

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 9906 of 2014 (O/M)
Date of decision : 18.5.2015

Ashok Kumar

..... Appellant

Versus

Amarjit and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.D. Sharma, Advocate,
for the applicant-appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Ashok Kumar (owner of the offending vehicle bearing registration No. PB-06-F-7170) has filed this appeal against the award dated 3.9.2014, passed by the Motor Accident Claims Tribunal, Pathankot, (in short 'the Tribunal'), vide which an award to the tune of Rs. 1,84,500/- alongwith interest @ 6% per annum from the date of filing of the claim petition till actual realization was passed in favour of the claimants. Since the offending vehicle was not insured, therefore, the present appellant alongwith Parvesh Kumar (driver) were made jointly and severally liable to pay the compensation.

The only contention of the learned counsel for the

appellant is that the appellant had already sold the said vehicle to respondent No. 4 (respondent No. 2-A before the Tribunal), namely, Rakesh Kumar before the accident. It is stated that in the written statement, respondent No. 4 (respondent No. 2-A before the Tribunal) had admitted this fact. However, things are not simple as are sought to be put forward. It comes out that the said vehicle was un-insured at the initial stage. The present appellant did not plead that he had sold the vehicle to said Rakesh Kumar (respondent No. 4 herein). It was only at the fag end of the case that respondent No. 4 herein (respondent No. 2-A before the Tribunal) was added as a party. While adding respondent No. 4 herein (respondent No. 2-A before the Tribunal), it was observed by the Tribunal that the effect of non joining of such respondent at the initial stage would be taken into consideration at final stage. The Tribunal made the following observations with regard to the effect of alleged plea of sale of vehicle to Rakesh Kumar (respondent) :-

“17. Although at the fag end of the litigation, when the case was fixed for respondent evidence, the respondent No. 2 came with a new plea, probably to avoid liability because of non insurance of the vehicle in question, by devising a novel method impleading respondent No. 2A as a party in this petition on the ground that such vehicle was already sold by him to respondent No. 2A before the accident. Although respondent No. 2-A, after appearance, admitted purchase of such vehicle but such admission is without any documentary proof.

Registration Certificate Ex.R2 is still in the name of respondent No. 2. No document of transfer of such vehicle by respondent No. 2 in favour of respondent No. 2A has been proved on record despite placing one photostat copy of a affidavit shown to have been executed by respondent No. 2A in favour of respondent No. 2. The respondent No. 2 and respondent No. 2-A have avoided their appearance into the witness box to prove such change of ownership before the accident. While impleading respondent No. 2-A, it was observed by this Tribunal that the effect of non joining of such respondent at the initial stage by respondent No. 2 would be taken into consideration at final stage. It seems that in order to avoid liability, being economically capable enough, respondent No. 2 has tried to avail the services of respondent No. 2-A, who might not be having any property to discharge the liability, to shift the liability so that the claimants might not be able to get reward of this claim petition. So such unscrupulous move on the part of respondent No. 2 and respondent No. 2-A cannot be allowed to bear fruits. Hence it is held that respondent No. 2 has failed to prove the transfer of ownership of the vehicle in favour of respondent No. 2-A before the accident and therefore he is liable to pay the aforesaid compensation to injured Gagandeep alongwith respondent No. 1.”

I am of the view that if the present appellant had sold the vehicle to Rakesh Kumar (respondent), it would have been in his notice and such plea, in the natural course, would have been raised at the time when the present appellant filed the initial written

statement. Neither the present appellant nor the subsequent vendee appeared in the witness box to state about the said sale of vehicle. Only photocopy of an affidavit of sale of vehicle was placed on file and same was not proved by anybody. It is not proved that at the time of accident, Rakesh Kumar (respondent) was in effective possession of the vehicle. Both the present appellant and the alleged subsequent vendee stayed away from putting in appearance and offering them for cross examination. Therefore, adverse inference has to be drawn against them that they had tried up to defeat the claim of the claimants.

The authority of the Hon'ble Supreme Court in case of Purnya Kala Devi Versus State of Assam and another, 2014 (2) RCR (Civil) 591, relied upon by the learned counsel for the appellant is of no help as in that case, the vehicle in question was requisitioned by the State Government and it was in this context that it was held that a person in control and possession of the vehicle should be construed as the 'owner'. The facts of the present case are entirely different. As such, I do not find any merit in the present appeal and the same is dismissed.

Rs. 25,000/- deposited by the present appellant before this Court at the time of filing the present appeal be remitted to the Tribunal for disbursement to the claimants.

18.5.2015
sjks

(KULDIP SINGH)
JUDGE