

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

**FAO No. 5377 of 2005 (O&M)  
Date of Decision: 25.07.2017**

**Surender**

**... Appellant**

**vs.**

**Jai Singh & Ors.**

**... Respondents**

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

**Present:- Mr. Sandeep Kotla, Advocate  
for the appellant.**

**Mr. Rohit Goswami, Advocate and  
D.D. Gupta, Advocate  
for Insurance Company.**

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**ANITA CHAUDHRY, J.**

The appellant-claimant is aggrieved by the dismissal of the claim petition vide award dated 04.10.2005 passed by the Motor Accident Claims Tribunal, Hisar (for brevity, the Tribunal).

The claim set up by the appellant was that on 08.07.2001 he was going in car bearing registration No. DL3CA-8362 driven by respondent No.1. The vehicle was driven rashly and negligently and met with an accident when they were in the process of over-taking a stationary truck. The claimant suffered injuries.

Respondent No.1 did not dispute the accident and presence of the claimant in the car at that time. According to him, it was an act of God. It was averred that it was raining and road was slippery, as a result of which the vehicle went out of control and struck against a tree.

The insurance company took the stand of collusion between the appellants and the private respondents, apart from the other legally available defences.

The learned Tribunal vide award dated 04.10.2005 turned down the plea of the claimant and held that he had failed to prove that the accident was caused by the rash and negligent driving of respondent No.1 and dismissed the claim petition.

I have heard learned counsel for the parties and have perused the award and other available documents carefully. The record of this case was burnt in the fire incident occurred in 2011 in the High Court premises and the file was reconstructed with the documents which were available with the learned counsel for the parties.

In the instant case, after the accident DDR Ex.P34 was entered on the statement of respondent No.1 Jai Singh, wherein it was mentioned that nobody was at fault. The claimant and respondent No.1 admittedly are cousins. A perusal of statement of claimant Surender shows that he admittedly had not made any complaint about registration of the case against Jai Singh. Had he any grouse, he could have approached the police or the higher authorities seeking registration of the case. But inaction on his part speaks volume about the veracity of his claim, which has been concocted lateron just to claim compensation. The glaring defects were noticed by the Tribunal while dismissing the claim petition, which read as under:-

*“9. It is clear from the petition itself that the stand taken by the petitioner is that he was sitting alongwith respondent No.1 in maruti car No.*

*DL3CA/8362 while going from Durjanpur to Hisar and respondent No.1 was driving the same in a rash and negligent manner. He was requested not to drive the car rashly and negligently but he did not pay any heed and as such he could not control the car while overtaking a truck and struck the car into a kikar tree. To the contrary, petitioner Surender while appearing into the witness box as PW3 stated that he along with Jai Singh was going to village Durjanpur from Hisar. The petitioner has also examined PW2 Har Lal, ASI, who has proved the first version of the accident i.e. DDR Ex.P34. This is the petitioner's own document. It reflects a contrary stand taken by him. According to the first version i.e. DDR No.P34 nobody was at fault. It was mentioned in the DDR Ex.P34 that near BSF camp on account of rain the glass pane of the car was dirty and when the driver was trying to overtake a standing truck, another truck came from the opposite side and he could not see through the glass and as such he turned the car towards katcha portion and lost control. He has further clarified that since suddenly a truck had come from the front side and in order to avoid head on collision, the driver took the car towards the katch portion and it hit against a kikar tree resulting into the present accident. Another glaring contradiction as per the petition and his deposition as PW3, is that at the time of accident Sudhir and Jagdish came from Hisar side on their motorcycle. They saw the accident and took them to hospital but according to DDR Ex.P34 the BSF personnel had telephonically informed at his residence and then Jagdish and Sudhir had come from Hisar and got them admitted*

*in the hospital.*

*10. Another aspect of the case is that, no doubt, the injured was taken to General Hospital, Hisar but neither any ruqa was sent to the police for registration of the case, though PW3 has admitted that police had come in the hospital, nor any further action in the matter was taken. The contention of counsel for the insurance company is that since no body was at fault, no action was initiated. It is also not disputed that Surender is the cousin brother of Jai Singh, the driver/owner of the car. The respondent No.1 has also taken the stand in his written statement that it was rainy season and due to slippery road, all of a sudden the brakes went out of control and the car struck against a kikkar tree.*

*11. Thus, keeping in view the contradictory stand taken by the petitioner in his own testimony and othr attending circumstances, as discussed above, the petitioner has failed to prove that the accident resulting in injuries to him took place due to rash and negligent driving on the part of Jai Singh respondent No.1. Respondent No.1 the driver and owner and its insurer i.e. respondent No.2 cannot be held liable to pay any compensation. Accordingly, the issues No.1 and 2 are decided against the petitioner. In view of my finding on issue No.3 has become redundant.”*

Reliance placed on **Raj Bala Vs. Bijender, 2001(3) RCR**

**(Civil) 520** is of no help to the appellant in view of the observations made above.

Keeping in view the aforesaid circumstances, the Tribunal had rightly disbelieved the appellant. The fact germane to the issue was that the appellant failed to prove that the accident had occurred due to rash and negligent driving by respondent No.1, which is a sine quo non for awarding compensation for the injuries. The findings are based on the evidence adduced on record. No ground for interference is made out. The appeal is dismissed.

**25.07.2017**

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**(ANITA CHAUDHRY)  
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No