

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

FAO No.4829 of 2005 (O&M)
Date of decision : 09.08.2018

Deepak Jain

.... Appellant

Versus

Hukam Chand Sharma and others

..... Respondents

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

Present: Ms. Shifali Goyal, Advocate for
Mr. Varun Issar, Advocate for the appellant.

Mr. Deepak Kundu, Advocate for respondent Nos.1 and 2.

Service of respondent No.3 dispensed with vide order dated
27.01.2015.

Mr. Suvir Dewan, Advocate for respondent No.4.

B.S. WALIA, J. (ORAL)

[1] Appeal is for setting aside dismissal of the claim petition as ordered by the learned Motor Accidents Claims Tribunal, Jagadhari (hereinafter referred to as "the Tribunal"), for allowing the claim and awarding compensation as claimed.

[2] Brief facts of the case as set up by the appellant before the Tribunal are that on 20th June, 2001, he was going to Delhi in his car No. HR- 02- E-0567 which was being driven by his driver, Ram Kumar. When

they reached near Madhuban in District Karnal on G.T. Road, a truck was going ahead of their car. Their car was at some distance from the truck. All of a sudden, the truck driver steered towards his left and the car driver could not notice a canter No. HR-38-A-0542 stationed on the wrong side of the road and despite applying brakes, the car struck against the stationary canter. It was alleged that the canter was stationed on the wrong side of the road without any indication which was a negligent act on the part of its driver and due to the impact, car of the claimant was totally damaged, besides, appellant sustained multiple and grievous injuries.

[3] Only the Insurance Company appeared to contest the petition whereas respondent Nos.1 to 3 did not appear and were proceeded against ex parte. Insurance Company was granted permission to contest the petition on all grounds available to respondent Nos.1 to 3 as provided under Section 170 of the Motor Vehicles Act, 1988. However, the Tribunal dismissed the claim petition on the basis of the evidence led before it.

[4] Learned counsel for the appellant reiterated the claim made before the Tribunal and stated that the accident occurred solely due to the canter being parked on the wrong side of the road and as a result of swerving of the truck, which was going ahead of the car of the appellant, to the left side in order to avoid the canter, therefore, the canter parked on the wrong side of the road could not be avoided by the car of the appellant despite applying brakes, as a result of which not only was the car of the appellant damaged but the appellant also sustained injuries. Learned counsel contends that since canter was parked on the wrong side, therefore, the appellant was entitled to be awarded compensation claimed.

[5] Per contra, learned counsel for the respondents contended that

the appellant lodged a DDR on 20.06.2001 in respect of the accident

mentioning therein that the accident was a chance accident, had occurred all of a sudden and nobody was at fault. However, after three years, claim petition was filed in 2004 by the appellant claiming compensation. Learned counsel contended that the evidence on record reveals that the fault if any was exclusively that of the appellant's car which was not being driven properly and that had proper distance been maintained by the driver of the appellant's car from the truck behind which the appellant's car was going, the accident would not have taken place.

[6] Admittedly, the accident took place on 20.06.2001 and a DDR was registered by the appellant mentioning therein that the accident which had taken place was an accident by chance and that nobody was at fault. No claim petition whatsoever was filed in respect of the accident except after a lapse of close to three years for claiming compensation for the injuries sustained by the appellant.

[7] No doubt, the Tribunal in paragraph No.15 of the award calculated the amount of compensation payable to the appellant but on account of the finding on issue No.1, the appellant was held not entitled to be compensated. As per the evidence on record, the appellant's car was going behind the truck. The truck which was going in front of the appellant's car swerved to the left in order to avoid a canter which was stationed on the wrong side. The driver of the appellant's car applied brakes but could not avoid striking into the canter. Although in the claim petition it has been alleged that the car was at some distance behind the truck but the Tribunal in paragraph No.10 has noticed the stand of the petitioner that the car was at a distance of 10 to 15 feet behind the truck.

[8] I have considered the submissions of learned counsel and am of the opinion that the distance between the appellant's car and the truck in

question was wholly inadequate and was the reason for the accident. Had the driver of the appellant’s car maintained proper distance as also speed while following the truck in question, the question of accident having taken place would not have arisen. The accident took place solely on account of the car of the appellant tailgating the truck at a high speed. I also agree with the reasoning of the Tribunal that if the truck driver could see the canter and could change the direction of the truck in order to avoid hitting the canter then there was no reason for the driver of the car not to be able to take evasive action to avoid striking the canter and could not do so only on account of his tailgating the truck and going at a high speed as a result of which despite applying brakes, the vehicle could not avoid striking the canter.

[9] In the circumstances, the finding of the learned Tribunal that the appellant was not entitled to any compensation except under Section 140 of the Motor Vehicles Act, 1988 is just and proper and does not warrant any interference by this Court.

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

(B.S. Walia)
Judge

09.08.2018
amit

1.

Whether speaking/reasoned

:

Yes/No.
2.

Whether reportable

:

Yes/No.