

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

FAO No. 4273 of 2015 (O&M)

Date of decision : September 07, 2018

Jaswant Singh

.....Appellant

Versus

Ramesh Kumar and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. Vinod Chaudhri, Advocate
for respondent No. 7.

LISA GILL, J.

Present appeal has been filed by the owner of the offending vehicle. Petition under Section 166 of the Motor Vehicles Act was filed by the claimants – respondents No. 1 to 5 seeking compensation on account of death of Santosh Kumari in a motor vehicle accident, which took place on 25.07.2012 due to rash and negligent driving of the offending vehicle car HR-01AA-6644 of respondent No. 6 – Vijay Kumar.

Learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the 'Tribunal') vide award dated 19.12.2014 concluded that death of Santosh Kumari was indeed due to injuries sustained by her in the accident caused by the rash and negligent driving of respondent – Vijay Kumar.

Compensation to the tune of ₹7,24,000/- was awarded to the claimants. There is no challenge to the quantum of compensation in this appeal. The appellant (owner of the offending vehicle) challenges the

entitlement of the insurance company to recover the compensation from him after paying the claimants. Learned Tribunal has held that the claimant – Ramesh Kumar while lodging FIR No. 85 dated 25.07.2012 stated that the offending vehicle was hired by him and his family. Learned Tribunal observed that Ramesh Kumar, however, took completely a different stand before the Tribunal by stating that Vijay Kumar – driver and Jaswant Singh – owner of the offending car were known to him which reflects that he was trying to take a self-serving stand. As the offending vehicle at that time was concluded to be plied as a commercial vehicle, insurance company was directed to pay the compensation with a right to recover the same from the owner.

Learned counsel for the appellant vehemently argues that the claimant – Ramesh Kumar in his petition under Section 166 of the Act has taken a specific stand that the owner and driver of the offending vehicle were known to him and it is due to this reason that the car was borrowed by him. He and his family were travelling in the car after borrowing it from its owner i.e. appellant. The driver of the said car has since been acquitted by the learned trial Court vide judgment dated 18.03.2015. Claimant - Ramesh Kumar while deposing before the learned Tribunal has specifically stated that he had borrowed the vehicle in question. Therefore, the learned Tribunal has erred in affording recovery rights to the insurance company. It is, thus, prayed that this appeal be allowed.

Learned counsel for respondent No. 7 – insurance company refutes the averments as above. He submits that the stand taken by Ramesh Kumar before the learned Tribunal is patently incorrect. FIR was registered on 25.07.2012 itself i.e. the day on which the accident took place. Truthful

version was set forth at the outset. It is merely because the claimant at a later stage, probably became wiser, that a totally divergent stand was taken by him. It is further contended that credibility of Ramesh Kumar as a witness is seriously compromised by the fact that he did not support the prosecution case in the proceedings emanating from FIR No. 85 dated 25.07.2012. The driver in the said case has since been acquitted. Thus, it is prayed that this appeal be dismissed.

Heard learned counsel for the parties and perused the available record.

As per the averments in the claim petition preferred by the claimant-respondents No. 1 to 5 in this appeal, it is pleaded that on 25.07.2012 Santosh Kumari (deceased) alongwith her husband – Ramesh Kumar, Vicky (son) and Anju (daughter) were travelling on the offending vehicle from Ambala for visiting the temple Goga Mari in Rajasthan. It was further stated that the vehicle in question was being driven by respondent – Vijay Kumar in a rash and negligent manner. Despite repeated requests by the claimant – Ramesh Kumar and other occupants, respondent – Vijay Kumar continued to drive the vehicle at a fast speed in a rash manner. Resultantly, the car turned turtle near Grain Market, Ismailabad at about 6.30 a.m. and fell in the nearby ditch filled with water. Occupants of the vehicle received multiple injuries. Santosh Kumari received serious injuries. She was shifted to a private hospital, Ismailabad, thereafter, referred to Civil Hospital, Ambala but she succumbed to her injuries. Accident, it was pleaded, took place due to rash and negligent driving of the offending vehicle by Vijay Kumar. FIR No. 85 dated 25.07.2012 was registered at Police Station Ismailabad on the statement of claimant – Ramesh Kumar.

Compensation on account of death of Santosh Kumari was claimed.

Learned Tribunal awarded a sum of ₹7,24,000/- as compensation to the claimants. The quantum of compensation is not in question in the present appeal. The appellant, who is the owner of the offending vehicle, is aggrieved of right afforded to the respondent – insurance company to recover the amount of compensation from the appellant after satisfying the award.

A perusal of the record reveals that FIR No. 85 dated 25.07.2012 was recorded on the statement of claimant – Ramesh Kumar. In the said statement, Ramesh Kumar specifically stated that the accident in question was caused due to rash and negligent driving of Vijay Kumar. Perusal of FIR No. 85 dated 25.07.2012 reveals that claimant – Ramesh Kumar clearly stated that the offending vehicle had been taken by him on hire from its owner and it was being driven by Vijay Kumar. The accident in question took place due to rash and negligent driving of the car by Vijay Kumar. Claimant – Ramesh Kumar in his evidence before the learned Tribunal (by way of affidavit) did not narrate about the vehicle in question being borrowed from its owner. In his cross examination, Ramesh Kumar categorically stated that his statement before the police authorities, on the basis of which FIR No. 85 dated 25.07.2012 was registered, was read out to him and he signed the same after verifying it to be correct. It is further noticed that Ramesh Kumar in the trial emanating from the registration of the FIR (Ex.P1), while deposing as PW4 therein, stated that it is the driver of the other car who was coming from the opposite side who hit into the car in which he alongwith others was travelling. Ramesh Kumar did not even identify the accused Vijay Kumar in the said case. Ramesh Kumar was

declared hostile and Vijay Kumar ultimately acquitted.

Wholesome evaluation of the evidence on record lends credence to the argument raised by learned counsel for the insurance company. A totally divergent stand has been taken by Ramesh Kumar at a later stage regarding the factum of rash and negligent driving of the offending vehicle by Vijay Kumar. Ramesh Kumar has categorically admitted that his statement before the police authorities, on the basis of which FIR No. 85 was registered was duly read out to him. Therefore, it stands to reason that a truthful version had indeed been given at the outset regarding the vehicle being taken on hire from its owner.

Learned Tribunal in this situation has rightly held that the offending vehicle had been taken on hire. Insurance policy would be valid for a use of the vehicle as a private car and would not cover the use of vehicle for hire or reward basis. The principle of 'pay and recover' has been correctly applied in this case. It has been rightly held by the learned Tribunal that the insurance company would be at liberty to recover the amount of compensation from the owner/appellant.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned award dated 19.12.2014 passed by the learned Motor Accident Claims Tribunal, Kurukshetra which calls for any interference by this Court.

Present appeal is accordingly, dismissed with no order as to costs.

September 07, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No