

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 791 of 2019 (O&M)
Date of decision: 8.5.2019

Deepak Kumar

.. Appellant

v.

Santosh Rani and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajat Gautam, Advocate for the appellant.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 3.10.2018 passed by the Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') has been assailed by the driver-cum-registered owner of three wheelers bearing registration Nos. HR-45B-9778 (hereinafter referred to as 'the offending vehicle') and HR-45B-1201.

The facts emanating from the record are that on 11.1.2013, Sube Singh along with Prem Singh and Dharmender was driving a motorcycle bearing registration No. HR-50Y-8089. On his way it is alleged that three wheeler bearing registration No. HR-45B-1201 attached with concrete mixer grinder driven by Deepak Kumar (respondent No. 1 before the Tribunal) struck the motorcycle. All the riders of the motorcycle fell down. Sube Singh sustained injuries and died at the spot. FIR No. 31 dated 11.1.2013 was registered on the statement of Pawan son of Prem Singh (brother of the deceased).

A claim petition was filed claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The following issues were framed by the Tribunal:

- “1. Whether the accident in question causing death of Sube Singh took place due to rash and negligent driving of three-wheeler bearing registration No. HR-45B-1201?
OPP
2. Whether the claimants are entitled to compensation, if so, to what amount and from whom? OPP
3. Whether the three-wheeler in question was being driven against the terms and conditions of insurance policy and provisions of Motor Vehicles Act? OPR-2.
4. Relief.”

The dispute in the present appeal is only with regard to issue No. 1. The Tribunal came to the conclusion that the accident was result of rash and negligent driving of the offending vehicle.

The case of the appellant is that the accident was actually caused by three wheeler bearing registration No. HR-45B-1201 and not by the offending vehicle.

Heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant argues that Pawan Kumar, on whose statement the FIR was registered himself deposed before the Tribunal that in the FIR he described the registration number of the three wheeler which caused the accident as HR-45B-1201 whereas mistakenly the police noted down the registration number of the offending vehicle. The argument is that once the witness of the claimants is deposing that the offending

vehicle was not involved, the Tribunal erred in coming to the conclusion that the offending vehicle caused the accident.

Before dealing with the contention raised by learned counsel for the appellant, it would be pertinent to note that it is a strange coincidence that three wheeler bearing registration No. HR-45B-1201 and the offending vehicle are owned by the same person. The claimants took no steps to rectify the mistake committed in recording the FIR wherein allegedly the registration number was wrongly mentioned. Even the driver and the registered owner of the offending vehicle availed no remedies to challenge the fact that in the FIR, registration number was wrongly mentioned though the appellant took his defence in criminal proceedings.

There is another aspect of the matter which has not been disputed by learned counsel for the appellant that the offending vehicle was not insured, whereas the three wheeler bearing registration No. HR-45B-1201 was duly insured.

The contention raised by learned counsel for the appellant is not well founded. From the FIR, it is evident that Pawan Kumar got registered the FIR stating that he was the pillion rider with Sube Singh at the time of accident and the number of the offending vehicle was mentioned as HR-45A-9778 (though in the award it is mentioned as HR-45B-9778). It has not been argued that none of these three wheelers were involved in the accident. The entire case set up is that it was not the offending vehicle but was three wheeler bearing registration No. HR-45B-1201 which caused the accident and it was attached with concrete mixer. In the FIR, it has not been mentioned that the offending vehicle was attached with concrete mixer. The physical description given in the FIR does not match with the

vehicle claimed to be involved in the accident. There is no explanation forthcoming as to how Pawan Kumar and the police personnel knew that the offending vehicle was owned by Deepak Kumar and the mistake was such that the number of vehicle which was wrongly noted was also owned by Deepak Kumar.

The acquittal in criminal proceedings will not affect the findings recorded by the Tribunal. In the criminal proceedings, the onus is heavy. Even benefit of doubt bails out the accused whereas in cases under the Act, the issue is to be decided on touchstone of preponderance of probabilities. The findings recorded by the Tribunal on issue No. 1 are reproduced below for ready reference:

“14. Before adverting to the question whether rash/negligent driving by respondent No. 1 was *causa causans* of the accident, let us set at rest the controversy with regard to the identity of the vehicle. As per FIR Ex. C1, the vehicle involved in the accident was No. HR-45B-9778 which is a three-wheeler attached with a concrete mixer. The petitioners plead that actually the accident had taken place with No. HR-45B-1201 and it is this number which was mentioned by first informant but police mistakenly noted it as No. HR-45B-9778. When Pawan, first informant, stepped in the witness box, he reiterated that he had revealed correct number in his statement but police mistakenly noted it as HR-45B-9778. However, this is in contradiction to the final report under Section 173 of the Code of Criminal Procedure as per which, the first

informant approached the police station on 12.1.2013 and informed that due to death of his brother, he was confused and with that state of mind he had wrongly mentioned registration number of the offending vehicle as No. HR-45B-9778 whereas it was No. HR-45B-1201. The contradiction may look cosmetic but it is real. The fact remains that both vehicles are three wheelers owned by respondent No. 1, albeit, as claimed by him he had sold three-wheeler bearing registration No. HR-45B-9778 before the accident to one Hashim. Let us skip the details of the alleged transaction between respondent No. 1 and Hashim. The question which is more relevant is as to if the first informant was so confused on account of death of his brother that he mixed up two vehicles, how could it be that registration number actually told by him to police matched in all details with another vehicle of the same nature owned by respondent? If, however, the first informant had correctly mentioned registration number of the offending vehicle as is now being claimed by him, a question arises as to on what basis police recorded it wrong? Another question is as to from where did police get registration number of another vehicle owned by respondent No. 1? Nobody has any explanation except that respondent No. 1 and first informant are from the same village. This, to my mind, is no explanation. Now-a-days registration numbers of the vehicles are not so short that anybody would

remember them by heart. There used to be times when only few persons in a village were having vehicles. It was understandable that everybody would have been remembering registration numbers of those vehicles but when practically every individual now owning a vehicle, it is not easy to remember registration numbers of the vehicles owned by others. It is, therefore, not just a coincidence that the first informant mentioned correct registered number of another three wheeler owned by respondent No. 1. The matter would have been simple had the three-wheeler bearing registration No. HR-45B-9778 been insured. Learned counsel for respondent No. 1 conceded at bar that is not insured though, he added that having already sold it, he has no concern as to whether it is insured or not. It seems that the accident actually happened with three-wheeler bearing registration No. HR-45B-9778 but since it was not insured, respondent No. 1 was able to convince the petitioners that it will be easy for them to get compensation from insurance company if they agree to switch the vehicle with another vehicle owned by him. At the same time, respondent No. 1 as two-pronged strategy appears to have struck upon the idea of showing sale of three-wheeler by fabricating affidavit in back date. The police officer investigating the case appears to have become willing party to the entire game and the victim is not just insurance company but also justice. The

investigating officer was not naïve as to have blindly accepted the version of first informant that due to death of his brother he, out of confusion, had given registration number of another vehicle owned by respondent No. 1. The fact remains that he pretended as if whatever was being done was in routine. However, the Tribunal will not shut its eyes. It will not remain a mute spectator to the trick being applied unscrupulously to subvert the cause of justice just for financial gains.

15. All said and done, there is no reason to buy the story concocted by the petitioners and respondent No. 1 in connivance with police that the accident was caused by three-wheeler bearing registration No. HR-45B-1201 but while getting FIR recorded, the first informant, who is brother of the deceased got confused and, mentioned registration number of the vehicle as HR-45B-9778. The matter would have been different had there been confusion about one or two digits. That could had been attributed to confusion but switching of the vehicle altogether cannot be out of confusion. It can only be by design as in this case. It is actually three-wheeler bearing registration No. HR-45B-9778 which caused the accident and there is no reason to doubt the version of the first informant that it was being driven by respondent No. 1 in rash/negligent manner. The issue stands decided accordingly.”

In view of the facts and circumstances of the case, no shadow

can be cast upon the findings recorded by the Tribunal with regard to involvement of the offending vehicle.

The appeal being without any merit is dismissed.

(AVNEESH JHINGAN)
JUDGE

8.5.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No