

(1) FAO-5344-2009 (O&M)
Date of decision: 13.03.2019

Vinay Singh and others

...Respondents

Pawan

Versus

...Appellant

Vinay Singh and others

...Respondents

Desh Raj

Versus

...Appellant

Vinay Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Tapan Yadav, Advocate
for the appellant.

Mr. Sandeep Suri, Advocate for Insurance Company.

H.S. MADAAN, J. (Oral)

This order shall decide the above mentioned appeals as the

same arise out of the consolidated award.

Briefly stated facts of the case are that on account of Pawan, Desh Raj and Mukhtiar Singh suffering injuries in a motor vehicular accident, which took place on 15.03.2007, in the area of Police Station Sector-10, Gurgaon, statedly on account of rash/negligent driving of Maruti Car bearing registration No.HR-26-X-7890 by respondent No.1-Vinay Singh, all the three of them brought separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 impleading Vinay Singh-driver, Yaudhbir Yadav-owner and National Insurance Company Ltd, Gurgaon-insurer of Maruti Car in question as respondents.

On notice, all the three respondents appeared. Respondent Nos. 1 & 2 filed a joint written statement, denying the assertion in the claim petitions, whereas, respondent No.3 had filed separate written statement, taking various legal objections to wit, respondent No.1 was not holding a valid and effective driving licence; that claimants did not have locus standi to file the claim petitions. On merits, contents of claim petitions were contested. All the three respondents had prayed for dismissal of the claim petitions.

On the pleadings of the parties, following issues were framed:-

1. Whether petitioners Desh Raj, Pawan and Mukhtiar sustained injuries due to the road side accident which took place on 15.03.2007 in the area of police station, Sector-10, Gurgaon, on

account of rash or/and negligent driving of vehicle bearing no.HR-26-X-7890 by respondent No.1 which is owned by respondent No.2 and insured by respondent No.3 as alleged? OPP.

2. If issue No.1 is proved whether, the petitioner is entitled to any amount as compensation. If so to what amount and from whom? OPP.

3. Whether the petitioners have no locus standi to file the present petitions, as alleged? OPR.

4. Whether the driver of offending vehicle was without a valid and effective driving licence to drive the same at the time of accident, as alleged. If so to what effect? OPR 3.

5. Relief.

The parties led evidence in support of their respective claims.

After hearing arguments, the Tribunal decided issue No. 1 against the petitioners and in favour of respondents. But no findings were given on issues Nos.2 to 4 and in view of the findings given on issue No.1, all the three claim petitions were dismissed, vide award dated 26.02.2009.

The claimants/injured felt aggrieved by the said award and have approached this Court, by way of filing the separate appeals, notice of which was given to the respondents, however, only respondent No.3-Insurance Company has put in appearance and offer a contest.

I have heard learned counsel for the parties besides going

through the record.

I find that the whole approach of the tribunal in passing the award to say the least has been erroneous and misconceived. Perhaps the tribunal thought that it was dealing with a criminal case and not a claim petition under Section 166 of the Motor Vehicles Act. Section 166 of the Motor Vehicles Act piece of welfare legislation, in order to provide compensation to the victims of road side accidents. The provisions is to be construed liberally and not in a hypertechnical manner. The tribunal seems to have been swayed away by the fact that there has been delay of two days in lodging of the FIR and the vehicle number and name of driver were not given therein. But the tribunal lost sight of the fact that FIR is not an encyclopedia of the events. Its only purpose is to set the criminal machinery in motion only after registration of the FIR, when the investigation takes place, then the investigating agency comes to know about the person who had committed the offence and other details. Therefore, non-suiting the claimants solely for this reason was uncalled for, especially, when sufficient evidence had been led by the claimants by getting their own statements recorded with regard to the involvement of car in question in the accident and it being driven in a rash and negligent manner by respondent No.1, resulting in the mishap, causing injuries to them. The claimants having suffered injuries in the accident were stamped witnesses and their presence at the spot could not be doubted. There is

nothing to show as to why should they involve a wrong vehicle in the accident.

The claimants had examined PW-5 HC Joginder Singh who had proved copy FIR Ex.PW5/A as well as filing of challan in criminal case arising out of the accident.

PW-6-Ashok Julia, Criminal Ahlmad, JMIC, Gurgaon had appeared to prove pendency of criminal case against Vinay Singh-respondent No.1.

What more evidence the tribunal required cannot be understood. It was more than sufficient evidence to show the involvement of Maruti Car in question in the accident and respondent No.1 being author of the accident by rash and negligent driving of the said car. It has to be noticed that respondent No.1 could not summon courage to appear in the witness box to deny that he was responsible for the accident by driving the car in question in a rash and negligent manner.

Similarly, Yaudhbir Yadav, owner of the car did not get himself examined as a witness to depose on oath that maruti car belonging to him, was not involved in the accident. Therefore, findings recorded by the tribunal on issue No.1 is absolutely wrong.

The tribunal has committed an another irregularity, it was expected to decide all the issues framed by it but it adopted a short cut procedure in avoiding giving decision on the remaining issues and in a

summary manner, dismissed the claim petitions in view of the verdict by it on issue No.1. Therefore, the appeals have merit; those are accepted, the impugned award is set aside and the petitions are remanded to the tribunal for giving issue-wise findings on the issues on the basis of evidence already adduced before it by the parties.

The parties through counsel are directed to appear before the Tribunal on 12.04.2019. The Tribunal shall issue notice to the respondents, who are unrepresented before this Court and thereafter, fix a date for arguments and then decide the claim petitions expeditiously, not later than six months from the date of receipt/production of copy of order in the said tribunal. Registry is directed to send the lower Court record back immediately.

13.03.2019
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No