M. No. 29912-CII of 2012

1. Heard. The application is allowed.

F.A.O. No. 5482 of 2012

The insurance company aggrieved by the liability fixed on it holding that the vehicle bearing registration No. HR26-AS-6977 was involved in the accident preferred the present appeal.

2. PW 3 Baijnath was returning to his house alongwith her daughter Lakshmi aged 7 years at about 5.00 p.m. on the fateful day on 6.11.2010. It was alleged in the claim petition that a tractor bearing registration No. HR26-AS-6977 which came from behind driven by its driver dashed against the minor girl and as a result of which she sustained injuries and succumbed to the same.

3. The Tribunal having adverted to the evidence of PW 3 Baijnath, the father of deceased Lakshmi and the first informant in this case held that in fact the vehicle bearing registration No. HR26-AS-6977 was involved in the accident and that the accident took place on account of the rash and negligent driving of the driver of the said vehicle. The Tribunal also took note of Ex. P5 the mechanical inspection report of the tractor which was subjected to examination and observed that the engine number and chasis number noted in the mechanical inspection report did tally with the engine and chasis number of the offending vehicle. Having thus observed, the Tribunal held, inspite of the fact that a different number was furnished in the first information report, that the vehicle bearing registration No. HR26-AS-6977 was involved in the accident.

4. Learned counsel appearing for the appellant drawing the attention of this Court to the evidence of PW 3 Baijnath in the background of the first information report furnished by him would submit that a totally different vehicle number was furnished by PW 3 in the first information report and therefore, the vehicle number of Chander, 2nd respondent in claim petition furnished by PW 3 during the course of evidence cannot be accepted. He would also submit that the vehicle was subjected to inspection by the mechanic only on 9.11.2010. Therefore, there is every chance for bringing the vehicle of the 2nd respondent after three days of the occurrence for the purpose of inspection by the mechanic. Inasmuch as PW 3 the alleged eye witness has come out with a totally contradictory version as to the number of the vehicle, it is submitted by learned counsel appearing for the appellant that the trial Court should not have accepted the evidence of PW 3 and held that the subject vehicle was not involved in the accident.

5. The evidence of PW 3 was placed on record by the appellant. On a perusal of his testimony, it is found that he was a totally illiterate person who has been habituated to put only his thumb impression. On a close scrutiny of his testimony, I find that the number of the vehicle was noted down by a passer-by and the same was passed on by him to PW 3. He had all the way gone to the police station and got the first information report scribed by somebody else for the purpose of lodging the same with the police. As the vehicle number noted was not scribed by the person who noted down and it was conveyed by a totally illiterate person for the purpose of recording the first information report, in my considered view, there is every chance for furnishing a wrong number in the first information report.

6. It is in evidence that the vehicle was left at the scene of the occurrence and the driver of the vehicle had sped away escaping the fury of public. The same vehicle had been recovered and was subjected to inspection by a mechanic. Of course, the mechanic came to the scene only after three days, i.e. on 9.11.2010. But on inspection he had noted down the engine and chasis number of the vehicle which was subjected to examination by him. The trial Court on comparison of those numbers gave a finding that those numbers did tally with the engine and chasis number of the offending vehicle. The above evidence on record would clinchingly show that the subject vehicle was infact involved in the accident though a different number was furnished in the first information

report. Such a telling evidence available on record had not been rebutted either by the driver or by the owner or by the insurance company during the course of trial. The evidence of Ahlmad of the Court concerned would go to show that the very same subject vehicle was recovered under a memo by the investigating officer who took up the case for investigation on the basis of the first information report furnished by PW 3. It appears that the investigating official is proceeding as against the driver who drove the offending vehicle. In view of the above, I find that the trial Court has rightly arrived at a conclusion that the subject vehicle bearing registration No. HR26-AS-6977 was involved in the accident and therefore, the appellant was answerable to the claim made by the claimants. I do not find any error in the award passed by the Tribunal. Therefore, the appeal stands dismissed.