



FAO-4116-2007 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-4116-2007(O&M)
Date of Decision :06.09.2024

Ved Parkash Munjal

....Appellant

Versus

Bachan Singh and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.A.P. Bhandari, Advocate
for the appellant.

Mr. Arvind Bansal, Advocate
for respondents No.1 and 2.

Mr. Suvir Dewan, Advocate
for respondents No.3.

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SUDEEPTI SHARMA, J. (Oral)

1. The appellant in the present appeal has challenged the award dated 15.05.2007, whereby, the claim petition filed by the appellant under the Motor Vehicles Act, 1988 was dismissed by the learned Motor Accident Claims Tribunal, Kaithal.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 03.01.2006 at about 3.15 p.m., claimant-Ved Parkash Munjal alongwith Chander Parkash son of Ram Kishan resident of Kaithal started their journey from village Siwan to Kaithal in a car bearing no.HR-06H-0099, which was being driven by claimant on a moderate speed. When they reached at first turn from Siwan bye-pass chowk/Arjan Nagar



bye pass chowk toward Khurana Road, then a bus bearing no. HR-64-0054 being driven by its driver in a rash and negligent manner came from the opposite side and directly hit the car of the claimant from front side, due to which, the car of the claimant fell into the drain and the claimant and Chander Parkash received injuries. It has been alleged that the said accident took place due to rash and negligent driving of the bus No.HR-64-0054 by its driver and the said accident was witnessed by Inderjit son of Dr. Atam Singh Madan resident of Siwan and after the accident, said Inderjit shifted the claimant and Chander Parkash to Shah Hospital, Kaithal. It has been alleged that the claimant received multiple and grievous injuries on various parts of his body and his car was also badly damaged in the aforestated accident.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident.

4. From the pleading of the parties, the Tribunal framed the following issues:-

“1. Whether the accident resulting into the injuries to the claimant and damage to his car no.HR-06H-0099 took place on 3.1.2006 at about 3.30 p.m. near Siwan bye- pass Chowk Kaithal due to rash and negligent driving of bus no.HR-64-0054 by respondent no. 1 ? OPP.

2. Whether the claimant is entitled to compensation and if so, to what amount and from whom? OPP.



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3. *Whether the respondent no.1 was not holding any valid and effective driving licence at the time of alleged accident?*

OPR-3.

4. Relief.”

5. After hearing learned counsel for the parties and perusing the whole record, the learned Tribunal dismissed the claim petition. Hence, the claimant appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSELS For THE PARTIES

6. The learned counsel for the claimant-appellant contends that the appellant suffered injuries and was admitted in the hospital for 5 days and learned Tribunal has wrongly dismissed the claim petition on account of negligence on his part.

7. Per contra, learned counsel for the respondent-Insurance Company contends that the learned Tribunal has rightly dismissed the claim petition.

8. I have heard learned counsel for the parties and perused the whole record of this case. Relevant portion of the judgment is reproduced hereunder:-

“In order to prove rash and negligent driving on the part of respondent no.1, who was allegedly driving the bus bearing no. HR-64/0054 owned by respondent no.2 and insured by respondent no.3, the claimant when appeared himself as PWI has tendered his affidavit Ex PA, wherein he has solemnly affirmed and declared that he was owner of Car no. HR-06H/0099 and on 3.1.2006, at about 3.15.p.m., he alongwith Chander Parkash started their journey from village Siwan to Kaithal in the said car and he was driving the said car at a



moderate speed on his correct side and when he reached near Arjun Nagar Khurana Road bye- pass, then a bus bearing no. HR-64/0054 driven by respondent no.1 at a very high speed and in a rash and negligent manner came and struck against his car after coming on the wrong side, due to which, the said car fell in the Nala-drain and said car was badly damaged and he as well as Chander Parkash received multiple injuries. He has categorically deposed that the afore stated accident took place on account of sole rash and negligent driving on the part of the driver of bus no. HR-64/0054 and the afore stated accident was witnessed by Inderjit who took him and Chander Parkash to Shah Hospital Kaithal, from where, he was referred to Orthopedic Surgeon. He has further deposed that since the offending bus belonged to Om Parbha Jain Senior Model School respondent no.2 and he remained under impression that the matter would be amicably settled by the said school and moreover he remained under treatment and thereafter, he got lodged the FIR against respondent no.1 driver of offending bus no. HR64/0054. He has also deposed that he also lodged the claim on account of damage to his car to respondent no.3 and respondent no.3 gave a sum of Rs. 1,05,878/-, despite the fact that the claimant has spent a sum of Rs. Two lacs approximately on the repair of the said car and the said cheque was received under protest.

However, in his cross-examination, he has admitted that one more passenger was sitting in the said car with him. He has also



admitted that he moved an application to the police on 8.2.2006 and his statement was recorded by the police on 27/28.2.2006.

7. *The claimant has also produced Chander Parkash as PW3, who has tendered his affidavit Ex. PW3/A wherein he has solemnly affirmed and declared that on 3.1.2006 he was coming to Kaithal in a car bearing registration no. HR-06H/0099 alongwith Ved Parkash claimant, who was driving the said car and when the said car reached near Siwan bye-pass Chowk at Khurana Road, Kaithal, then a bus bearing no.HR-64/0054 driven by respondent no.1 in a rash and negligent manner came from Khurana side and hit the said car, due to which, they received injuries and the car fell in the Nala and they were taken to Shah Hospital Kaithal by Inderjit son of Atam Singh and the said car was badly damaged.*

However, in his cross-examination, he has admitted that Ved Parkash claimant was known to him since long and he was also distantly related to him. He has also admitted that the police might have recorded his statement after one and half months of the occurrence. The claimant has also produced attested copy of FIR Ex. P11.

8. *However, on the other hand, the respondent produced Bhim Chand Goyal as RWI. who has tendered his affidavit Ex. RWI/A. wherein he has solemnly affirmed and declared that on 03.01.2006. He was standing at bus stand Siwan for coming to Kaithal and at about 3 p.m., he got lift in the car no. HR-06-H/0099 which was being*



driven by Ved Parkash and his cousin Chander Parkash was sitting in the said car and both were known to him. He has deposed that the said car being driven at a very high speed and when they reached near Siwan Road bye pass, then a bus came from Kaithal side and after seeing their car, the driver of the said bus on one side of the road, but even then Ved Parkash could not control his car and struck against the said bus and the said car fell in the ditches, as a result of which, he, said Ved Parkash and Chander Parkash received injuries and they were taken to Shah Hospital Kaithal. He has deposed that the accident took place on account of rash and negligent driving on the part of Ved Parkash and there was no negligence on the part of driver of the bus and his statement was also recorded in the police station.

However, in his cross-examination, he has admitted that his statement was recorded by the police on 21.11.2006 in police station, city Kaithal.

9. *The respondent have also produced Balbir Singh ASI as RW2, who was appointed as investigating officer of this case pertaining to FIR no. 135 dated 7.3.2006 police station city, Kaithal. He has stated that after completion of necessary investigation of this case, he submitted the report to the SHO concerned and he has testified the said report as Ex.R2.*



However, in his cross-examination, he has admitted that during investigation, he recorded the statements of Chander Parkash as well as Bhim Chand Goyal who were sitting in the said car.

10. To substantiate further, the respondent no.1 himself appeared as RW3. who has tendered his affidavit Ex. RW3/A wherein he has solemnly affirmed and declared that on 3.1.2006, he was driver on bus no. HR-64-0054 and on that day, when he reached near Siwan Road bye pass, then a car bearing no. HR06-H/0099 came from the opposite side driven in a rash and negligent manner and at a very high speed and after seeing the said car, he stopped his bus, but even then the driver of the said car could not control over his car and struck the same against his bus and the driver of the car admitted his guilt at the spot. He has categorically deposed that the accident took place on account of rash and negligent driving on the part of driver of the said car but on account of being co-village, he had not registered the case against the claimant. He has also deposed that the school has received the compensation on account of damage to the bus from respondent no.3 insurance company as he was not negligent.

However, in his cross-examination, he had denied the suggestion that the FIR has been got cancelled under the influence.

11. Therefore, after going through the evidence and circumstances of the case, it emerges that when on 3.1.2006 the claimant was going in his car no. HR-06H/0099, in which Chander Parkash PW3 and Bhim Chand Goyal RWI were sitting and when they reached near



Khurana road bye pass. Then the afore stated accident took place with bus no. HR-64/0054 driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3.

12. As per the case of the claimant, respondent no. I was driving the bus no.HR-64/0054 in a rash and negligent manner and the afore stated accident took place on account or rash and negligent driving on the part of respondent no.1, whereas the case of the opposite party is that the afore stated accident took place on account of rash and negligent driving on the part of the claimant himself, as he was driving his car no. HR-06H/0099 at very high speed and in a rash and negligent manner and the driver of the bus after seeing the car stopped the bus on the side of the road, but even then, the claimant who was driving his car could not control over his car and struck against the bus and thereafter the said car turned turtle and fell in the ditches.

It has come in evidence that the claimant has recorded the matter to the police on 7.3.2006 on the basis of which, formal FIR Ex. P11 bearing no. 135 dated 7.3.2006 under sections 279, 337 IPC was got recorded regarding taking place of the accident on 3.1.2006.

It has also come in evidence that when the matter was investigated regarding taking place of accident on 3.1.2006 regarding which, the present claim petition has been filed, then the investigating agency submitted the discharge report under section 173 Cr. P.C. Ex.R2.



13. *Therefore, from the evidence and circumstances of the case, it is evident that since the investigating agency had not found any truth in the allegations leveled by the claimant against respondent no.1 as contained in FIR no. 135 dated 7.3.2006 and thus, the investigating agency has submitted the discharge report under section 173 Cr. P.C. Ex. R2 against respondent no. 1.*

Therefore, when the investigating agency has submitted the discharge report against respondent no.1, then it cannot be held that the afore stated accident took place on account of rash and negligent driving on the part of respondent no.1 i.e. driver of bus no. HR-64/0054 at the time of afore stated accident.

14. *Moreover, admittedly and evidently, one Bhim Chand Goyal, who was also sitting in the said car at the time of accident has also vide his affidavit Ex. RWI/A has categorically deposed that the afore stated accident took place on account of rash and negligent driving on the part of Ved Parkash claimant, who was driving the car no.HR-06H/0099 at the time of afore stated accident.*

Moreover, there is no explanation as to who the FIR has been lodged approximately two months after taking place of the accident as well as after the receipt of compensation on account of damage suffered by the care driven and owned by the claimant himself.

Therefore, in my opinion, respondent no.1 cannot be held liable for causing the afore stated accident resulting into damage to



the car and injuries to the claimant and such, this issue is decided against the claimant and in favour of the respondents.”

9. A perusal of the award shows that the claimant had already received a sum of Rs.1,05,878/- from respondent No.3 (New India Assurance company Ltd.) on account of damage to his car. Further perusal of the evidence of the witnesses show that the accident took place due to rash and negligent driving of the driver of the car. Even in FIR lodged against the driver of the bus No.HR-64-0054, discharge report under Section 173 Cr.P.C. Ex.R-2 against respondent No.1-driver was submitted. Even the statement of one Bhim Chand Goyal, who was also sitting in the said car at the time of accident vide his affidavit EX.RW-1/A categorically deposed that the accident took place on account of rash and negligent driving on the part of Ved Parkash – claimant, who was driving the car No.HR-06H-0099.

10. In view of the above, I do not find any infirmity in the award dated 15.05.2007 and the same is upheld. The present appeal is dismissed devoid of any merit.

11. Before parting with the judgment, this Court extends its appreciation to Mr. Suvir Dewan, Advocate, for his able assistance to the Court in the present matter.

12. All the pending application(s), if any, stands disposed of.

September 06, 2024
A.Kaundal

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No