

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

**FAO No.2759 of 2012 (O&M).
Date of Decision: 11.02.2016.**

Kailash Garg and others

....Appellants.

VERSUS

Satish Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ashok Jindal, Advocate for the appellants.

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

Respondent No.2 was proceeded against exparte vide order dated 28.09.2015.

Mr. Abhishek Goyal, Advocate for respondent No.3.

SNEH PRASHAR, J.

This appeal is directed against the award dated 01.02.2012 passed by Motor Accident Claims Tribunal, Bathinda (for short, “the tribunal”) dismissing the claim petition titled “Kailash Garg and others vs. Satish Kumar and others” in MACT case No.30 of 2011 filed under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”).

The relevant facts are recapitulated hereunder:-

“On 20.03.2011 Bhagwan Dass Garg (deceased) alongwith Rakesh Kumar and Satish Kumar (respondent No.1) was coming back to

Bathinda from Salasar Dham by means of car bearing registration No.DL-9CK-2284 (hereinafter referred to as “the car”). Satish Kumar was the driver of the car. At about 3:30 p.m., when they reached Rawatsar on Hanumangarh road, the front left side tyre of the car burst as a result of which driver Satish Kumar lost control over the car and it turned turtle. The accident resulted in injuries to all the occupants. Bhagwan Dass suffered multiple serious and grievous injuries and died at the spot. Daily Diary Report No.6 dated 20.03.2011 was registered at Police Station Rawatsar on the basis of the statement given by Rakesh Kumar son of Prem Nath in respect of the accident.

The claimants-appellants filed a claim petition seeking compensation under Section 166 of the Act of 1988 alleging that the accident occurred entirely due to rash and negligent driving of the car by respondent Satish Kumar as well as due to negligence in maintenance of the car in question by respondent Kartik Garg-owner of the car.

The claim petition was contested by the respondents. In his written reply respondent Satish Kumar denied that there was any fault or negligence on his part in driving the car. Respondent Kartik Garg-owner admitted the accident but denied all other averments of the claimants. Respondent-insurer (United India Insurance Company Limited) denied occurrence of accident as pleaded by the claimants and also alleged that the insured had violated the terms and conditions of the insurance policy.

Finding that the claimants could not prove that the accident took place due to rash and negligent driving of the car by respondent Satish

Kumar, learned tribunal dismissed the petition.

Feeling aggrieved by the award dated 01.02.2012, the claimants-appellants have preferred the instant appeal.

The submissions made by Mr. Ashok Jindal, learned counsel representing the appellants, Mr. Rajan Bansal, learned counsel representing respondent No.1 and Mr. Abhishek Goyal, learned counsel representing respondent No.3 insurance company have been heard and record perused.

At the very outset, Learned counsel for the appellants argued that it was wrongly held by learned tribunal that the accident was not result of rash and negligent driving of the car by respondent Satish Kumar. He pointed out that CW4 Manoj Kumar son of Chaman Lal, who on the relevant date and time was also coming from Salasar Dham to Bathinda by means of his own car, was following the car being driven by respondent Satish Kumar in which deceased Bhagwan Dass was travelling. He deposed that the car was being driven by respondent Satish Kumar in a rash and negligent manner because of which the front tyre of the car burst and it turned turtle. The fact that front tyre of the car had burst was also proved by D.D.R. No.6 dated 20.03.2011 Ex.C8 registered at Police Station Rawatsar, District Hanumangarh.

Learned counsel further asserted that it was also the plea of the appellants that the negligence in maintenance of the car by the owner had also contributed in causing the accident. As such, the appellants, who are legal heirs and dependents of deceased Bhagwan Dass, who died at the spot due to the injuries sustained during the accident, are entitled to

compensation under Section 166 of the Act of 1988. To support his argument, learned counsel relied upon ***Kaushnuma Begum and others vs. New India Assurance Co. Ltd. and others, 2001 ACJ 428.*** Reference has also been made to the judgment dated 28.02.2011 passed by this Court in ***FAO No.3214 of 1999 (O&M) titled “Surinder Kaur and others vs. Bagicha Singh and others”.***

Refuting the arguments of learned counsel for the appellants, learned counsel for the respondents argued that respondent No.2 (owner of the car) is none else but son of the deceased and appellant No.1 Smt. Kailash Garg is his mother and appellants No.2 and 3 are the brothers. D.D.R. No.6 dated 20.03.2011 (Ex.C8) in respect of the accident was registered on the statement of one Rakesh Kumar, who was admittedly travelling with deceased Bhagwan Dass in the car being driven by respondent Satish Kumar. For the reasons best known to the appellants, Rakesh Kumar was not examined. To prove the accident, a new eyewitness was introduced namely, Manoj Kumar who appeared as CW4. He being husband of the niece, of deceased Bhagwan Dass, was a near relative and it was rightly held by learned tribunal that he was a procured witness and was not an eyewitness.

Learned counsel further argued that as deposed by RW1 Satish Kumar, the car was owned by the deceased and his family consisting of the appellant and respondent No.2 and it was their duty to maintain the car if at all their plea is that the accident was result of negligence in maintenance of the car. In fact, the present claim petition had been filed in connivance with

respondent No.2 said to be the registered owner of the car who is none else but a family member of the appellants.

The facts in hand are different and peculiar. In Kaushnuma Begum and others' case (supra), it was held as under:-

“It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in Rylands vs. Fletcher (supra) can apply in motor accident cases. The said Rule is summarised by Blackburn, J, thus:

“The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.”

The House of Lords considered it and upheld the ratio

with the following dictum:

“We think that the true rule of law is that the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiffs default, or, perhaps, that the escape was the consequence of vis major or the act of God; but, as nothing of this sort exists, here, it is unnecessary to inquire what excuse would be sufficient.”

The above Rule eventually gained approval in a large number of decisions rendered by courts in England and abroad. Winfield on Tort has brought out even a chapter on the Rule in Rylands vs. Fletcher. At page 543 of the 15th Edn. of the calibrated work the learned author has pointed out that over the years Rylands v. Fletcher has been applied to a remarkable variety of things: fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation. He has elaborated seven defences recognised in common law against action brought on the strength of the rule in Rylands vs. Fletcher. They are: (1) Consent of the plaintiff i.e. volenti non fit injuria. (2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape. (3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply. (4) Exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides

otherwise. (5) Act of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognise the possibility. (6) Default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself, the rule will not apply. (7) Remoteness of consequences i.e. the rule cannot be applied ad infinitum, because even according to the formulation of the rule made by Blackburn, J., the defendant is answerable only for all the damage which is the natural consequence of its escape.”

In Surinder Kaur and others' case (supra), the State was the owner of the vehicle involved in the accident. It was a case where the jeep was on a hot chase to conduct a police raid in the wee hours of the morning and the jeep in which the deceased Constable was travelling capsized and he suffered fatal injuries. The Court took the view that the log sheet for maintenance of the Jeep must have been produced before the Court if the State was trying to contend that the vehicle had been properly maintained but still an accident had taken place for no latent and patent defect.

The claim petition by the appellants was filed under Section 166 of the Act of 1988. Their main allegation was that the accident in which Bhagwan Dass lost his life had taken place due to rash and negligent driving of the car by respondent Satish Kumar. The only eyewitness examined by the appellants to prove the accident was CW4 Manoj Kumar. Admittedly, he is a near relative of the deceased because as per his own statement niece of the deceased is married to him. He testified that he was following the car in which the deceased was travelling at the time of

accident. However, his presence does not stand mentioned in Ex.C8 i.e. proceedings conducted by the police under Section 174 of the Code of Criminal Procedure which also contains the version regarding the accident recorded in D.D.R. No.6 dated 20.03.2011 on the statement of Rakesh Kumar, undisputedly the eyewitness. For the reason best known to the appellants Rakesh Kumar was not examined by them.

The other eyewitness respondent Satish Kumar, driver of the car appeared as RW1 and during his statement, categorically deposed that Manoj Kumar was not following them when they were returning from Salasar Dham and the accident took place. He added that Manoj Kumar was not an eyewitness of the accident and he had made a false deposition being relative of the claimants. He also stated that the car was being driven by him in a very moderate speed and with due care and caution. There was no negligence on his part and there was also no pothole on the road when the tyre of the car burst.

Importantly, it was nowhere mentioned in the report lodged with the police by Rakesh Kumar that respondent Satish Kumar driver of the car was driving rashly and negligently. If CW4 Manoj Kumar was present at the time of accident, he could explain no reason why he did not report to the police that the accident had occurred due to rash and negligent driving of driver Satish Kumar. Even his presence does not find mention in the proceedings of the police. Otherwise also, CW4 Manoj Kumar could not spell out any overt act on part of respondent Satish Kumar which could be termed as 'rashness or negligence' on his part in driving the car. Thus, from

the evidence adduced by the parties it is crystal clear clear that Manoj Kumar was not an eyewitness of the accident and was only a procured witness.

In the above premise, the conclusion manifest is that there is absolutely no substantive or reliable evidence on record to establish that the accident took place due to rash or negligent driving of the car by respondent Satish Kumar.

Coming to the plea of the appellants that the accident occurred due to negligence in maintenance of the vehicle, it is worthwhile to refer to the statement of CW5 Kailash Garg, widow of deceased Bhagwan Dass. In her cross-examination, she admitted that Kartik Garg (respondent No.2) is her son and is unmarried. They live in one house and have a joint mess and residence and the car was in the name of Kartik Garg. Respondent Satish Kumar was not employed as driver on the car. He stated that the car belong to the claimants-appellants' family. It was the duty of the appellants-deceased himself to maintain the car properly. CW4 Manoj Kumar, near relative of the appellants, stated in so many words that Kartik Garg is idle and is still unmarried. He too stated that Kartik Garg is residing with the appellants in the same house jointly. He did not deny but expressed ignorance to the suggestion given by the respondents that the car was owned by Bhagwan Dass but it was in the name of Kartik Garg being his son. Meaning thereby that the car belonged to the family of which appellants and respondent No.2 were the members and deceased Bhagwan Dass was the head. Kartik Garg is an unmarried son of the deceased and as

he is doing nothing, he had no independent income and was dependent on the earnings of his father. It is also noteworthy that no evidence was led by the appellants to prove that the tyre of the car burst because it was in a worn out condition and that the car was not being properly maintained by the owner.

Apparently, the petition was filed with consent of respondent No.1 and for the common benefit of the family (claimants and respondent No.2). Considering the said facts and peculiar circumstances of the case, learned tribunal had rightly dismissed the claim petition.

The award passed by learned tribunal is very much in accordance with law and calls for no intervention. Accordingly, the appeal is dismissed.

(SNEH PRASHAR)
JUDGE

11.02.2016.
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