

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 43 of 2006 (O&M)

Date of Decision: 29.09.2017

Rakesh

.....Appellant

Versus

Surinder Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.S.Mamli, Advocate
for the appellant.

None for respondent No.1.

Mr. R.C.Kapur, Advocate
for respondent No.2.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 11.6.2005 passed by the Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal').

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

The brief facts necessary for adjudication of the present appeal are noted:

On 23.2.2004 an accident took place when a rickshaw puller Rakesh was hit by a maruti car bearing registration No.HR-05-M-2410. As a result of the accident, Rakesh got fracture on his right leg. He was hospitalised and had to undergo treatment.

The claim petition under Section 166 of the Motor Vehicles Act

(for short 'the Act') was filed claiming compensation of ₹ 3,50,000/- alongwith interest at the rate of 18% per annum.

The only short issue involved in the present appeal is that whether the accident was as a result of rash and negligent driving of the car?

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

Hon'ble the Apex Court in **Surender Kumar Arora and another Versus Dr. Manoj Bisla and others**, 2012 (4) SCC 552, has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

In the present case, the said onus has not been discharged by the claimant. The witnesses produced by the claimant were not worth reliance as the version in the DDR was totally different from what the witnesses deposed. In the DDR the version was that the accident occurred as a stray cattle was crossing the road and in order to save the cattle, sudden break of rickshaw was applied and it was diverted. The car also applied breaks but it struck the rickshaw. The claimant took a stand that this DDR was false as his thumb impression was taken on the blank paper while he was unconscious in the hospital. Even this stand was found wrong by the Tribunal. The reason was that in his hospitalization ticket it was never show that he was unconscious during his stay in the hospital. It appears to be a case where a compromise was arrived at and thereafter on better advise, the claimant wanted some more money as compensation. Though there is no bar that after compromise claim cannot be filed but in order to award compensation the onus has to be discharged by the claimant that the

accident was as a result of rash and negligent driving.

From the perusal of the entire paper book, it is more than clear that the claimant has failed to discharge the onus.

The appeal is, accordingly, dismissed.

29.09.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No