

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

FAO-1214-2014

Date of Decision:18.01.2018

Ankush Sardana

.....Appellant

Versus

Manpreet Kaur and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Yogesh Goel, Advocate,
for the appellant.

None for respondent Nos.1 and 2.

Mr. Navin Kapur, Advocate,
for respondent No.3.

HARI PAL VERMA, J.(Oral)

Appellant-claimant who is stated to be injured in the motor vehicular accident, which took place on the intervening night of 20/21.06.2010, has filed the present appeal seeking compensation on account of injuries suffered by him in the said accident. The claimant has filed a claim-petition under Section 166 of the Motor Vehicles Act for grant of compensation of ₹40 lacs along with interest @ 24% per annum.

Vide impugned award dated 07.05.2013 passed by learned Motor Accidents Claims Tribunal, Ludhiana (for short “the MACT”), the claim-petition filed by the appellant-claimant was dismissed on the ground that no witness was examined on behalf of the complainant to prove that the accident had been caused due to rash and negligent driving of deceased driver Prabhjit Singh.

Learned counsel for the appellant states that without formulating a proper issue, learned MACT has dismissed the claim petition. He has placed reliance on the judgment of Hon'ble the Supreme Court in **Kalyan Singh Chouhan Versus C.P. Joshi, 2011(2) Civil Court Cases 001 (S.C.)**, to contend that the court should not decide a suit on a matter/point on which no issue has been framed. He has argued that without formulating any issue as to whether the accident was caused due to rash and negligent driving of the deceased driver Prabhjit Singh, learned MACT should not have declined the claim-petition.

On the other hand, learned counsel for respondent No.3- Insurance Company has argued that the learned MACT had already framed an issue that, whether the claimant is entitled to compensation as prayed for, which includes the issue of rash and negligent driving of the driver also.

I have heard the learned counsel for the parties.

The learned MACT has formulated the following issues:-

“1. Whether Ankush Sardana son of Amesh Kumar was grievously injured while driving in car bearing No.PB-10BZ-1797 as lights of the car suddenly flashed and car went out of control?OPP

2. Whether the claimant is entitled to compensation as prayed for, if so to what extent and from whom?OPP

3. Whether the claim petition is not verified in accordance with Order 6 Rule 15 CPC, if so its effect?OPR

4. Whether the claim petition is bad for non-joinder and mis-joinder of necessary parties?OPR

5. Whether respondent No.1 did not possess valid and effective driving licence at the time of alleged driving licence.

6. Whether respondent No.1 was not driving the vehicle bearing No.PB-10BZ-1797?OPR

7. *Whether vehicle No. PB-10BZ-1797 was not having valid registration certificate and fitness certificate, if so its effect?OPR*

8. *Whether the claim petition is not maintainable?OPR*

9. *Relief.”*

On the basis of pleadings of the parties, interestingly while deciding the claim-petition, learned MACT has given a finding on issue No.2 and has declined the claim of the claimant. The finding on issue No.2 reads as under:-

“The claimant is seeking claim of Rs.40 lakhs but he has failed to prove that the accident was caused by the rash and negligent driving of deceased respondent No.1 Prabhjit Singh. As such respondent Insurance Company is not liable to pay any compensation to the claimant. Admittedly the vehicle in question bearing registration No.PB-10BA-1797 was insured with the respondent insurance company at the time of accident. No witness has been examined on behalf of the complainant to prove that the accident was caused due to the rash and negligent driving of deceased respondent Prabhjit Singh or that the deceased was having valid driving licence or other documents of the car. No eye witness of the accident has been examined who could have deposed regarding the cause of accident. None of the respondents are liable to make the payment of amount of the compensation to the claimant. This issue is accordingly decided against the claimant.”

Thus, it is clear that the MACT has rejected the claim- petition only for the reason that the claimant has failed to prove that the accident was caused due to rash and negligent driving of the deceased driver without appreciating the law cited in Kalyan Singh Chouhan's case(supra) that a

suit cannot be decided on a matter on which no issue has been framed. This Court finds that this case is required to be remanded back to the learned MACT so as to give its finding on the issue as to whether the accident was caused due to rash and negligent driving of the driver Prabhjit Singh.

Since no proper issue has been formulated by the learned MACT, award dated 07.05.2013 is hereby set aside. The case is remanded back to the learned MACT to return its finding on the issue as to whether the accident has been caused due to rash and negligent driving of the driver and accordingly to pass a fresh award in this regard. As the case has been remanded back, it shall not be construed as an expression on the merits of the case. The learned MACT shall decide the case independently without being influenced by the order passed by this Court.

The parties shall appear before the learned MACT on 22.02.2018.

January 18, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No