allotted premises and if there is some difficulty in this regard, the Bank is at liberty to approach the High Court for the implementation of its order of eviction.

24. We may also note that the Bank has demanded damages from the employees both who are still working with the Bank and those who have retired. In our opinion, since the employees were pursuing their remedies before the High Court as well as before this Court, we do not think it appropriate to direct them to pay any damages to the Bank for the use and occupation of the premises allotted nor do we think it appropriate to permit the Bank to recover the damages awarded against the employees.

Order accordingly.

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PUNJAB AND HARYANA HIGH COURT

Before: Jitendra Chauhan, J.

FAO No. 55 of 2013 (O&M) Decided on: 04.03.2016

The Oriental Insurance Co. Ltd. Appellant

Versus

Kamla and others Respondents

Alongwith

FAO No. 9672 of 2014, Kamla and others v. Parveen Kumar and others

Present: Mr. Ashwani Talwar, Advocate with Mr. J.S. Chatrath, Advocate and Mr. Aditya Kochar, Advocate, for the Insurance Company.

Mr. Ajit Sihag, Advocate, for the claimants.

Motor Vehicles Act, 1988 (59 of 1988), Section 166 – Compensation in motor vehicle accident case – Acquittal in criminal case – Effect of -- Deceased slipped/skidded from the motorcycle and it is the consistent stand of the relatives that there is no criminal intent -- However, after two days, when the patient died, the theory of involvement of the offending vehicle was coined and the same has been proved before the Tribunal -- However, when the case came up before the Criminal Court, the same very eye witness turned hostile so that the accused-driver is not put to any harm and thus cleverly the insurer of the offending vehicle has been made to be held liable to pay the compensation in the instant case – Held, there is a massive increase in such like cases of fraud -- High Court in its supervisory role has the onerous duty to cleanse the lower Courts of such fraudulent acts -- Appeal filed by the Insurance Company is allowed -- Claim petition filed by the claimants is dismissed -- Superintendent of Police is directed to investigate the matter and initiate the appropriate proceedings.

(Para 21-24)

Cases referred:

1. S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagnanth (dead) by

LRs, 1994(1) SCC 1.

2. Indian Bank Vs. Satyam Fibers (India) Pvt. Ltd. 1996(5) SCC 550.

3. United India Insurance Co. Vs. Rajindra Singh, 2000(3) SCC 581.

JUDGMENT

JITENDRA CHAUHAN, J. –

1. This judgment shall dispose of afore-mentioned two appeals bearing FAO No. 55 of 2013 titled as “The Oriental Insurance Co. Ltd. Vs. Kamla and others” and FAO No. 9672 of 2014 titled as “Kamla and others Vs. Parveen Kumar and others” arising out of the common award dated 07.11.2012 passed by the Motor Accident Claims Tribunal, Hisar (for short 'The Tribunal').

2. By filing FAO No. 55 of 2013, the Oriental Insurance Company has assailed the findings of the Tribunal on the ground that the claimants, in collusion with the owner of the offending motor vehicle have played a fraud with the Insurance Company and the offending motorcycle bearing Registration No. HR-20E/1226 has been planted, whereas, the claimants have filed the appeal No. 9672 of 2014 for enhancement of compensation.

3. Facts of the case in brief are that the claimants approached the MACT, Hisar in a petition filed under Section 166 of the Motor Vehicles Act mentioning therein that on 13.04.2011, deceased Jagdish Chander alongwith his nephew Sukhdarshan were travelling from Village Landhri to Hisar on motorcycle which was being driven by Sukhdarshan. When they reached near Petrol Pump, in the area of Octroi Post, a motorcycle bearing registration No. HR-20E-1226 came from the opposite side which was being driven by respondent-Parveen Kumar S/o Sh. Hanuman Singh, R/o Jhumpa Kalan and which was owned by Ashok Kumar. The offending vehicle was being driven by its driver rashly and negligently and as a result of its colliding with the motorcycle being driven by Sukhdarshan, the pillion, Sh. Jagdish Chander received grievous injuries and was taken to Civil Hospital from where he was shifted to a private hospital (Survodaya Hospital, Hisar) and succumbed to his injuries.

4. The claimants filed the petition claiming compensation on account of death of Sh. Jagdish Chander.

5. The respondents driver & owner denied the allegations as made by the claimants and alleged that a false case has been got registered against them in order to grab compensation.

6. The Insurance Company also alleged false implication of the vehicle and further took the defence that the driver of the offending vehicle was not holding a valid and effective driving license.

7. The Tribunal, framed issue Nos. 1 & 2 as follows:-

1. Whether the accident occurred on 13.4.2011 has been caused due to rash and negligent driving of respondent no. 1 by driving Motor Cycle No. HR-20E-1226, if so to what effect? OPP
2. If issue no. 1 is proved, to what amount of compensation the petitioners are entitled to, if so, from whom? OPP

8. The Tribunal, on the basis of evidence led before it, returned a finding that the accident had taken place on account of rash and negligent driving of the offending vehicle by respondent No. 4, Sh. Parveen Kumar and negated the contentions as raised by the Insurance Company and awarded a compensation of Rs.6,43,000/- to the claimants along with interest @ 7.5%, which is under challenge both by the Insurance Company as well as the claimants.

9. In FAO No.55 of 2013, filed by the Oriental Insurance Company, it has been vehemently pleaded that a fraud has been played with the Court and that the offending vehicle has been planted in order to secure compensation. The counsel for the insurance company has contended that although accident took place on 13.04.2011 at about 12.00 Noon and the deceased was only a pillion but the FIR in this case was lodged by Sukhdarshan Singh, the driver of the said motorcycle only on 15.04.2011 and thus, there is an unexplained delay of 2 days in lodging the FIR. It has further been contended that in the FIR which has been duly exhibited as Ex. P13, although the particulars of the offending motorcycle i.e. Registration No. HR-20E-1226 have been given but in as far as the details of the driver are concerned, it has been mentioned that the driver fled away with the offending vehicle from the site and that he (Sukhdarshan Singh) could identify the driver in case he is brought before him. The counsel for the Insurance Company has further submitted that in the Challan presented before the Criminal Court on 21.05.2011, copy of which is exhibited as Ex.P14, the name of Sukhdarshan Singh S/o Bhajan Lal Bishnoi, R/o Mohammadpur Rohi appears in the list of witnesses at Sr. No. 5 and it is further mentioned therein that during the investigations, Sh. Parveen Kumar S/o Sh. Hanuman Singh Bishnoi R/o Jhumpa Kalan, P.S. Siwani was found to be driving the vehicle and he has been challaned under Sections 279, 304A, 337 IPC.

10. The counsel for the Insurance Company has argued that although in the FIR, it has been stated that the deceased was initially taken to Civil Hospital, Hisar from where he was shifted to Sarvodaya Multi Specialty Hospital, Hisar but in the Medico legal report, Ex. P1 of Sarvodaya Hospital, it is mentioned in the history as follows:-

> "Alleged history of sustained injury due to road side accident while he was going on bike suddenly slipped at about 1 PM"

11. It is further mentioned therein that the patient was brought to the Hospital by his nephew, Sh. Bahadur Singh and name of Sukhdarshan Singh does not find mention.

12. The counsel has further referred to Ex. R2 which is again of Sarvodaya Hospital dated 13.04.2011 wherein it has been mentioned as follows:-

> "Our patient has received injuries on account of falling from motor bike. We do not want any police action and nor do we want any M.L.R. to be issued". Sd/- RTI Haloman, brother Sd/- Daulat Ram, brother in law, Sd/- Devo Lal, mother."

13. On the basis of the above document, the counsel has contended that the story as put forth by Sh. Sukhdarshan Singh does not inspire confidence in as much, he never accompanied the injured Jagdish to the Hospital and still further, it is the consistent case of the relatives of the deceased that the injuries were suffered by the deceased on account of slipping/skidding the motorcycle and not in the accident with offending motorcycle as projected by the claimants.

14. The counsel for the Insurance Company has further contended that Sh. Sukhdarshan Singh, while appearing as PW5 before the Tribunal has not given the correct version of the accident and in order to grab compensation by way of the present claim petition, the offending vehicle has been knowingly introduced.

15. It has further been submitted that in his deposition before the Tribunal, Sh. Sukhdarshan Singh has made improvements over his statement as recorded in the FIR and has specifically named the respondent Parveen Kumar being responsible for causing the accident on account of driving of motorcycle No. HR-20E-1226. The counsel further submitted that the Tribunal has wrongly placed reliance on the statement of this witness and thus the findings as arrived by the Tribunal holding Sh. Parveen to be responsible for causing the accident on account of his rash and negligent driving of the motorcycle does not inspire confidence.

16. The counsel for the Insurance Company further contended that after the filing of the present appeal by the Insurance Company, the JMIC, Hisar vide his orders dated 01.05.2014 has decided the criminal case titled State Vs. Parveen Kumar pertaining to FIR No. 276 of 15.04.2011 and from a perusal of this judgment, it is evident that Sh. 'Sukhdarshan' has been recorded as 'Sudarshan' before the Criminal Court and appeared as PW1 and resiled from his statement and further mentioned that the accused Parveen was not the same person who caused the accident. This witness was declared hostile and was cross examined by APP and during cross examination, he even denied the statements Ex. PW1/A and PW1/B having been made by him to the Police. It was further stated by him that the Police had taken his signatures on blank papers.

17. Since the above said orders of the JMIC, Hisar dated 01.05.2014 have been passed subsequent to the filing of the appeal and go a long way in bringing the factual position on record, the same is ordered to be taken on record as Mark 'A'.

18. The counsel for the Insurance Company on the basis of above pleas have stressed that in this case, the claimants are guilty of misrepresentation and consequently for playing fraud upon the Court in order to secure compensation by resorting to illegal and unethical means. Reliance has been placed in this regard on the judgment of the Hon'ble Supreme Court in the case titled **S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagnanth (dead) by LRs, 1994(1) SCC 1** wherein it has been held as follows:-

> "Fraud avoids all judicial acts, ecclesiastical or temporal"- observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree- by the first Court or by the highest courthas to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings".

19. The counsel has further relied upon the judgment of Hon'ble Supreme Court in the case of **Indian Bank Vs. Satyam Fibers (India) Pvt. Ltd. 1996(5)**

SCC 550 wherein it has been held as follows:-

> "Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practiced upon the Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order."

20. It has further been contended that in the case titled **United India Insurance Co. Vs. Rajindra Singh, 2000(3) SCC 581**, the Hon'ble Supreme Court has held that no Court or Tribunal can be regarded as power-less to pass appropriate orders in case it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

21. The counsel for the claimants has no answer to the above submissions made on behalf of the Insurance Company. After going through the records, I am convinced that in this case, the claimants successfully misled the Tribunal which recorded the finding that the accident was caused on account of rash and negligent driving of the offending motorcycle by its driver, Sh. Parveen. In-fact, the deceased slipped/skidded from the motorcycle and it is the consistent stand of the relatives that there is no criminal intent. However, after two days, when the patient died, the theory of involvement of the offending vehicle being driven by Sh. Parveen was coined and the same has been proved before the Tribunal.

22. However, when the case came up before the Criminal Court, the same very eye witness turned hostile so that the accused driver is not put to any harm and thus cleverly the insurer of the offending vehicle has been made to be held liable to pay the compensation on account of death of Sh. Jagdish in the instant case.

23. There is a massive increase in such like cases of fraud in recent times as the vehicular population has increased manifold. The High Court in its supervisory role has the onerous duty to cleanse the lower Courts of such fraudulent acts. As a consequence, the appeal filed by the Insurance Company bearing No. 55 of 2013 is allowed. The claim petition filed by the claimants is dismissed. The claimants-respondents shall be liable to refund the amount already received by them against surety alongwith interest @ 9.5% per annum from the date of such disbursal to the claimants till its refund.

24. The Superintendent of Police, Hisar is directed to investigate the matter and initiate the appropriate proceedings against Sukhdarshan Singh S/o Sh. Bhajan Lal Bishnoi, R/o Village Mohamadpur Rohi.

25. As a consequence of the above, the FAO No. 9672 of 2014 titled Kamla & others Vs. Parveen Kumar & others, filed by the claimants for enhancement of compensation does not survive as the claim petition itself has been dismissed. The FAO No. 9672 of 2014, is therefore, dismissed. The claimants shall also pay cost of Rs. 50,000/- towards litigation expenses.

Order accordingly.

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