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

FAO No.917 of 2004

Date of Decision: 06.09.2017

AJIT SINGH

.....Appellant

Vs

RAJINDER SINGH AND ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Govind Chauhan, Advocate for
Mr. V.S. Kajla, Advocate
for the appellant.

Mr. Naveen Gupta, Advocate
for respondent No.2.

Mr. Sandeep Suri, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J. (Oral)

[1]. This appeal has been preferred by the claimant against the award dated 27.01.2004 passed by the Motor Accidents Claims Tribunal, Kaithal (hereinafter to be referred as 'the Tribunal') vide which the claim petition was dismissed in *toto* on the ground that the appellant was facing criminal prosecution in the FIR registered in respect of accident in question.

[2]. The accident in question took place on 02.12.2001

between Jeep bearing registration No.PB-13E-0291 and school Bus make Tata 407 bearing registration No.HR-16-4372 belonging to S.D. Public Senior Secondary School, Narwana.

[3]. The Tribunal while deciding the issue No.1 held that since the FIR was registered against the claimant/appellant and he was facing prosecution, therefore, the accident in question cannot be held to be on account of rash and negligent driving of respondent No.1. The appellant could not lead any independent evidence except his solitary statement got recorded as PW-1. The Tribunal on the said premise decided issue No.1 against the claimant/appellant and accordingly issue Nos.2 and 3 were declared redundant.

[4]. By adverting to the claim with regard to under Section 140 of the Motor Vehicles Act (for short 'the Act'), the Tribunal recorded the finding that no fault liability is distinguishable from rule of strict liability. Since issue No.1 could not be proved viz.- a-viz. rash and negligent act on behalf of respondent No.1, therefore, the appellant can be termed to be a tort-feasor and a tort-feasor is not entitled to any compensation for his own wrong.

[5]. Perusal of the award passed by the Tribunal, reveals that the issues have been decided solely on the basis of

registration of criminal case against claimant/appellant and challan submitted against him.

[6]. It appears that the Tribunal has rightly concluded issue No.1 for want of any evidence on behalf of the claimant so far as the negligent act of respondent No.1 was concerned. Findings having not been returned in respect of rash and negligent driving on the part of respondent No.1 has entailed in dismissal of the claim petition under Section 166 of the Act. No fault liability has to be tested on the basis of the findings recorded by the Tribunal, if any, other than the findings of innocence recorded in favour of respondent No.1. In the event of recording the findings that respondent No.1 was not rash and negligent in driving the bus, the Tribunal ought to have recorded the findings of rash and negligent driving on the part of driver of the Jeep in order to rule out any other hypothesis of contributory negligence or on account of any inevitable happenings etc. Recording of such findings would have disentitled the appellant from claiming compensation under Section 140 of the Act being a tort-feasor. In the absence of such findings, the principle of strict liability would not come into being.

[7]. In view of above, I deem it appropriate to modify the award to the extent of awarding requisite compensation in favour of claimant/appellant under Section 140 of the Act. Since

the accident in question took place in the year 2001, therefore, as per Section 140 of the Act, an amount of Rs.25,000/- towards “no fault liability” is awarded to the claimant/appellant. The same shall carry interest @ 7.5 per annum from the date of filing the claim petition till final realization of the amount. The liability to pay the amount shall be joint and several of the respondents.

[8]. In view of aforesaid modification, the present appeal is disposed of.

September 06, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No