

FAO No.2317 of 2013 (O&M)
Date of Decision: 18.10.2019

Parminder Singh

.....Appellant

Versus

Surinder Mohan

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAURPresent: Mr. Gurcharan Dass, Advocate
for the appellant.Mr. Shailender Sharma, Advocate
for the respondent.**NIRMALJIT KAUR, J.**

The present appeal has been filed against the award dated 15.10.2012, passed by the Motor Accident Claims Tribunal, Hoshiarpur (for short, the Tribunal), vide which, the claim petition filed by the respondent against the present appellant, was allowed.

Learned counsel for the appellant submitted that the respondent filed claim petition bearing MACT case No.22 dated 23.12.2009, against the appellant, claiming compensation to the tune of Rs.2,00,000/- on account of damage of Chevrolet Aveo Car bearing registration No.CH-04-6991, alleging a road side accident by the appellant. It was mentioned in the claim petition by the respondent that he is posted as Additional District & Sessions Judge, Ropar and was recently transferred from Gurdaspur to Ropar. It was further mentioned that on 23.06.2009, respondent alongwith his family was officially shifting from Gurdaspur to Ropar and they were traveling in their car No.CH-04-6991. Akshay Goel, who is son of respondent was driving the car and respondent was sitting on the back seat,

whereas, Mrs. Prabha Goel wife of respondent was sitting on the left front

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seat of the car. It was further alleged that when the car reached near Nawan Shahar crossing on the bye pass road near Balachaur, a motor cycle bearing registration No.PB-07U-8958 being driven by the appellant at a very high speed and negligently came from the side of Balachaur and struck on the front left door of the car due to which car touched the roundabout of Nawanshahar and it was badly smashed.

After hearing learned counsel for the appellant, certain facts as narrated below have emerged, leaving no choice with this Court but to allow the present appeal filed by the appellant:

- a) The accident took place on 23.06.2009, in which, the appellant received injuries. Accordingly, the appellant filed the claim petition bearing MACT No.39 dated 09.10.2009 titled as Parminder Singh Vs. Surinder Mohan and others, claiming compensation. The Tribunal allowed the said claim petition filed by the appellant, vide award dated 15.10.2012. As per award, respondent No.3-Insurance Company was held liable to pay the entire amount of compensation within two months from the date of award.
- b) Respondent No.1-Surinder Mohan also filed the claim petition bearing MACT No.22 dated 23.12.2009, claiming compensation from the appellant damage to his car bearing No.CH-04-6991 in the same accident, that occurred on 23.06.2009, which too was allowed by the same Presiding Officer, on the same day.
- c) Meaning thereby, the Tribunal had granted compensation in

favour of the appellant, who suffered injuries in the accident caused by Sh. Akshay Goel, son of the respondent and on the other hand, on the same day, the Tribunal allowed the claim petition filed by the respondent-Surinder Mohan, allowing the compensation on account of damage to his car to be recovered from the same appellant. Therefore, it is strange that once the findings have been recorded by the Tribunal in claim petition bearing No.39 dated 09.10.2009 that the accident took place on account of the car being driven at the hands of Akshay Goel, the Tribunal could not have allowed the claim petition claiming compensation on account of damage to the car against the injured-appellant filed by the owner of the same offending vehicle, being driven by Akshay Goel, especially when the accident was on account of negligence of Akshay Goel and no contributory negligence was raised nor proved.”

Learned counsel for the respondent however while justifying the award qua the compensation granted to the respondent for the damaged vehicle, to be recovered from the present injured-appellant, submitted that since there was no finding recorded in the award dated 15.10.2012, passed in the claim petition No.39 dated 09.10.2009, titled as Parminder Singh Versus Surinder Mohan and others, qua the negligence of the driver Akshay Goel, driver, who was son of respondent-Surinder Mohan, therefore, there was no bar in allowing the claim petition filed by Surinder Mohan against the present appellant qua the damaged vehicle.

Learned counsel for the appellant on the other hand pointed out

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& respondent was serving as Additional District Judge. Therefore, while passing the award in favour of the appellant under Section 166 of the MACT found that accident occurred on account of the driving by Akshay Goel but purposely did not mention the word 'negligent'.

After hearing, the Court finds that the sufficient evidence was led by the appellant in the said case to prove the negligence of Akshay Goel, driver of the offending car. The copy of the award is placed on record. A perusal of the same shows that claimant/appellant Parminder Singh himself stepped into the witness box as AW-1 and tendered his affidavit in examination-in-chief and reiterated the version of claim petition. An FIR No.50 dated 26.06.2009 was also registered under Sections 279/338 IPC against the driver Akshay Goel. One Harjit Kumar was examined as AW-2 as independent witness who also tendered his affidavit in examination-in-chief, wherein he has corroborated the incident and stated in no uncertain terms that Akshay Goel was driving the car in a rash and negligent manner. Moreover, the claim petition was allowed taking note of the FIR which was under Sections 279/338 IPC-for rash and negligent driving. The claim could not have been allowed under Section 166 of the Motor Vehicles Act, 1988, in case the negligence of the driver of the offending vehicle had not been proved. The claim petition having been allowed under Section 166 of the MACT, there can only be one conclusion i.e. the negligence of the driver of the offending vehicle. Moreover, no appeal was filed against the said award and the said award was accepted by the driver Akshay Goel as well as the owner of the offending vehicle, Surinder Mohan, respondent in the present appeal. Having accepted the award under Section 166 of the MACT, it is no

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Akshay Goel was not proved. The Tribunal seems to have been extra cautious while ignoring to mention the word negligence for obvious reasons, which is evident on the face of it. Less said, the better !

There is another reason as to why the present award deserves to be set aside. Neither the issue of contributory negligence was raised nor it was framed and nor argued before the Tribunal in the claim petition bearing No.39 dated 09.10.2009. In the absence of any finding on contributory negligence, no claim petition for recovery of damages to the car could have been filed against the appellant. Surprisingly, the insurance company of the offending vehicle, which was impleaded as party was also subsequently deleted vide order dated 21.05.2011 on an application filed by the respondent for reasons best known to the respondent himself. Photocopy of the same is taken on record. This fact has not been denied by learned counsel for the respondent that the name United India Insurance Company, Gurdaspur, insurer of offending car bearing No.CH-04-6991, was subsequently deleted from the array of respondent. Once the Tribunal, while passing the award in claim petition bearing No.39 dated 09.10.2009 in favour of the appellant has held that it was proved by the appellant that he sustained injuries in the accident in question, which took place with offending car No.CH-04-6991 driven by Sh. Akshay Goel, respondent No.2 therein, son of respondent, no compensation on account of damage to the car could have been awarded by the Tribunal in the present case against the same appellant. The reason is not for to seek. It is both blatant and shocking.

In view of the above, the present appeal is allowed and the award dated 15.10.2012 is set aside keeping in mind the findings recorded

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09.10.2009, against which no appeal was filed by the respondent and in which the accident was held to be on account the offending vehicle driven by Akshay Goel, son of the private respondent in which no issue of contributory negligence was either raised nor framed or held.

18.10.2019
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No