

(206) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4213 of 2005 (O&M)
Date of decision: 14.09.2018

Karam Singh Appellant
Versus
Ved Parkash and others Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. Rajesh Bhardwaj, Advocate for the appellant.

None for respondent Nos. 1 & 2.

Mr. Gopal Mittal, Advocate for respondent No.3 – Insurance Company.

B.S. Walia, J.,

[1] Appeal has been filed against dismissal of the claim petition on 02.06.2005 by the learned Motor Accidents Claims Tribunal, Fast Track Court, Kurukshetra (hereinafter referred to as the Tribunal) with a prayer for setting aside the impugned award and for grant of compensation as claimed in the claim petition along with interest in accordance with law.

[2] Learned counsel contended that the learned Tribunal failed to take into account that the appellant had appeared as PW-1 and proved that respondent No.1 had driven the motorcycle in question in a rash and negligent manner due to which the appellant suffered multiple grievous injuries and the Daily Diary Report i.e. Ex.R1 produced by the respondent in evidence had no evidentiary value.

[3] Per contra, learned counsel for the respondent-Insurance Company supported the award and reiterated the reasoning for the dismissal of the claim petition.

[4] I have considered the submissions of learned counsel for the parties.

[5] The appellant had filed a petition claiming compensation on the allegations that he had suffered injuries in a road accident on 20.11.2003 while he and Manohar Lal were going on foot on the left side of the road from Village Umri to Samani on Umri-Samani link road and that when they had reached the area of Village Samani, a motorcycle bearing No. HR07D – 9288 came from the opposite side being driven by respondent No.1 in a rash and negligent manner and hit the appellant/claimant after coming on the wrong side of the road. It was further alleged that the appellant was shifted to Soni Hospital, Kurukshetra by Manohar Lal but the police in collusion with respondent No.1 by distorting the facts wrongly recorded DDR No.27 dated 27.11.2003 by showing the accident to be “Itfakiya” by obtaining the appellant’s signatures on blank paper while assuring him that action would be taken, that he had given application to the Superintendent of Police, Kurukshetra for taking action against respondent No.1, but no action was taken against him as he was a influential person and the police was in collusion with him. Prayer was for payment of compensation of ₹2 lakh along with costs and interest, besides, ₹25,000/- under Sections 140 and 141 of the Motor Vehicles Act, 1988.

[6] Respondent No.1 took preliminary objection in the written statement that the claim petition was not maintainable as he was not at fault in causing the accident and the same occurred only on account of a stray

rightly and correctly entered but later the appellant/claimant become dishonest and twisted the facts so as to claim compensation.

[7] Respondent No.2 owner of the motorcycle also took up preliminary objection in line with the stand of respondent No.1 and prayed for the dismissal of the claim petition.

[8] Respondent No.3 i.e. Insurance Company took up the stand in its written statement that the appellant/claimant had no *locus standi* to file and maintain the claim petition as he had himself made a statement to the police that the incident was an accident and the motorcyclist was not at fault and he did not want to take any legal action against the motorcyclist and on the basis of which DDR No.27 dated 27.11.2003 was recorded by the police and statement was signed by the claimant himself and further that the claim petition had been filed in collusion with and at the instance of respondent Nos.1 and 2 etc. Amount spent on treatment was denied. Prayer was for dismissal of the claim petition.

[9] PW-1 i.e. appellant in his deposition before the learned Tribunal stated that on 20.11.2003 at about 8.30 p.m., he was going on foot from Umri to Samani on the left side along with Manohar Lal and when they reached village Samani, motorcycle bearing No.HR07D-9288 driven by respondent No.1 (i.e. Ved Parkash) rashly and negligently hit his right leg and he suffered injuries on his leg and head and that the accident occurred due to fault of respondent No.1 and after the accident, respondent No.1 and Manohar Lal evacuated him to the hospital of Dr. Soni on the same motorcycle. He also produced on record copy of complaint (Ex.P9) filed by him against respondent No.1. During his cross-examination, he admitted that he had made a statement to the police but that he had not stated before

the police that some stray cattle came or that there was no fault of the

motorcyclist. However, he was confronted with the statement in the DDR (Ex.R1), wherein it was recorded that he had stated that a stray cattle had come there as a result of which the accident took place and there was no fault of the motorcyclist.

[10] On the basis of the evidence led before the Tribunal, the Tribunal came to the conclusion that a specific statement had been made by the appellant before the police on 27.11.2003 that while going on foot a motorcyclist came from the opposite side and at that time one stray animal came in front of the motorcycle as a result of which the motorcyclist applied brakes and the motorcycle while stopping, hit the appellant on the right leg and that the said motorcyclist got him admitted in the hospital and further that driver of the motorcycle was not at fault and the accident had occurred suddenly due to coming of stray animal in front and that it was “Itfakiya”, but in the claim petition, the claimant had set up a totally different case and attributed negligence to respondent No.1, the driver of the motorcycle and that in the circumstances, the appellant could not be allowed to do so as he was bound by the statement made by him before the police and for coming to the aforementioned conclusion, the learned Tribunal placed reliance on the decision of this Court in **Surinderjit Singh v. Kuldip Rai Thapar and others, 1982 PLR 711** wherein it has been held by relying on the decision in **Dharam Chand v. Shiv Pat, 1966 ACJ 319** that where the claimant made a statement before the police that the occurrence was accidental, he could not turn round and allege negligence to maintain a civil action for compensation. To the same effect is **The Unique Motor and General Insurance Co. Ltd. and another vs The New India Assurance Co. Ltd., 1967 ACJ 317** and **Mandi Kulu Road Transport Corporation vs Janak Raj Singh, (1968)**

The decision of the learned Single Judge in appeal against the award of the learned Motor Accidents Claims Tribunal was upheld by a Division Bench of this Court in **Surinderjit Singh vs Kuldip Rai Thapar and others, 1991 (2) PLR 244**. Relevant extract of the same is reproduced as under:-

“ The present Letters Patent Appeal has been filed by Surinderjit Singh, appellant-claimant, against the judgment of the learned Single Judge dismissing the appeal. The Tribunal having decided various issues had also dismissed the claim petition and recorded a positive finding that the accident had not taken place due to the rash and negligent driving by respondent No.1, Kuldip Rai Thapar. The facts giving rise to the filing of the claim petition are as under:-

Respondent No.1, Kuldip Rai Thapar and the claimant were travelling in Fiat car No.DLK 5001 from Delhi to Panipat and the car was being driven by respondent No.1. The accident took place at about 10.30 p.m. on the night of March 25, 1969. The claimant has alleged that the driver was driving the car in a rash and negligent manner and despite having been warned by him to drive carefully, he did not do so. As a result of the rash and negligent driving by respondent No.1, the car in question was involved in an accident with bullock-cart. Resultantly, the elbow of the claimant got entangled between the car and the bullock-cart and was severed from near his shoulder. It has further been alleged that the claimant was taken to the Civil Hospital, Panipat, by the car driver, Kuldip Rai Thapar, respondent No.1.

2. *The claim petition was contested by respondents. It was, inter alia, pleaded that the appellant had rested*

his elbow on the window of the car, with the result a portion of his arm was projecting outside the vehicle. Respondent No.1 further stated that he had several times reminded the appellant to keep his arm inside, but his warning had no effect. It was further pleaded that at the material time a truck had come from the opposite side with its dazzling headlights, as a result whereof respondent No.1 got temporarily blinded. When he realized that there was a bullock-cart in front of his car, he swerved to avoid the collision and as the claimant was resting his arm on the window, in the resultant accident between the bullock-cart and the car, the injury was caused to the claimant. The Tribunal framed various issues on the point and, as stated above, dismissed the claim petition.

3. *We have gone through the records of the case and find that the findings of the fact recorded cannot be interfered with in a Letter Patent Appeal until and unless some glaring discrepancy or mistake is pointed out. The claimant had himself admitted in his statement made before the police that there was no negligence on the part of respondent No.1 and the injury had been suffered by him as he stretched his arm outside the car. While this statement by itself may not be sufficient to deny the claimant his compensation, but this along with the other relevant evidence produced clearly shows that the findings recorded by the Tribunal as well as by the learned Single Judge with regard to the liability of respondent No.1 cannot be set aside. It has also been held by the learned Single Judge that from the reading of the evidence, it appears that respondent No.1 suddenly noticed the bullock-cart going in front of his car, as he could not notice it earlier on account of the glare of the headlights of the oncoming truck. It has also been recorded that the injury has been suffered by the*

claimant on account of the fact that he allowed his arm to project outside the body of the car.

4. *In view of the findings of fact recorded and for the reasons aforesaid, we find no merit in this appeal and the same is dismissed but with no order as to costs.*

Appeal dismissed.”

[11] The learned Tribunal further came to the conclusion that even if the case as set up by the appellant/claimant was believed even then the same did not establish rash and negligent driving on the part of respondent No.1 as there was nothing on the record to show that the motorcyclist came on the wrong side of the road and hit the appellant, besides, no other witness had supported the version of the appellant despite the fact that apart from respondent No.1, Manohar Lal who was accompanying the appellant had along with the motorcyclist removed the appellant to the hospital but that said Manohar Lal had not stepped into the witness box to support the version of the appellant. The learned Tribunal observed that it was for the claimant to prove negligence of the motorcyclist which he had failed to do so and that in the circumstances, onus of proving negligence not having been discharged by the claimant, no relief could be granted to the appellant.

[12] Admittedly, apart from the evidence of appellant, there is no other evidence on record in support of the allegation of rash and negligent driving by respondent No.1 despite the fact that at the time when the accident took place, the appellant and Manohar Lal were going together and the appellant on receiving injuries was shifted to the hospital by respondent No.1 along with Manohar Lal. However, except for the appellant, his companion i.e. Manohar Lal who took him to the hospital along with respondent No.1 did not step into the witness-box to give evidence qua

viewed in the context of the DDR dated 27.11.2003 got lodged by none else than the appellant, goes to establish that immediately after the accident, the petitioner had made a statement to the police that the accident had taken place due to a stray animal coming in front of the motorcyclist and that the accident was “Itfakiya”. Apparently, the appellant set up a new case in the claim petition different from what had been stated by him in the DDR solely to claim compensation.

[13] Accordingly, finding no merit in the appeal, the same is dismissed.

(B.S. Walia)
Judge

14.09.2018
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No