

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

FAO-1104-2012 (O&M)

Date of decision: 19.03.2019

Amit

...Appellant

Versus

Rajesh Kumar and others

...Respondents

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

Present: Mr. APS Sekhon, Legal Aid Counsel
for the appellant.

Ms. Vandana Malhotra, Advocate for respondent No.3.

H.S. MADAAN, J. (Oral)

Appellant/claimant Amit had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Rajesh Kumar-driver, Braham Parkash-owner and ICICI Lombard General Insurance Company Ltd., New Delhi-insurer of Jeep No.HR-26-AQ-1100, claiming compensation of Rs.20 lacs for receiving injuries in a motor vehicular accident, which took place on 06.12.2009.

As per version of the appellant/claimant on 06.12.2009 at about 10.30 AM, Ankur son of Vijay Kaushik, appellant/claimant Amit along with his brother Rajesh were travelling in Pajero Jeep No.HR-26-AQ-1100 and going to market from Daultabad. The jeep was being driven by Rajesh son of Braham Parkash, while on Daultabad-Dhanwapur road, a Blue Bull (Neela Gai) suddenly appeared in front of the jeep. Rajesh

could not control the vehicle; he applied brakes, resultantly the jeep turned turtle. Amit and Ankur received grievous injuries. The appellant/claimant Amit was removed to ARTEMIS Health Medicare Services Ltd., Sector-51, Gurgaon, where he remained as an indoor patient from 06.12.2009 to 31.12.2009. According to the claimant, the accident had taken place due to rash and negligent driving of the jeep by respondent No.1 Rajesh Kumar.

Notice of the claim petition was given to the respondents who put in appearance. Respondent Nos. 1 & 2 filed a joint written statement, contesting the assertions in the claim petition, denying that the accident had taken place due to rash and negligent driving of Jeep No.HR-26-AQ-1100 in question by respondent No.1 Rajesh Kumar. As such, respondents prayed for dismissal of the claim petition.

Respondent No.3-Insurance Company filed a separate written statement, taking various legal objections, challenging maintainability of the claim petition and locus standi of the claimant to file it. The insurance company denied that claimant had received injuries in the accident as alleged by him. It came up with a plea that respondent No.1 was not holding a valid and effective driving licence to drive the jeep, in that way, respondent No.2 had violated the terms & conditions of insurance policy. As such respondent contended that it was not liable to pay any compensation to the claimant on behalf of the insured. In the end, it prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were

framed:-

1. Whether the accident in question was caused by respondent No.1 while driving vehicle bearing registration No.HR-26-AQ-1100 in a rash and negligent manner resulting into injuries to petitioner, as alleged? OPP.
2. If issue No.1 is proved, whether the petitioner is entitled to any compensation and if so, to what extent and from whom? OPP.
3. Whether respondent No.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy? OPR(3).
4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal decided issue No.1 against the petitioner. Issues Nos.2 & 3 were decided as having become redundant. In view of such findings, vide award dated 29.08.2011, the claim petition was dismissed.

The claimant felt aggrieved by the said award and has approached this Court, by way of filing the present appeal, praying that the impugned award be set aside, the claim petition be accepted and compensation be awarded to him. Notice of the appeal was given to respondents, however, only respondent No.3-Insurance Company has appeared to offer a contest.

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

Though the petitioner/claimant in the claim petition has contended that the accident had taken place due to rash and negligent driving of jeep by respondent No.1 Rajesh Kumar, but, if we see the facts

and circumstances of the case in entirety and analyze the evidence adduced by the parties, then, it comes out that it was not so and the accident had taken place due to sudden appearance of a Blue Bull (Neel Gai) in front of the jeep. The tribunal by detailed analysis of the evidence adduced by the parties, considering copy of DDR No.24 dated 15.12.2009 Ex.P1 recorded at Police Station Rajindra Park, Gurgaon on statement of Rajesh to the effect that the accident had taken place on account of sudden appearance of Blue Bull (Neel Gai) before the jeep and that he had applied brakes, as a result of which the vehicle turned turtle and nobody was responsible for the said accident, which had taken place per chance as well as copy of DDR No.15 dated 26.12.2009 Ex.P2 recorded at that very police station on statement of Lalit son of Vijay Kaushik to the similar effect and further noting that father of Amit injured, namely, Braham Parkash had not witnessed the accident and had rather made statement to doctor as per MLR Ex.P7 that Amit had met with an accident while driving four wheeler, had come to conclusion that respondent No.1 was not guilty of rash and negligent driving. The documents Ex.P1 & P2 had been tendered into evidence by claimant himself. It being so, now he cannot wriggle out of their contents. The tribunal was justified in returning the findings that the accident had not taken place on account of rash and negligent driving of Jeep No.HR-26-AQ-1100 by respondent No.1 Rajesh Kumar.

However, the petitioner/claimant had successfully established on record that he had suffered injuries while travelling in the jeep in question on account of road side accident. PW-5 Sarita Rani,

Medical Record Department, Artemis Hospital, Sector-51, Gurgaon had brought the summoned record with regard to the claimant, stating that he was admitted in their hospital on 06.12.2009 and was discharged on 31.12.2009. She had proved various documents including copy of intimation given by their hospital to the Police Station Rajendra Park, Gurgaon Ex.P6, copy of MLR of injured Ex.P7, final bill Ex.P8, emergency medical certificate Ex.P9. A perusal of police intimation form Ex.P6 goes to show that it is mentioned therein that petitioner Amit had been admitted in the said hospital as a case of suffering head injury in a road side accident.

From the evidence available on file, it comes out that the petitioner/claimant had suffered serious and grievous multiple injuries and in terms of Section 140 of the Motor Vehicles Act, compensation of Rs.25,000/- ought to have been awarded to the claimant, payable by all the three respondents, jointly and severally. The tribunal lost sight of that fact and dismissed the claim petition in totality. That wrong is undone by way of acceptance of the appeal in part. Resultantly, the impugned award is set aside and compensation of Rs.25,000/- is awarded to the appellant/claimant, payable by all the three respondents, jointly and severally with interest @ 7.5% p.a., from the date of filing of appeal till actual realization besides costs of the litigation.

19.03.2019

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(H.S. MADAAN)
JUDGE

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