

340 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3156-2005 (O&M)
Date of decision: 01.09.2017

Gurpreet Singh

.... Appellant

Versus

Gaba Travels Service and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Vinod Kanwal, Advocate for
Mr.Ashit Malik, Advocate
for the appellant.

Mr.R.S.Mamli, Advocate
for respondent No.1.

None for respondents No.2 and 3.

Mr. Suman Jain, Advocate
for respondent No.4.

Avneesh Jhingan, J.

The present appeal is against the award dated 02.03.2005 passed by the Motor Accidents Claims Tribunal, Karnal (hereinafter to be referred as 'Tribunal'). The claim was filed under Section 166 of the Motor Vehicles Act (hereinafter to be referred as the 'Act') by one Gurpreet Singh son of Gurcharan Singh, resident of 660/10, Krishna Colony, Gurgaon. The claimant claimed a compensation of `7 lakhs stating that he suffered a fracture on his right arm due to the accident of car No.DBC-7841 which he hired as a taxi from Yamuna Nagar. Before the Tribunal, the claimant and his father appeared but no evidence was produced regarding hiring of taxi. The Tribunal was not

satisfied and dismissed the claim petition.

Aggrieved of the said award, the present appeal has been filed.

I have heard the learned counsel for the parties and have perused the paper-book with their able assistance.

The case of the appellant is that he along with his father visited Yamuna Nagar to attend the marriage of his cousin. On 01.07.1994, they hired a taxi from M/s Gaba Travel Services, Yamuna Nagar for their return journey to Gurgaon. According to the appellant, M/s Gaba Travel Services provided a car No.DBC-7841 and one Ram Rakesh was driver of the said vehicle. It was also alleged that the receipt of Rs.300/- as advanced payment was issued by the M/s Gaba Travel Services. They started their journey from Yamuna Nagar for Delhi at about 10 a.m. They reached Shamgarh at about 12.15 p.m. Due to rash and negligent driving of the driver, the car went out of control and hit the truck which was coming from the opposite direction.

The counsel for the appellant has argued that the factum of claimant suffering a fracture in his right arm, has not been disputed by the respondent. The Tribunal erred in dismissing the claim petition as the appellant had suffered a fracture for which he had to be awarded compensation.

Learned counsel for respondent No.1 argued that they filed a written statement denying that car No.DBC-7841 was hired from their taxi stand. He denied issuance of receipt of Rs.300/- as an advance.

Learned counsel for respondent No.4 argued that the car which allegedly met with accident was not a taxi and was insured with them by Ballarpur Industries Ltd. being the owners of the car. He further vehemently

argued that the appellant miserably failed before the Tribunal to prove the involvement of the said vehicle. Learned counsel further argued that the driver of the truck with which allegedly the car struck was neither arraigned as a party nor its registration number had been mentioned.

The first and foremost question required to be proved by the claimant is that the accident had taken place with the offending car.

The learned Tribunal after appreciating the evidence reached to the conclusion that the claimant has failed to prove that the accident had taken place with the offending car.

The present appeal is devoid of merits and is liable to be dismissed as the claimant had failed at the threshold. The appellant was not able to discharge the onus that fracture was result of accident with car No. DBC-7841.

The Hon'ble Apex Court in **Bimla Devi & Ors. Vs. Himachal Road Transport Corpn. & Ors., 2009 (3) RCR (Civil) 805**, the Hon'ble Apex Court observed that the standard of proof beyond reasonable doubt has not to be applied.

After perusal of the above said authority, it is clear that the initial onus to prove the accident lies upon the claimant. In the present case, the said onus has not been discharged. The claimant failed to explain either before the Tribunal or before this Court that how the car owned by the limited company was hired as the taxi from the taxi stand. Even if no serious view is taken of this fact, the position remains that the taxi stand has specifically denied that any such car was hired from their stand. The conduct of the claimant is still doubtful as it was alleged that the receipt was issued by taxi stand for the

advanced payment made but the said receipt was never produced. Further, even the driver of the car/taxi was never produced.

Learned counsel for the appellant at this stage argued that this fact has been wrongly mentioned by the Tribunal, actually no receipt was issued as is evident from the statement of PW2. When asked that where the said finding has been challenged in the grounds of appeal, he failed to show any challenge to the finding of the Tribunal.

Be that as it may, the fact remains that even if no receipt was issued, yet the claimant failed to show that taxi was hired from Gaba Travels Service.

The owner of the car Bailarpur Industries Ltd. filed the written statement before the Tribunal and specifically denied that their car had met with an accident. They further said that their car is only for personal use and is never used as taxi.

Apart from the discussion above, the fact which dislodges the case of the appellant is that the car allegedly struck with the truck, inspite, of such an accident neither any DDR was recorded nor any FIR was lodged. Much less even the registration number of the truck has not come on record. Even the driver of truck was not produced before the Tribunal as a witness.

Keeping in view the entirety of the case, the appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

01.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes