

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

FAO No.5425 of 2009.

Date of Decision: 04.04.2016.

Veena Rani and othersAppellants.

VERSUS

Charan Singh and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Manav Bajaj, Advocate for the appellants.

Mr. Arvind Bansal, Advocate for respondent No.1.

Mr. D.P. Gupta, Advocate for respondent No.2.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

SNEH PRASHAR, J.

A petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by Jai Parkash Goel through his wife/next friend Veena Goel as he was said to be in coma. After he succumbed to the injuries, the appellants were substituted as his representatives-claimants. It was averred by the appellants that on 05.06.2006 at about 6:20 p.m. when Jai Parkash Goel was going from his office at Ambala Road, Kaithal to his other office near Hindu School, Kaithal on his scooter No.HR-08F-0110 and was being followed by his son Jitin Goel accompanied by his friend on motorcycle No.HR-08E-8800 and they had reached near the crossing of Tractor Market on Jind Road, Kaithal, a stray cow, that was passing by the side of the road, instigated by the horn

blown with pressure by Charan Singh (respondent No.1) who was going on his motorcycle and was driving rashly and negligently, the cow suddenly became furious and came in front of the scooter of Jai Parkash. In his attempt to save the scooter from hitting the cow Jai Parkash fell down with the scooter and sustained multiple injuries including head injury because of which he became unconscious and went in coma.

A Daily Diary Report No.16 dated 07.06.2006 was got registered by Jitin Goel with Police Post Civil Line, Kaithal. The factum of rash and negligent driving of the motorcycle by respondent No.1 and blowing up horn with pressure by him was later on brought to the knowledge of Jitin Goel and other members of the family by Rajender Parshad son of Bakshi Ram who had witnessed the accident. The injured-Jai Parkash was taken to various hospitals for treatment but he could not be saved and he succumbed to the injuries on 30.03.2008.

The insurer (respondent No.3) of the scooter being driven by the deceased in addition to the owner-driver and insurer of motorcycle No.HR-08-4004 (hereinafter referred to as the “motorcycle”) were impleaded as respondents. All three of them contested the petition. Respondent No.1 denied involvement of his motorcycle in the alleged accident. He also submitted that blowing of horn with pressure does not amount to rash and negligent driving. Respondent No.2 denied the occurrence of accident as alleged by the claimants and also raised all preliminary objections available to the insurer under the Act of 1988. Respondent No.3 pleaded that on the basis of the settled proposition of law

that a tort feaser cannot claim compensation for his own wrong, it had no liability to pay any compensation.

On the basis of pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus on them. Considering the ocular and documentary evidence led by the parties and the submission made on their behalf, learned Tribunal dismissed the claim petition vide award dated 05.06.2009.

Feeling aggrieved with the award, the appellants preferred the instant appeal.

The submissions made by Mr. Manav Bajaj, learned counsel for the appellant, Mr. Arvind Bansal, learned counsel for respondent No.1, Mr. D.P. Gupta, learned counsel for respondent No.2 and Mr. Rajneesh Malhotra, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants argued that Rajender Parsad, who was present at his shop near the site of accident and had witnessed the accident, stepped into the witness box as PW5 and testified that the deceased was driving his scooter in a normal speed whereas the motorcycle was being driven by respondent-Charan Singh rashly and negligently and because Charan Singh blew his horn with pressure, a stray cow passing beside the road suddenly got furious and came in front of the scooter of Jai Parkash and in a bid to save the cow Jai Parkash fell with the scooter on the road and suffered injuries on his head and other parts of the body. Learned Tribunal erred in completely ignoring the deposition of PW5 Rajender

Parsad whereas the witness was neither related to the deceased or the claimants nor had any reason to falsely blame respondent No.1 for causing the accident. The statement of PW5 was corroborated by PW6 Jitin Goel who too stated that the cow got furious due to the horn of his motorcycle blown with pressure by Charan Singh and it came in front of the scooter of his father.

A scrutiny of the evidence led by the appellants reveals that there is absolutely no force in the arguments of learned counsel for the appellants. Admittedly, the Daily Diary Report No.16 dated 07.06.2006 Ex.P130 was registered at Police Post Civil Line, Kaithal on the statement of Jitin Goel son of deceased Jai Parkash whereas the accident had taken place on 05.06.2006. In his statement, which formed basis of the Daily Diary Report, Jitin Goel who claimed to be an eyewitness of the accident, stated that his father was going on his scooter ahead of his motorcycle and when his father was in front of MRF Tyres shop, a cow came in front of his scooter and when he tried to save his scooter from the cow, his scooter became imbalanced and he fell on the road and suffered head injury and various other injuries on the body. Several people gathered at the spot and he took his father to Shah Hospital, Kaithal for treatment. He specifically stated that the accident occurred by chance while saving the cow and there was no fault on part of anyone.

Importantly, PW6 Jitin Goel, who got the Daily Diary Report registered about the accident, did not spell out a word about presence of any motorcycle on the road when the accident took place. He also did not state

that one Rajender Parsad whose shop was nearby had witnessed the accident. PW5 Rajender Parsad, who claimed to be an eyewitness of the accident introduced the presence of the motorcyclist on the road at the time of accident and stated that the motorcycle was being driven rashly and negligently and because the motorcyclist blew horn with pressure the cow became furious and came in front of the scooter of deceased Jai Parkash which led to imbalance of the scooter and he fell down and suffered fatal head injury. It is not his version that he on his own or at the instance of the claimants had ever approached the police to lodge a report in respect of the accident. For his appearance as an eyewitness during the evidence of the claimants he stated that 2½ /3 months after the accident when he went to enquire about the health of Jai Parkash he disclosed to his family members that the accident had occurred because of rash and negligent driving of the motorcycle and blowing of horn with pressure by Charan Singh-respondent No.1.

To corroborate the testimony of PW5 Rajender Parsad and to justify his own statement recorded in the Daily Diary Report Ex.P130, PW6 Jitin Goel also stated that after 2½ /3 months Rajender Parsad had told him the actual cause of accident.

It is clear from the deposition of both the witnesses that the story presented by them was concocted and was result of an after thought. While lodging Daily Diary Report dated 07.06.2006 Jitin Goel stated that he accompanied by a friend was following his father on a separate motorcycle. He also stated that immediately after the accident he reached

the spot. If according to PW5 Rajender Parsad he had witnessed the accident, he would have immediately talked to Jitin Goel when he reached the site of accident and would have disclosed to him the cause of accident. It does not appeal to a prudent mind that he did not narrate the manner in which the accident had taken place to Jitin Goel immediately after the accident but after 2½ /3 months he went to his house to disclose him the manner in which the accident had taken place.

In his statement which formed the basis of Daily Diary Report, PW6 Jitin Goel stated that the accident had taken place by chance and there was no fault on part of anyone. The Daily Diary Report was not lodged in the heat of moment on the date of accident. It was lodged two days after the accident which means the statement was made by the lodger in a cool and disposing mind. When initially it was not the case that there was some motorcycle on the road which was being driven rashly and negligently, it can be said that the said story was later on manipulated only to implicate the motorcycle. In any case, it is not the version of the claimants that the motorcycle had hit the scooter of the deceased. For the mere reason that the horn was blown with pressure, respondent No.1-driver of the motorcycle could not be held responsible for fall of the deceased with his scooter which admittedly had taken place because the deceased lost balance on his scooter.

Thus, seen from every angle, there is no merit in the appeal and it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

04.04.2016.
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