

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 1097 of 2006 (O&M)

Date of Decision: 18.09.2017

Ashok Kumar

.....Appellant

Versus

Jagga Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajnish Gupta, Advocate
for the appellant.

Mr. Sandeep Goyal, Advocate
for respondents No.1 and 2.

Ms. Priya Deep, Advocate for
Mr. Ashwani Talwar, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

The present appeal is filed against the award dated 31.10.2005 passed by the Motor Accidents Claims Tribunal, Kaithal (for short 'the Tribunal). The Tribunal vide award dated 31.10.2005 dismissed the claim petition filed by the appellant.

This was burnt case and has been reconstructed from the salvaged record and copies supplied by counsels subject to all just exceptions.

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

The brief facts are that on 18.7.2002 the appellant was driving scooter bearing registration No. PIP-93 and ASI Dewa Singh was pillion rider. They were coming from Rasulpur to Police Station Siwan. On their way back, it is alleged that car bearing registration No.HR-08-D-5500, which was being driven rashly and negligently by Jagga Singh, touched the scooter of the appellant, as a result, they fell down and received injuries. It

has been claimed that the appellant was taken to Government Hospital,

Kaithal by Dewa Singh ASI in a private van. The claimant was Head Constable in Haryana Police at the time of accident. DDR No. 23 dated 18.1.2002 was also lodged.

The claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') was filed claiming compensation for the injuries suffered by the appellant. In the claim petition, notices were issued and written statements were filed. The respondents disputed that the injuries were not result of the accident with the offending vehicle. The Tribunal before proceeding had to decide the basic issue of involvement of the offending vehicle in the accident. The claimant himself stepped into the witness box as PW-1 and one Karam Chand as PW-2 also deposed.

The Tribunal dismissed the claim petition as it was satisfied that the claimant has failed to discharge the initial onus to establish that the offending vehicle was involved in the accident.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant argued that the Tribunal has erred in dismissing the claim petition. It was not disputed that the appellant had suffered injuries in an accident. It was argued that the claimant himself deposed and even Karam Chand-PW2 had also appeared before the Tribunal. Learned counsel further contended that the Tribunal should not have considered the contents of DDR as the same was reported after there was compromise between the parties Ex.P2.

Learned counsel for the respondents argued that the involvement of the offending vehicle has not been proved. The appellant suffered injuries because his scooter slipped. In such circumstance, no claim

can be awarded under Section 163-A of the Act.

The issue with regard to contradictory version were noticed by the Tribunal. There is one version of the claimant in the claim petition, according to which he along with ASI Dewa Singh were coming on the same scooter and as the offending vehicle touched their scooter, the scooter fell down and they received injuries.

On the other hand, the version in the DDR is that in order to save the cyclist while stopping the scooter, the scooter slipped and the claimant received injuries.

The appellant contended that the above contradiction occurred as there was a compromise between the claimant, owner and driver of the offending vehicle. It was for this reason that a wrong version was got recorded in the DDR. The explanation prima-facie appears to be correct. But when it is seen from other angle, the same is not worth acceptance. The reasons for not accepting these contradictory stands are : firstly, even if, there was a compromise, there was no question of giving totally different version of the story by the claimant in which there was no iota of truth especially when he himself was Head Constable in Haryana Police. Secondly, if the compromise was arrived at, a perusal of the compromise shows that it was arrived at around 9:30 p.m. on 18.7.2002 whereas the DDR was recorded on 18.7.2002 at 11:00 p.m. If the matter was compromised there was no occasion for DDR. Otherwise also it could have been recorded that the accident occurred because of the offending vehicle and thereafter the reasons could have been given. But in the present case there is no mention of any vehicle in DDR. The registration number of the offending vehicle finds no mention in the DDR.

The best available witness in this case was ASI Dewa Singh. He was colleague of the claimant. He was pillion rider as per the claim petition. The best witness had not come forward to support the claim of the claimant. No doubt the claimant had produced PW-2 whose signatures are there on Ex.P2. PW-2 in his deposition only talks about the compromise. It is not stated that he was present at the place of accident or he was an eye witness to the accident. His statement cannot be relied upon to conclude that the offending vehicle was involved in the accident.

So far the compromise Ex.P2 is concerned, it only points out one thing that the claimant knowing well that his scooter was not insured, was trying to get damages by one way or the other. This claim petition appears to be another attempt to achieve that object.

Apart from the reasons mentioned above, the claimant while making his statement in the cross-examination admitted that the police recorded his statement at 9:45 p.m. He accepted that in his statement Ex.R1 he stated that in order to save the cyclist he was stopping the scooter and the scooter slipped, resultantly he received injuries. It was further admitted that after recording the statement, the police read over the statement and he signed and admitted it to be correct. It was admitted in cross-examination that the car number was not recorded in the DDR. In such circumstance, the findings recorded by the Tribunal cannot be faulted with. The appeal is devoid of merit and is liable to be dismissed.

Dismissed.

(AVNEESH JHINGAN)
JUDGE

18.09.2017
reema

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No