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

FAO No.4357 of 2003

Date of Decision: 26.02.2019

Ghaisha Ram @ Jai Bhagwan

Appellant

Versus

Sumitra Devi and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tara Chand Dhanwal, Advocate
for the appellant.

Mr. R.N. Singal, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (Oral):

The award dated 07.04.2003 passed by the passed by the Motor Accident Claims Tribunal, Bhiwani [for brevity 'the Tribunal'] under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] has been assailed by the owner of Car bearing registration No. HNE-1490 [hereinafter referred to as 'offending vehicle'] being aggrieved of the recovery rights granted to the insurer of the offending vehicle.

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.

Brief facts of the case are that on 12.07.2000, the offending vehicle was being driven by Mukesh (respondent No.1 before the Tribunal). Sham Charan {mentioned as Sham Sunder in

paragraph 2 of the award (hereinafter referred to as Sham Charan)) alongwith Bijender and Rakesh was travelling in the offending vehicle. When they reached near village Paintawas Khurd, it struck some other vehicle coming from the opposite side. Consequently, both the drivers lost control and the offending vehicle fell in trenches, as a result, Sham Charan sustained injuries which proved fatal. FIR No.165 was registered.

A claim petition under Section 166 of the Act was filed by the legal heirs of Sham Charan. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle.

The Tribunal awarded a sum of ₹3,55,100/- alongwith interest @ 9% per annum. It was held that the offending vehicle was hired for reward and hence, recovery rights were given to the insurer.

Learned counsel for the appellant contends that the Tribunal only relied upon the deposition of PW-2 Suresh, whose name was not mentioned in the FIR and driver of Car was not examined by the insurer, hence the Tribunal erred in awarding recovery rights to the insurer.

Learned counsel for the insurer contends that there is nothing on record to prove that deposition of Suresh is not worth reliance, he defends the award.

The only issue involved in the present case is as to whether the offending vehicle was being used for 'hire & reward' at

the time of accident or not.

From the perusal of the award and paper book, it is evident that Suresh-PW2 was witness of the claimants and was travelling in said vehicle. His deposition was relied upon to prove the rash and negligent driving of respondent No.1. He deposed that offending vehicle was hired. Learned counsel for the appellant is not able to show any reason for not relying upon the deposition of PW2. Further, that as to why his statement, only in part, be accepted vis-a-vis proving rash and negligent driving and part of his statement be ignored to the fact that offending vehicle was hired for reward. The claimants stand to gain nothing by producing the witness who deposes to the prejudice of the appellant.

The statement of PW-2, eye-witness, cannot be ignored merely on the ground that driver of vehicle was not examined. More so, when the statement of PW-2 has not been rebutted and he withstood cross-examination also.

In such circumstances, no shadow can be cast upon the findings recorded by the Tribunal with regard to liability to pay compensation.

No interference is called for in the impugned award.

The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

February 26, 2019
pankaj baweja

1. Whether speaking/ reasoned

:

Yes
2. Whether reportable

:

Yes