IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.1556 of 2003.
Date of Decision: 09.02.2017.

Parmod Kumar ....Appellant.

VERSUS

Karamjit Dass and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.K. Shukla, Advocate for the appellant.

Mr. S.K. Tandon, Advocate for respondent No.2.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate for respondent No.3.

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<u>SNEH PRASHAR, J.</u>

This appeal is directed against the award dated 14.12.2002 passed by learned Motor Accident Claims Tribunal, Patiala (for short, "the Tribunal") by virtue of which the M.A.C.T. Petition No.49 dated 26.07.2000 filed under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") by the appellant-claimant, was dismissed.

The relevant facts, in brief, are that on 29.03.2000, a Tata Sumo bearing registration No.CH-01V-4775 (hereinafter referred to as "the Tata Sumo") was being driven by Lal Singh (since deceased) who was going from Patran to Patiala. At about 11:00 p.m., after he had crossed village Dehdna, his Tata Sumo was hit by truck bearing registration No.PB-11J-3622 (hereinafter referred to as "the offending truck") which came from the opposite side and was being driven rashly, negligently and in a high speed. As a result of accident, Lal Singh suffered multiple and fatal injuries and died at the spot. The Tata Sumo was also badly damaged.

A First Information Report No.39 dated 30.03.2000 under Sections 279, 427, 304-A of the Indian Penal Code in respect of the accident was registered at Police Station Ghagga on the statement of one Jagtar Singh who had witnessed the accident.

Two claim petitions invoking the provisions of Section 166 of the Act of 1988 were filed claiming compensation from the driver, owner and insurer of the offending truck (respondents No.1 to 3). M.A.C.T. Petition No.50 of 26.07.2000 was filed by Jaswinder Kaur and another, legal representatives of deceased Lal Singh and M.A.C.T. Petition No.49 of 26.07.2000 was filed by Parmod Kumar, appellant-owner of the Tata Sumo. Both the claim petitions were contested by the respondents. On the basis of the pleadings of the parties issues were settled. Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, while petition No.50 filed by legal representatives of the deceased was allowed by learned Tribunal, the petition filed by Parmod Kumar-appellant was dismissed.

Feeling aggrieved with the award dated 14.12.2002, the appellant preferred the instant appeal.

The submissions made by Mr. R.K. Shukla, learned counsel for the appellant, Mr. S.K. Tandon, learned counsel for respondent No.2 and Mr. Vipul Sharma, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellant argued that the findings of learned Tribunal that the accident occurred due to rash and negligent driving of the offending truck by its driver Karamjit Dass-respondent No.1 and that during the accident, the Tata Sumo driven by Lal Singh (deceased) was damaged, were not challenged by respondent-insurance company. After having held that the driver of the offending truck was responsible for causing the accident, the Tribunal legally erred in dismissing the petition filed by the appellant claiming compensation on account of damage to the Tata Sumo. The offending truck was insured with respondent-insurance company for third party risk and therefore, the said respondent was bound to compensate the appellant for the damage caused to his vehicle during the accident. Under the statutory provisions of Section 146 of the Act of 1988, a vehicle is necessarily to be insured covering third party risk but under that policy the vehicle is not covered for own damage claim from the insurance company with which it is insured. Therefore, the claim petition of the appellant seeking compensation from the respondent-insurance company with which the offending truck was insured, deserves to be allowed.

It was not the case of the appellant that the Tata Sumo was not insured or that the insurance cover was only against third party risk which did not cover own damage claim. Appellant-claimant Parmod Kumar in his statement recorded before the Tribunal testified that he had purchased the Tata Sumo from one Arvinder Pal Singh of Chandigarh in January, 2010. He added that the Tata Sumo was already insured by the previous owner. Meaning thereby that the insurance policy of the Tata Sumo was with the appellant, but for the reasons best known to him, he did not produce the same in evidence. The appellant also did not furnish the requisite particulars of the insurance policy or atleast the name of the insurance company with whom the Tata Sumo was insured. Though the suggestion put by the respondent-insurance company to the appellant that he had taken own damage claim from the insurance company with whom the Tata Sumo was insured, was denied by him, but as observed above, he did not opt to produce the insurance policy or disclose the name of the insurance company with whom the Tata Sumo was insured. His simple denial could not be taken as gospel truth especially when he intentionally withheld the relevant document i.e. the insurance policy by simply saying that he had not been able to find the same. In said circumstances, learned Tribunal rightly held that the appellant-claimant was not entitled to claim compensation from respondent No.3-insurance company for the damage suffered by the Tata Sumo.

Thus, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

09.02.2017.
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No