

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

**FAO No.6675 of 2010 (O&M).
Date of Decision: 18.01.2017.**

Gurcharan Singh

....Appellant.

VERSUS

Manish Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Mansi Bansal, Advocate for the appellant.

Mr. R.N. Singal, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-28914-CII-2010

Allowed, as prayed for.

CM-28915-CII-2010

Delay of 29 days in filing the appeal is condoned and the application stands disposed of.

FAO-6675-2010

This appeal was preferred by the appellant-claimant assailing the award dated 23.04.2010 passed by Motor Accident Claims Tribunal, Ludhiana (for short, “the tribunal”) in MACT case No.70 of 2007 titled “Gurchara Singh vs. Manish Kumar and others”, vide which the petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by the appellant was dismissed.

A petition under Section 166 of the Act of 1988 seeking compensation of Rs.2,00,000/- on account of damages to Maruti Zen Car No.PB-10T-8583 (hereinafter referred to as “the Maruti car”), in a motor vehicular accident, was filed by the appellant. It was alleged that on 13.06.2007, Swaran Singh alongwith Harjit Singh and Kirandeep Singh, was going from Sahnewal to Dehlon by driving the Maruti car. When they reached near culvert of Abohar branch canal within the area of village Khanpur, a truck bearing registration No.HR-37A-3941 (hereinafter referred to as “the offending truck”) being driven by respondent No.1 (Manish Kumar) in a rash and negligent manner, came from opposite side and struck into the car driven by Swaran Singh. As a result of the collision, the Maruti car was extensively damaged and all occupants of the car suffered multiple injuries. After causing the accident, respondent No.1 fled away from the spot. Injured were taken to Satguru Partap Singh Apollo Hospital, Ludhiana and a First Information Report No.110 dated 14.06.2007 under Sections 279, 337, 338, 304-A and 427 of the Indian Penal Code was registered.

In their written statement, the driver and owner (respondents No.1 and 2) of the offending truck denied the accident and averred that a false First Information Report regarding the accident had been registered against them. The insurer-respondent No.3 in its written statement besides taking certain preliminary objections regarding maintainability of the claim petition etc. denied its liability for payment of any compensation as there was no valid registration certificate, fitness certificate and route permit of the offending truck at the time of accident in question.

On the basis of the pleadings of the parties, following issues

- (1) Whether the claimant was owner of car No.PB-10T-8583 on the date of accident? (OPP)
- (2) Whether car No.PB-10T-8583 belonging to claimant was damaged due to rash and negligent driving of truck No.HR-37A-3941 being driven by respondent No.1? (OPP)
- (3) Whether the claim petition is bad for non-joinder of necessary parties? (OPR-3)
- (4) Whether the respondent No.1 was not holding valid and effective driving licence and valid documents of truck on the date of alleged accident? If so, its effect? (OPR-3)
- (5) If issue No.1 is proved, whether the claimant is entitled to compensation, if so, to what amount and from which of the respondents? (OPP)
- (6) Relief.

In order to discharge the onus, the appellant examined AW1 Jaswinder Singh, AW2 Kuldeep Singh and he himself stepped into the witness box as AW3. While the respondents No.1 and 2 were proceeded against exparte, respondent No.3 tendered documents Ex.R1 to Ex.R4 and closed its evidence.

Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal dismissed the claim petition vide award dated 23.04.2010.

Feeling aggrieved, the appellant-claimant preferred the instant appeal.

The submissions made by Ms. Mansi Bansal, learned counsel representing the appellant and Mr. R.N. Singal, learned counsel representing respondent No.3-insurance company have been heard.

Learned counsel for the appellant argued that though learned tribunal rightly decided Issue No.2 in favour of the appellant holding that

but wrongly dismissed the claim petition. Before the accident, the Maruti car was well maintained by the appellant and was in a good condition. Due to the accident in question, the appellant suffered loss of Rs.2,00,000/- on account of damage to his car. Learned tribunal wrongly ignored the fact that AW2 Kuldeep Singh had prepared an estimate of the expenses required to be incurred on the repair of the damaged car.

No evidence was led by the appellant to prove the damage caused to the Maruti car. Rather, the appellant during his statement admitted that he had not got the car repaired after the accident. He stated that photographs of the damaged car were taken but stated that neither the photographs nor its negatives were in his possession. Apart from that, no evidence was led to prove that immediately after the accident the car was got inspected by an approved surveyor or was got mechanically examined by some authorized mechanic to assess the extent of damage, if any, caused to the car.

In the above premise, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

18.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**