

In the High Court of Punjab and Haryana at Chandigarh

FAO No.2831 of 2018 (O&M)

Date of Decision:- 24.05.2018

Uttarakhand Transport Corporation

.....Appellant

Versus

Vijay Kamboj and others

.....Respondents

CORAM: **HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. Amit Jaiswal, Advocate, for the appellant.

GURVINDER SINGH GILL, J.

Appellant-Uttarakhand Transport Corporation, aggrieved by award dated 3.1.2018, passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred, 'the Tribunal') whereby the Tribunal has awarded compensation to the tune of ₹4,30,020/- on account of damage to a Ford Figo car, belonging to respondent-claimant/Vijay Kamboj, has challenged the said award by filing this appeal.

The respondent-claimant, in his claim petition had set up a case that on 31.12.2012 when he along with his brother-in-law Narinder Kumar and one of his friend Neeraj Kumar were going from Rishikesh to Haridwar in their vehicle i.e. Ford Figo bearing temporary registration No. HR99NQ(T)-0742 and permanent registration No.HR02AB-5040 at a normal speed and on the correct side of the road and when they reached near Chandi Mandir and "Trikoniya" of Nazibabad road, a bus bearing registration No. UK07PA0913, being driven by respondent No.1, came from opposite side which was being driven in a zig-zag manner and struck against their car as a result of which the

car was totally damaged. The claimant thus sought compensation to the tune of ₹10,00,000/- for the damage caused to the car in question.

The claim petition was opposed by the respondents. The learned Tribunal upon appraisal of the evidence on record held that the accident in question had occurred due to rash and negligent driving on the part of respondent No.1 and further held that the car belonging to the claimant had sustained extensive damage and thus awarded compensation to the tune of ₹4,30,020/-, vide award dated 3.1.2018.

Learned counsel for the appellant has assailed the impugned award by submitting that in fact, it was a case of head-on collision between the vehicles and that in these circumstances at best it could be said to be a case of contributory negligence and respondent No.1 could not be held solely responsible for causing the accident in question.

I have considered the aforesaid submission. No doubt, it is a case where both the vehicles were coming from the opposite side but the claimant has led evidence to the effect that respondent No.1 was driving the bus in question in a rash and negligent manner and in a zig-zag manner. FIR in respect of the accident in question had also been lodged though after about one week of the accident. Though, the respondents have examined RW-1 Anzar Ali, Conductor of the bus in question, who stated that the bus was being driven at a moderate speed and that it was the car which was being driven rashly and negligently but the learned Tribunal upon marshaling the evidence, reached at a conclusion that it is respondent No.1 who had caused the accident. Nothing has been shown to this Court so as to warrant interference in the said finding and as such, the same are hereby affirmed.

During the course of arguments, the learned counsel for the appellant has pointed out that in fact a claim raised by the claimant against his insurance company had been declined which would indicate that a false claim had been raised before the learned Tribunal.

I have considered the aforesaid submission. It is evident that a claim raised by the claimant before Insurance Company has been declined but learned counsel for the appellant has fairly informed that in fact the said claim had been made belatedly before the Insurance Company and it was on account of the said fact that the insurance company did not entertain the claim raised by the claimant. Since the claimant, in any case could have filed the claim petition, therefore, the same cannot be said to be not maintainable especially, when it is not the case of the respondents that he has already received any compensation from the Insurance Company.

As regards the quantum, the learned counsel has submitted that the quantum of compensation on account of the damage to the vehicle, as assessed by the Tribunal is on the higher side and that the amount of ₹4,30,020/- is based solely on the basis of estimate Ex.P-2.

I have considered the aforesaid submission. A perusal of copy of the insurance policy, which has been shown to this Court by the learned counsel for the appellant shows that the year of manufacture of the vehicle was 2012. The vehicle in question had been insured for an amount of ₹5,31,905/-. As per report Ex.P-2, it is apparent that it was a case of extensive damage to the vehicle. In fact, the vehicle was not repaired and remained lying in the workshop apparently on account of the fact that it was a case of extensive damage. There is nothing to the contrary on record so as to doubt the extent of damage. Bearing in mind the insured value of the car as in the

year 2012 when the accident took place and also the fact that it was an almost a brand new car having been manufactured in the year 2012, the estimate Ex.P-2 for extensive damage to the vehicle cannot be doubted in the absence of any evidence to the contrary. As such, I do not find any infirmity in the findings of the learned Tribunal holding therein that the claimant is entitled to ₹4,30,020/- as compensation on account of damage to his car. However, it needs to be clarified that the aforesaid amount is to be paid by the respondents to the claimant in the shape of draft/cheque/RTGS and not in the shape of cash, as directed by the learned Tribunal.

Finding no merit in the present appeal, the same is hereby dismissed except for the aforesaid clarification.

May 24, 2018
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(GURVINDER SINGH GILL)
JUDGE

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