

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

FAO No. 3796 of 2006 (O&M)
Date of Decision:- 21.11.2017

Gurnam Singh

....Appellant

Versus

Gurcharan Singh & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Rajesh Bansal, Advocate, for the appellant.

Mr. Karamveer Singh Banyana, Advocate,
for respondent No.2.

Mr. Lalit Garg, Advocate, for respondent No.3 – Insurance Co.

AVNEESH JHINGAN, J. (Oral)

The present appeal raises the issue whether the claimant was able to discharge the onus casted upon him under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') to prove the involvement and rash and negligent driving of the offending vehicle.

The factual matrix of the case are that on 03.10.2004, the appellant along with his brother Jagir Singh were travelling in a jeep bearing registration No. HR-01E-1917. The jeep allegedly met with an accident. As a result of the accident the appellant suffered grievous injuries which resulted into amputation of his left arm from the shoulder.

A claim petition was moved under Section 166 of the Act. The said claim petition was dismissed vide award dated 03.01.2006 by the Motor Accident Claims Tribunal, Kurukshetra (for short,'the Tribunal') on the ground that the claimant was not able to prove rash and negligent

driving of Indica Car bearing registration No. HR-05K-9393 (for short, 'the offending vehicle').

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

Learned counsel for the appellant argued that it has not been disputed that there was an accident and as a result of the accident, the appellant's arm was amputated. He contended that petition should not have been dismissed merely on the ground that in statement recorded in hospital it was stated that the accident occurred because suddenly a Neelgai came in front of the jeep and while avoiding the Neelgai, the jeep struck into the Indica car and turned turtle. The contention is that at the time of recording of statement, appellant was admitted in ICU and was not in a position to give statement. He further contended that the rash and negligent driving of the offending vehicle was proved as the appellant himself deposed before the Tribunal. He argued that the contents of DDR No. 15 dated 04.10.2004 should have been ignored and rather the contents of the claim petition should have been accepted. He argued that appellant may be granted liberty to proceed against the insurance company of the jeep.

Learned counsel for the insurance company argued that the claimant has miserably failed to prove the rash and negligent driving of the Indica car. He further argued that under Section 166 of the Act the onus was on the claimant, which was not discharged.

The fact which is not disputed in the present case is that the appellant and the driver of the jeep are real brothers. The issue which arises is whether the accident occurred because of sudden appearance of Neelgai in middle of the road and in avoiding the Neelgai the jeep went out of

control and turned turtle, because of this it struck against the Indica car or as pleaded in the claim petition the offending vehicle was being driven in a rash and negligent manner and it came and struck the jeep from the rear side and as a result of the impact the jeep turned turtle.

The legal aspect of the question has been decided by the Hon'ble Apex Court in **Surender Kumar Arora & Anr. Vs. Manoj Bisla and Ors., 2012 (4) SCC 552.**

In the above decision it has been held that under Section 166 of the Act the onus of proving the rash and negligent driving of the offending vehicle is on the claimant.

In this background it is to be considered whether the said onus has been discharged or not. The DDR and the claim petition give two different versions. Only issue is which version is acceptable and is supported by some evidence. It is worth noting that the statement of the appellant was recorded by Naresh Kumar, Head Constable on 04.10.2004 and the accident occurred on 03.10.2004. It has not been disputed that at that time the appellant was admitted in intensive care unit. On the basis of the said statement, DDR was recorded. The claim petition was instituted on 10.01.2005. Firstly, the doctor of Military Hospital had endorsed the fitness of Gurnam Singh to make the statement. Meaning thereby simply because he was admitted in ICU will not be sufficient to conclude that he was not in a position to give statement. Secondly from 04.10.2004 to 10.01.2005 no steps were taken by the appellant for challenging or taking any other remedy with regard to wrong recording of the statement. It is pertinent to mention that even no FIR was got registered.

No reason has been mentioned in the claim petition or in this

appeal that why Head Constable Naresh Kumar would record a wrong statement. A bald statement has been made that he had recorded a wrong statement in order to save the driver of the offending vehicle. Nothing has been brought on record to substantiate the same. This statement loses its weight when the said statement and the contents of the DDR are not challenged.

Leaving apart the reasons mentioned above, there is another angle of this case that apart from the appellant himself no other evidence was produced to prove rash and negligent driving of the offending vehicle. The driver of the jeep is a real brother of the appellant but for reasons best known, this star witness was withheld and in such circumstances, there is no occasion to doubt the statement made by the appellant and the contents of the DDR. The onus casted upon the appellant has not been discharged in the claim petition.

In the present appeal since the insurance company of the jeep is not a party, there is no occasion to decide the said contention of learned counsel for the appellant praying liberty to proceed against insurer of jeep. If law so permits, he can avail his remedy.

The appeal is accordingly dismissed.

November 21, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No