

(2014) 02 P&H CK 0200

High Court Of Punjab And Haryana At Chandigarh**Case No:** F.A.O. No. 636 of 1997 (O & M) (MACT case No. 31 of 1995)

United India Insurance Co. Ltd.

APPELLANT

Vs

Usha Kalra

RESPONDENT

Date of Decision: Feb. 13, 2014**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 279, 337

Citation: (2014) 4 RCR(Civil) 58**Hon'ble Judges:** Jitendra Chauhan, J**Bench:** Single Bench**Advocate:** Sanjiv Pabbi, Advocate for the Appellant; R.C. Chaudhary, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Jitendra Chauhan, J.

The present appeal has been filed by the Insurance Company, challenging the impugned Award dated 2.11.1996, passed by the learned Motor Accident Claims Tribunal, Kurukshetra (in short "the Tribunal"), vide which a sum of Rs. 3,17,000/- has been allowed to respondent Nos. 1 to 4-claimants and the appellant being the insurer, alongwith owner and driver has been held liable to pay the compensation. Learned counsel for the appellant contends that the learned Tribunal erred in awarding the compensation without appreciating the evidence placed on record. In fact, it is a clear case of collusion between the parties. The registration, chassis and engine numbers mentioned in the FIR did not tally with the registration, chassis and engine numbers of the offending tractor. The learned Tribunal by relying on the statement of one Ramesh Arora, P.W. 1, held the driver of the offending tractor No. HRL-4277, rash and negligent.

2. On the other hand, the learned counsel for the respondent Nos. 1 and 2 submits that the learned Tribunal has rightly held liable the appellant to pay the

compensation. Therefore, the present appeal deserves to be dismissed.

3. I have heard the learned counsel for the parties and perused the record carefully.

4. It is worthwhile to mention here that at the time of admission of appeal, this Court passed the following order on 1.10.1997:--

"Admitted.

The appeal be heard at a very early date.

No case for staying the execution of the award is made out. Stay is accordingly declined. The appellant is directed to deposit the awarded amount with the Tribunal which in turn would redeposit the same in a nationalised bank in the fixed deposits. No part of the deposited amount be paid to the claimants. However, the interest accruing on the deposit be paid to the claimants regularly.

The amount deposited herein at the time of filing of the appeal be remitted to the Tribunal for disbursement to the claimants in terms of the award."

5. RW2 Dharam Pal MHC Police Station City Thanesar deposed that in the Malkhana Register No. 19, on 8.11.1994, there is an entry at serial No. 543 that a Ford Tractor bearing No. HRQ-783 bearing chassis No. BSN-28336 and Engine No. T.27160 was deposited in the police station malkhana on 8.11.1994, in case FIR No. 359 dated 8.11.1994 u/s 279 and 337 of IPC, PS City Thanesar. In his cross-examination, he has admitted that there is cutting i.e. big cross on the entry showing the tractor No. HRQ 783 with engine No. BSN-28336 and Engine No. T.27160 and a note has been given that tractor No. HRL 4277 with engine No. NXC 034339 and chassis No. BSM 34605 was deposited in the malkhana and on 9.11.1994, according to that register, vide DDR No. 24 dated 9.11.1994, the tractor No. HRL 4277 make Ford alongwith trolley, was released on superdari. Learned counsel for the respondent Nos. 1 to 3 in the claim petition i.e. driver and owners did not cross-examine the witness on this material point, which shows the collusion between the claimants and the driver and owners. It has not been got clarified that when a tractor No. HRQ 783 was taken into possession from the spot and how tractor No. HRL 4277 came in the custody of the police. Ex. R1, photostat copy of recovery memo goes to show that tractor No. HRQ 783 was taken into possession from the place of accident in the presence of Hans Raj and Shanti Parkash by the police. Ex. R1 was proved by Sukhdev Singh RW1 Assistant Ahlmad of the Court of CJM, Kurukshetra. The Investigator of this Court was not examined as to how the tractor No. HRL 4277 was substituted with HRQ 783. P.W. 1 Ramesh Arora in his examination in chief did not utter any word regarding registration number of the tractor, but simply stated that it was a Ford tractor. In his cross-examination, he admitted that the tractor which caused the accident remained standing at the spot after accident and police took the same into possession. So, the fact of taking into possession of tractor No. HRQ 783 is proved from the statement of PW 1 Ramesh Arora. However, there is not an iota of

evidence, on record that in fact, tractor No. HRL 4277 was taken into possession from the place of the accident. The FIR, which is the first version, has been withheld by the claimants for the reasons best known to them from the circumstances brought on record, it appears that subsequently, in collusion with the police, tractor trolley No. HRL 4277, chassis No. BSN 34605 engine No. NXC 03433 was involved in the accident and entry was later on altered in the register No. 19 of the Malkhana of the police station after cutting the entry of previous tractor trolley No. HRQ 783 engine No. BSN-28336 and Engine No. T.27160. There may be reason to do that the previous tractor bearing registration No. HRQ 783 may not be insured and to get the compensation, the insured tractor i.e. HRL 4277 was replaced with the active connivance of the police. Moreover, neither the driver, nor the owner of the offending tractor was examined. It is a clear case of substitution of the vehicle. The findings recorded on additional issues No. 1 and 2A are reversed holding that no accident took place with tractor No. HRL 4277 and issue No. 1 is decided against the claimants and it being a case of collusion between the parties, the issue No. 2A is decided in favour of Insurance Company.

6. In view of the above, the present appeal is allowed; the impugned award dated 2.11.1996 is set aside and the claim petition filed by the claimants is dismissed without costs. As the amount has already been deposited by the Insurance Company in a national bank in the FDR, the same will be credited to the appellant-insurance company. However, it being a case of exceptional hardship, the interest accruing on the FDRs already paid to the claimants will not be recovered.