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

**FAO No.4002 of 2009 (O&M)
Date of Decision: 19.11.2018**

Imran

Appellant

Versus

Surender Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vivek Khatri, Advocate
for the appellant.

Mr. Suman Jain, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The claimant is in appeal against award dated 30.04.2009 passed by the Motor Accident Claims Tribunal, Hisar (for brevity 'the Tribunal'), dismissing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The driver of Canter bearing registration No. RJ-31GA-1923 (hereinafter referred to as 'offending vehicle'), owner of offending vehicle and insurer of offending vehicle i.e. National Insurance Company Limited have been arrayed as respondents No.1

to 3 respectively in this appeal.

The facts of the case are that on 21.07.2007, appellant alongwith respondent No.1 started his journey from Delhi to Bhadra. At about 8:00/8:30 A.M., when they reached in the area of village Bhiwani Rohila, a cow came before the alleged offending vehicle and respondent No.1 could not control the alleged offending vehicle due to high speed. He suddenly applied brakes, in that process, window of alleged offending vehicle opened and petitioner fell down on the road. As a result of the impact, he suffered multiple injuries. He was taken to Sarvodaya Multispeciality Hospital, Hisar and was treated there. DDR no.18, dated 22.07.2007 was lodged at Police Post Balsmand.

In the claim petition, apart from statement of the appellant, no evidence was adduced to prove that the accident occurred due to rash and negligent driving of the alleged offending vehicle. The Tribunal after considering the facts, that in DDR lodged by uncle of appellant namely Jaimal Khan, it was stated that the appellant suffered injuries due to sudden application of brakes and that the appellant was sleeping on the roof of the alleged offending vehicle, dismissed the claim petition. Hence, the present appeal.

Heard learned counsel for the parties, perused the paper book and relevant documents placed on record.

Learned counsel for the appellant contended that from reading of the DDR, it is evident that uncle of the appellant was not present at the time of accident and he was telephonically informed

about the accident. It was further contended that the Tribunal erred in dismissing the claim petition.

Learned counsel for the insurer argued that there was no evidence adduced to prove rash and negligent driving of the alleged offending vehicle. He further argued that pleadings in the claim petition were modified so that a claim can be made under Section 166 of the Act.

The contention raised by learned counsel for the appellant lacks merit. The DDR was registered by his uncle. He specifically stated that the appellant was sleeping on roof of the alleged offending vehicle and the driver suddenly applied brakes due to which the appellant fell down and suffered injuries. Whereas the appellant in his own statement stated that the accident occurred due to rash and negligent driving of the alleged offending vehicle. There are two contradictory statements.

There is no evidence adduced to show that the alleged offending vehicle was being driven in a rash and negligent manner. There is only a self-serving statement of the appellant. There is no quarrel on proposition that onus of proof under the Act is not strict as under the criminal proceedings. The Supreme Court in **Parmeshwari Vs. Amir Chand and others, 2011 AIR (SC) 1504** held as under:

*“The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in **Bimla Devi and others vs. Himachal Road Transport***

Corporation and others [(2009) 13 SCC 530] are very pertinent.

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

In view of above decision of the Supreme Court, the issue is to be decided on the principles of preponderance of probability.

In the present case, respondent No.1 was not a stranger to the appellant. They had started their journey together on alleged offending vehicle. The fact remains that respondent No.1 neither filed a written statement admitting the facts nor he stepped into the witness box to substantiate claim of the appellant.

There is another aspect to the matter, that though the appellant has contradicted the contents of DDR lodged by his uncle but his uncle was also not produced as a witness so as to avoid his cross-examination.

In such circumstances, no shadow can be cast upon the findings recorded by the Tribunal.

The appeal is, accordingly, dismissed.

**[AVNEESH JHINGAN]
JUDGE**

November 19, 2018

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |