

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5625 of 2009 (O&M)

Date of Decision: 29.9.2017

Kamal Kant

.....Appellant

Versus

Balwant Rai and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Neeraj Khanna, Advocate
for the appellant.

None for respondents No. 1 and 2.

Mr. R.N. Singal, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 8.5.2009 passed by the Motor Accidents Claims Tribunal, Ambala (for short 'the Tribunal').

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

On 6.2.2008 Kamal Kant was driving his motor cycle bearing registration No. HR-01-M-4605 and Rakesh Bagga, was a pillion rider. When they reached near Polytechnic Chowk near Ambala City, they were allegedly struck by Maruti Van bearing registration No. HR-01-H-7477. As a result of the accident, the appellant suffered fracture on his right leg. He was shifted to Civil Hospital, Ambala City and then referred to PGIMER, Chandigarh, but he was taken to Mahandiratta Hospital, where he remained admitted for 7-8 days for treatment.

The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), which has been dismissed by the

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

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

Learned counsel for the appellant argued that there is no dispute that the accident took place and the appellant suffered fracture. It has been contended that FIR was lodged though after three days but the number of the vehicle was duly mentioned. It has been stated that the pillion rider Rakesh Bagga had noted the vehicle number. The award has been challenged on the ground that the Tribunal erred in dismissing the claim petition as the accident admittedly had occurred.

Learned counsel for the respondent No.3 argued that owner of the vehicle has denied the accident and best witness available with the claimant i.e. eye witness Rakesh Bagga has not deposed before the Tribunal. In these circumstance, it cannot be said that the insured vehicle was involved in the accident.

Here the claim was struck at the threshold as the claimant was not able to discharge the initial onus to prove the involvement of the vehicle in the accident.

Argument of learned counsel, if accepted, would result into laying down the law that simply because the accident occurred and injuries suffered, the claim has to be granted. The welfare legislation has been made to see that the accident victims are duly compensated but this itself contains rider i.e. apart from no fault liability, if the claim is made, atleast the claimants have to prove that a particular vehicle was involved in the accident. There is another rider under Section 166 of the Act i.e. even the rash and negligent driving of the offending vehicle has to be proved.

In the present case we are only concerned with the involvement of the vehicle.

Though learned counsel for the appellant very vehemently argued that involvement of the said maruti van is not in dispute but the fact remains that it has not been proved that said vehicle was involved in the accident. The owner of the vehicle has denied the accident.

The number mentioned in the FIR is said to be noted by Rakesh Bagga, who chooses not to step in the witness box for the reason that truth may not emanate in the cross-examination. He intentionally avoided cross-examination. Merely recording of FIR in itself will not be enough to prove the involvement of the vehicle especially when in the criminal proceedings, the alleged eye witness failed to identify the accused rather categorically deposed that the accused was not driving the offending vehicle. Though the criminal proceedings do not have bearing on the claim moved under the Act but in this case the entire case is there at its initial stage of involvement of the vehicle. Thus criminal proceedings can be looked into for the purpose of involvement of the vehicle.

Leaving apart the criminal proceedings, the fact remains that the star witness (alleged eye witness) has not been produced before the Tribunal. In such circumstance, no fault can be found with the award passed by the Tribunal.

Resultantly, the appeal is dismissed.

29.09.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No