

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 1462 of 1998
DECIDED ON: MARCH 14, 2017

SADHU RAM

.....APPELLANT

VERSUS

SHYAM SUNDER AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Mohit, Advocate for
Mr. R.A. Sheoran, Advocate
for the appellant.

Mr. Amit Arora, Advocate
for respondent No.3.

Mr. R.C. Gupta, Advocate
for respondent No. 4.

JASPAL SINGH, J

Aggrieved against the impugned order dated February 19, 1998 passed by Motor Accident Claims Tribunal, Bhiwani (for brevity 'Tribunal') whereby, a claim petition preferred under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act') by Suresh Kumar; has been dismissed.

The brief facts giving rise to the instant appeal are that on

November 04, 1992, Suresh Kumar accompanied by Sadhu Ram and two other persons were going from Bhiwani to Hisar in a maruti van bearing registration No. DL-2CB-4947 (hereinafter referred to as the 'offending vehicle'), which was being driven by respondent No.1-Shyam Sunder in a rash and negligent manner. At about 7.45 PM when they reached in the area of Vilage Sikandarpur, Tehsil Bawani Khera, a wild cow (Neel Cow) came running and struck against the conductor side of the offending vehicle, as a result of impact, respondent NO.1 lost control over the offending vehicle and it turned turtle resulting into injuries to the appellant-Sadhu Ram as well as Suresh Kumar. It has further been averred in the petition that accident in question solely took place due to rash and negligent driving of offending vehicle by respondent No.1. For claiming compensation on account of injuries sustained by the appellant, he preferred the afore-said claim petition, which was dismissed vide impugned order dated February 19, 1998. The dismissal of claim petition necessitated the filing of instant appeal.

While assailing the impugned order/judgment it has been ebulliently argued by learned counsel for the appellant that the same is absolutely against the evidence available on file and settled canons of law and misappreciation of evidence brought on record by the appellant as well as legal proposition applicable to the facts and circumstances of the case, has resulted into miscarriage of justice. In fact, the accident had solely occurred due to rash and negligent driving of offending vehicle by

respondent No.1, in which appellant as well as three other persons were travelling. Respondent No.1 was though, time and again requested to drive the offending vehicle at a normal speed but he did not pay any heed to it. Had the offending vehicle being driven on a normal speed, there was no possibility of accident. Moreover, non registration of criminal case is not a complete bar for seeking compensation under Section 163-A and 166 of the Act.

In the instant case the accident is an admitted fact and from the injuries it is clearly established that the offending vehicle was on fast speed. It was the duty of the driver to drive the vehicle cautiously and not negligently. Learned Tribunal has wrongly relied upon the statements made by appellant before the police. In fact, on sustaining of injuries, he fell unconscious and the police had recorded his statement during the period when he was not in free state of mind. Thus, no reliance could have been placed upon the statement made by him or any other persons, in respect of accident. On account of sustaining injuries appellant suffered a great loss. Accordingly, learned counsel for the appellant prayed for setting aside the impugned award by way of acceptance of instant appeal and for granting of just and adequate compensation.

On the other hand, learned counsel for the contesting respondents have supported the impugned award and submitted that the same is absolutely in consonance with the evidence available on file and in view of the evidence, especially, the statement got recorded by the

appellant, he is estopped from holding that accident occurred due to rash and negligent driving of offending vehicle by respondent No.1. Accordingly, they prayed for the dismissal of instant appeal.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned award as well as evidence available on file this Court is of the considered view that various submissions made by learned counsel for the appellant are without any legal or factual substance.

The sole question which requires determination in the instant case is whether the accident in question has taken place due to rash and negligent driving of offending vehicle by respondent No.1 and the answer to this question is in the negative, in view of overwhelming evidence available on record. Appellant stepped into witness box as PW-1 and has unfolded the version stated by him in the claim petition and asserted that accident in question solely took place due to rash and negligent driving of offending vehicle by respondent No.1. However, while subjecting cross-examination, it has been stated by him that DDR Ex.P-2 was got recorded by him with the police. He has also stated that he was asked by the police that whether he intends to proceed with the case or not but since the driver had also sustained multiple injuries, was lying by his side and was weeping and begging for favour, he made statement before the police he did not want to initiate proceedings against the driver. To the similar effect the statement was suffered by Suresh Kumar another injured, while appearing

in the witness box as PW-4. Though both the afore-said witnesses have stated that accident has occurred due to rash and negligent driving of offending vehicle by respondent No.1 but stands proved on record that a wild cow (Neel cow) suddenly emerged on the road and struck against the offending vehicle, due to which the accident had taken place. Thus, as per statements of Sadhu Ram and Suresh Kumar recorded by HC Ram Singh, respondent No.1 cannot be held liable for the commission of accident. Rather, it was clearly stated by them that no one was at fault for causing the accident and it has occurred all of sudden due to emerging of Wild cow on the road.

The filing of claim petition at a subsequent stage by twisting the facts and the manner in which the accident occurred is just to extract the compensation. Thus, this Court is of the considered view that learned Tribunal has rightly concluded that accident occurred due to rash and negligent driving of offending vehicle by respondent No.1. Since the claim petition has been preferred by the appellant under Section 166 of the Act, thus, it was obligatory upon him to establish the rashness and negligence on the part of driver of offending vehicle and in the absence thereof, the owner, driver or insurance company cannot be fastened with any liability. Thus, the impugned award does not call for any interference by this Court and the findings recorded by learned Tribunal, especially on issue No.1 are upheld.

In the light of what has been discussed above, this Court does

not find any merit in the instant appeal. As such, it stands dismissed whereby, impugned award is upheld.

No order as to costs.

JASPAL SINGH
JUDGE

MARCH 14, 2017
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<i>Whether speaking/non-speaking</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>