

CM-23312-CII-2017 in
FAO-1861-2013

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

CM-23312-CII-2017 in
FAO-1861-2013
Date of decision: 08.11.2017

Manoj Appellant

Versus

Om Parkash and others Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Navneet Singh, Advocate
for the appellant.

None for respondents No.1 and 2.

Ms. Vandana Malhotra, Advocate for
Mr. Rajneesh Malhotra, Advocate
for respondent No.3.

Avneesh Jhingan, J.

CM-23312-CII-2017

The application has been moved for restoration of the appeal.

Learned counsel for respondent No.3 has no objection, if the
application is allowed.

For the reasons mentioned in the application, which is duly
supported by an affidavit, order dated 07.10.2017 is recalled and the appeal is
restored to its original number.

On consent of both parties, the main appeal itself is taken up for
disposal today itself.

FAO-1861-2013

The present appeal has been filed by the appellant against the

award dated 31.10.2012 passed by Motor Accidents Claims Tribunal, Sonipat (hereinafter referred to as the 'Tribunal').

The factual matrix necessary for adjudication of the present appeal are that on 08.12.2007, appellant along with his brother Devender was going on motorcycle bearing registration No.HR-10J-5837. They allegedly met with a motor vehicular accident. It was averred that the car bearing registration No.HR-16F-007 was being driven rashly and negligently struck their motorcycle. The appellant suffered injuries and was taken to PGIMS, Rohtak. FIR No.276 dated 09.12.2007 was lodged on the statement of Devender at Police Station Kharkhoda.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed claiming compensation for injuries. The Tribunal dismissed the claim petition on the ground that the claimant was not able to prove the involvement of vehicle bearing registration No. HR-16F-007 and further it was not proved that it was being driven rashly and negligently.

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

Learned counsel for the appellant has argued that the accident occurred with car bearing registration No.HR-16F-6007 and it was only a typographical mistake because of which in the claim petition, the number was wrongly written as 007 instead of 6007. He further submits that he has moved an application under Order 6 Rule 17 read with Sections 151 and 152 for amendment/correction of registration number of the vehicle in the present appeal. He argued that the Tribunal erred in dismissing the claim petition.

Learned counsel for respondent No.3 has argued that it was not a typographical mistake due to which the number was wrongly mentioned in the

claim petition. The same number was mentioned in the affidavit filed by the appellant in support of his claim petition. The counsel further argued that it was too late in the days to permit correction of registration number of the vehicle in the claim petition. The appellant was aware of this mistake during the course of claim proceedings.

The present case depicts a very interesting picture. Two brothers were travelling on a motorcycle and are hit by a car. One of the brother (appellant in case) suffered injuries and was taken to the hospital. The other brother Devender lodged the FIR in which the number of car is HR-16F-6007. Thereafter, the claim petition was filed under Section 166 of the Act in which the number is mentioned as 007 instead of 6007. The respondent filed reply to the said claim petition and denied that they have nothing to do with the registration number mentioned in the claim petition. At this stage, even no correction was made of the alleged mistake. Affidavit is filed in support of the claim petition, in the said affidavit, the number is mentioned as 007.

During the course of arguments before the Tribunal, the issue specifically arises that there is difference in the vehicle number as mentioned in the FIR and in the claim petition and in the affidavit. The counsel argued before the tribunal that there is typographical mistake but no application is moved to rectify the error. The Tribunal was duty bound to decide the claim petition as per the material placed before it in which the number mentioned of the vehicle was HR-16F-007.

The law is well settled that under Section 166 of the Act, the onus to prove the involvement of the vehicle and rash and negligent driving of the offending vehicle is on the claimant.

In the present case, the involvement of the vehicle is in doubt.

There is another angle to the case, even if above mentioned reasons are ignored for the time being. It has to be considered that respondent No.1 driver of the vehicle No.HR-16F-6007, faced criminal proceedings in the FIR lodged by Devender, he was acquitted. The brother of the appellant Devender while appearing as PW7 turned hostile and did not support the case of the prosecution. He rather stated that he had not noted the number of the vehicle involved in the accident.

Though the criminal proceedings have no effect in the proceedings under the Act but the star witness, who was common in both the cases, has specifically denied that he has not noted the number. There is dispute of the involvement of the vehicle, hence the common witness would be relevant.

The application moved in this appeal for amendment of claim petition is too late in the days. There is no reason mentioned that when the applicant was aware of the contradiction in the registration number of the vehicle involved why same was not corrected earlier.

The appeal and application are dismissed being without any merits.

(AVNEESH JHINGAN)
JUDGE

08.11.2017
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1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes