

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

FAO-941-2012(O&M)

Date of decision:-17.1.2019

Ardass Ram

...Appellant

Versus

Sohan Singh and others

...Respondents

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

Present: Mr.Onkar Singh, Advocate
for the appellant.

Mr.Lalit Kumar Sharma, Advocate for
Mr.S.K. Sharma, Advocate for respondent No.1.

Mr.Suvir Dewan, Advocate
for respondent No.4.

H.S. MADAAN, J.

Petitioner – claimant Sohan Singh through his attorney Smt.Sarbjit Kaur had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Ashwani Kumar – driver, Ardass Ram – owner of truck bearing registration No.PB-4B-9132 (hereinafter referred to as the offending truck) as well as Surinder Kaur and Naranjan Singh, mother and father, respectively of Santokh Singh – driver of Tavera having registration No.PB-07U-7450 and The Oriental Insurance Company Ltd. - insurer of Tavera car bearing registration No. PB-07U-7450, claiming compensation to the tune of Rs.80 lacs on account of injuries suffered by

him in the accident.

According to the claimant, on 17.3.2010, he along with Balwinder Singh son of Daya Singh, Parminder Singh son of Daya Singh, Jaspal Singh son of Ajit Singh, Jagdip Singh son of Amarjit Singh, Bhupinder Singh son of Dharam Singh, Mahadev and Santokh Singh sons of Naranjan Singh, all residents of village Tihara, P.S. Dasuya had gone to Golden Temple, Amritsar in taxi Tavera car having registration No.PB-07U-7450 (hereinafter referred to as Tavera Car) owned and driven by Santokh Singh alias Sabhi son of respondents No.3 and 4; that when the Tavera car reached near Gurudwara Dehlan, PS Dasuya, then the offending truck being driven by respondent No.1 – Ashwani Kumar in a rash and negligent manner without blowing horn came from the opposite side and struck against the Tavera car, as a result occupants of Tavera car received multiple injuries; that one Hoshiar Singh, who was present nearby removed the injured to a hospital at Dasuya, however, Maninder Singh, Santokh Singh (driver of Tavera car) and Jaspal Singh succumbed to the injuries suffered by them; that the remaining injured were given medical treatment; that an FIR No.33 dated 17.3.2010 under Sections 304-A, 279, 337, 338, 427 IPC was registered against respondent No.1, the driver of the offending truck on the basis of statement of Balwinder Singh son of Daya Singh, resident of village Tihara, Tehsil Dasuya, District Hoshiarpur. According to the claimant, he had suffered 80% disability, as a result of receiving injuries in the accident and is not in a position to do any work and he had filed the claim petition through his wife as his attorney.

On notice, the respondents appeared. Respondents No.1 and 2 had filed a joint written reply in which they challenged the maintainability of the claim petition contending that Santokh Singh – deceased, driver of ill-fated Tavera car was not having a driving licence at the time of accident and the accident had not taken place on account of any negligence on the part of the respondent No.1 but the same was caused due to rash and negligent driving of Tavera car by Santokh Singh; that a false FIR was got registered against respondent No.1; that the truck in question was going from Dasuya on Sansarpur-Malkowal Road and when they had reached near Gurudwara Dehlan, some noise in the gear box of the truck was noticed, as such respondent No.1 parked the truck on *katcha* portion of road on its correct side and thereafter he went to bring a mechanic for inspection of the gear box and the parking indicators were switched on, in the meanwhile, the Tavera car came from the opposite side being driven in a rash and negligent manner and struck against the driver side of the stationary truck.

In the joint written statement filed on behalf of respondents No.3 and 4, they have taken up a legal objection of the claim petition being bad for misjoinder of necessary parties inasmuch as the driver, owner and insurance company of the offending truck were necessary parties. According to such respondents, they had lost their son Santokh Singh in the accident. It was admitted that the claimant was travelling in Tavera car being driven by Santokh Singh – deceased. According to the answering respondents the Tavera car was not being used as a taxi and it was put to use for private purposes. It is further pleaded that on account of

old age, the answering respondents are not keeping good health.

In the written statement filed on behalf of respondent No.5, it has taken up a plea that the claim petition is vague, incomplete and does not disclose any cause of action against the answering respondent; that the Tavera car alleged to have been involved in the accident was being driven against the provisions of Motor Vehicles Act and there has been breach of conditions of the policy; that Santokh Singh – deceased, driver of Tavera car was not holding a valid driving licence at the time of accident. According to such respondent, it is not liable to pay any compensation; that the Tavera car was being used for a purpose other than specified in the route permit and fitness certificate and against the terms of the insurance policy; that the claim petition has been filed by the claimant in collusion with respondents No.1 to 4.

Finally, all the respondents came up with a prayer for dismissal of the claim petition.

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

1. Whether claimant suffered injuries in a Motor Vehicular Accident which took place on 17.3.2010 in the area of Dehlan PS Dasuya near Gurudwara? OPP.
2. Whether the Motor Vehicular Accident was caused due to rash and negligent driving of truck bearing registration No.PB-4B-9132 by respondent no.1? OPP.
3. Whether claimant is entitled to recover compensation for injuries received by him, if so to what extent and from which of the

respondents? OPP.

4. Whether petition is bad for misjoinder and non joinder of necessary parties? OPR.
5. Whether the claim petition is not maintainable? OPR.
6. Whether driver of Tavera bearing registration No.PB-07U-7450 was not holding valid driving licence at the relevant time of accident? OPR-2 and 3.
7. Relief.

Both the parties led evidence in support of their respective claims.

In support of his case, the claimant himself appeared as PW1. He further examined Balwinder Singh as PW2, Dr.Jaspreet Singh Dhami as PW3, Pankaj Kumar as PW4 and Subhash Chander as PW5.

On the other hand, respondent No.1 Ashwani Kumar appeared as RW1 and Damool Singh was examined as RW2.

After hearing arguments, the Tribunal decided issues No.1 to 3 in favour of the claimant and against the respondents, issue No.4 in favour of the claimant and against the respondents, issue No.5 in favour of the claimant and against the respondents, issue No.6 against the respondents and in favour of the claimant. Resultantly the claim petition was accepted by the Tribunal and compensation of Rs.5,99,485/- was granted in favour of the claimant against respondents No.1 and 2 with costs further observing that in case payment was made within three months, the interest would be charged at the rate of 6%, failing which, it would be 9% per annum, from the date of filing of the claim petition till

actual realization. The liability of respondents No.1 and 2 to pay the compensation amount was held to be joint and several.

This award left the respondent No.2 – owner of the offending truck aggrieved and he had approached this Court by filing the present appeal.

Notice of the appeal was given to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The main thrust of arguments advanced by learned counsel for the appellant had been that the claimant had failed to establish that the accident had taken place due to rash and negligent driving of the offending truck by respondent No.1, even then issues struck in that regard as issues No.1 and 2 were decided in favour of the claimant against the respondents.

However, after perusing the record carefully, I find that there is no merit in the argument advanced by learned counsel for the appellant. The claimant/injured himself had suffered injuries in the accident and he happened to be a crucial witness. He appearing as PW1 deposed as per his case given in the claim petition. PW2 Balwinder Singh, eye-witness provided the eye-witness account of the accident. I find presence of both the witnesses at the spot to be natural and probable and account given by them to be worthy of reliance since no cogent or convincing reason could be pointed out for which they might have deposed against respondents No.1 and 2. The FIR against respondent No.1 had been lodged, which

prima facie goes to show rashness and negligence on his part. Though respondent No.1 – Ashwani Kumar appearing as RW1 had stated that accident had not taken place on account of his negligence, rather attributing the rashness and negligence to Santokh Singh, the driver of ill-fated Tavera car but then in his cross-examination, he admitted that an FIR was lodged against him regarding the accident. The Tribunal has observed that RW1 had not made report to the higher authorities for holding inquiry for registration of alleged wrong FIR against him with respect to the accident in question. If he had been roped wrongly, he would not have kept quiet with civil and criminal action awaiting him. The Tribunal has noted that PW2 had categorically stated that when the Tavera car reached near Gurudwara Dehlan, PS Dasuya, the offending truck being driven by respondent No.1 in a rash and negligent manner came from the opposite side without giving any horn and rammed into the Tavera car.

Although learned counsel for the appellant had contended that in photograph Mark-A, the truck is shown to be parked on the *katcha* path but that does not prove the version of the appellant. The photograph shows the position of the truck after the accident, which is not of much significance. This Court is to see as to how and in what manner the accident had taken place. The Tribunal by adopting a judicious approach has come to the conclusion that respondent No.1 was author of the accident by rash and negligent driving of the offending truck. I do not see any reason to disagree with the Tribunal on that point. The respondent No.2 being owner of the offending truck, he is obviously liable to pay

compensation for the reason that his employee – respondent No.1, who drove the truck in a rash and negligent manner on the fateful day and by hitting Tavera car caused injuries to occupants of the car, out of them three of them had expired.

From the statement of eye-witness, perusal of FIR and other facts and circumstances, it comes out that rash and negligent driving of the offending truck by respondent No.1 was direct and proximate cause of the accident in which occupants of Tavera car had suffered injuries including the claimant. It was of course for want of care and caution on the part of respondent No.1 – driver of the offending truck and he had driven the offending truck in a dare devil manner throwing caution to the winds, not caring for safety and security of the other commuters on the road. The Tribunal was fully justified in coming to the conclusion that the petitioner/claimant had suffered injuries in the mishap, which had taken place on account of rash and negligent driving of respondent No.1. Therefore, respondents No.1 and 2 were held liable to pay compensation.

I do not find any illegality or infirmity in the award passed by the Tribunal. Rather the same is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Thus, the appeal stands dismissed.

17.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No