

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.911 of 2003
Date of Decision: 24.01.2020

Vaneet

..... APPELLANT

VERSUS

Tej Pal & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

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PRESENT: - Mr. Surjit Singh, Advocate, for Mr. Vikram Singh,
Advocate, for the appellant.

Mr. Pardeep Goyal, Advocate, for respondent No.3.

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Sant Parkash, J

The present appeal is directed against award dated 06.11.2002 passed by the Motor Accident Claims Tribunal, Karnal (for short, 'Tribunal') whereby the claim petition filed by the appellant has been dismissed.

Brief facts as unfolded from the file are that the appellant – claimant suffered multiple, serious and grievous injuries in the accident, allegedly caused by respondent No.1 – Driver, while driving the Tractor bearing No.HR-07-C-5618, in a rash and negligent manner when the injured – claimant was coming from his school. The said accident was witnessed by various persons present there and had respondent No.1 been a little bit

careful, the accident could have been avoided. It was next pleaded that the offending vehicle was owned by respondent No.2 – Neki Ram and the vehicle was insured with respondent No.3 _ New India Assurance Company Limited (for short, ‘Insurance Company’), and therefore, all the three respondents were jointly and severally are liable to indemnify the appellant – claimant on account of injuries sustained by him in the accident.

Upon notice, respondent Nos.1 and 2 appeared and filed joint written statement denying therein the allegations in the claim petition in toto. The alleged accident was the result of negligence of the appellant – claimant himself when he tried to cross the road without observing the traffic rules. Apart from that, certain preliminary objections with regard to cause of action; and non maintainability, were also taken.

Respondent No.3 – Insurance Company filed a separate written statement and apart from taking all the identical pleas as taken in the written statement filed on behalf of respondent Nos.1 and 2, took the plea that respondent No.1 was not having valid and effective driving license at the time of accident. Since respondent No.1 contravened the terms and conditions of the insurance policy, the Insurance Company was not liable to indemnify; and the plea of collusion between the claimant and respondent Nos.1 & 2 was also taken.

No replication was filed.

From the pleadings of the parties, the following issues were framed by the Tribunal:-

“1. Whether the accident in question took place due to the rash and negligent driving of tractor bearing No.HR-07C-5819 by its driver respondent no.1? OPP.

2. If issue no.1 is proved, whether the claimant is entitled to receive any compensation, if so how much and from whom?

OPP.

3. Whether the petition is not maintainable in the present form?

OPR.

4. Whether the claimant has got no cause of action to file the present petition? OPR

5. Whether the respondent no.1 was not holding a valid driving licence at the time of accident, is so its effect? OPR-3

4. Relief.”

In order to substantiate the aforesaid issues, appellant – claimant examined three witnesses in support of his claim and also relied on documents – Ex.P1 to Ex.P62.

On the contrary, respondent No.1 himself appeared in the witness box as RW-1 besides examining Bela Malik as RW-2 – Licencing Clerk and tendered report Ex.R1. Respondent No.3 tendered into evidence the investigation report Ex.R2 and the policy cover note Ex.P3.

Having heard learned counsel for the parties and going through the material placed, the learned Tribunal decided issue No.1 against the appellant – claimant and in favour of respondents, and held that the accident was not the result of the rash and negligent driving by respondent No.1. Issue No.2 was also decided in favour of respondents and against the appellant – claimant. Issue Nos.3 and 4 were taken up together and decided again in favour of the respondents and against the appellant – claimant. Issue No.5 was decided in favour of respondent No.3 – Insurance company and

against respondent Nos.1 and 2, and in the Relief clause, the petition was dismissed.

Assailing the impugned award of the Tribunal, learned counsel for the appellant has vehemently argued that the Tribunal did not consider the overwhelming oral as well as documentary evidence and passed the awarded on conjectures and surmises. The learned Tribunal failed to appreciate the evidence of PW-2, Mukesh Kumar, who was the eye witness of the occurrence and ignored it on flimsy grounds. Since the factum of the accident was duly admitted by respondent No.1, the Tribunal ought to have held that the accident was the result of the rash and negligent driving of respondent No.1. The mere non-registration of FIR is no ground to dismiss the petition. It was the duty of the Tribunal to assess the evidence before it and the admission of respondent No.1 regarding the accident, was the clinching piece of evidence, which the Tribunal erroneously ignored, as also relying upon Tarwinder Singh vs. Ishwar Chand Mittal, 2001 (3) Civil Court Cases 286.

Per contra, learned Insurance Company took strong exceptions and hailed the impugned award, and urged that learned Tribunal, after evaluating the evidence on file, rightly came to the conclusion that the claimant had failed to prove that the accident was the result of rash and negligent driving of respondent No.1. There were no reason to interfere with the findings recorded by the Tribunal and the appeal should be dismissed.

Heard.

The factual matrix of the present case is not disputed. It is also proved on record that the appellant– claimant had sustained injuries in the accident with Tractor bearing No.HR-07C-5618, which was being driven

by respondent No.1. The mode and manner of the accident has been disputed specifically by respondent No.1. The plea of the claimant is that the accident was the result of rash and negligent driving of respondent No1 whereas respondent No.1 has set up a divergent plea that the accident occurred when the claimant himself was crossing the road without observing the traffic rules. Admittedly, no DDR or FIR was recorded in this case. In the given circumstances, the evidence coming before this Court is to be scanned minutely. PW-1 is Dr. V.K. Singla, who treated the claimant. PW-2 – Mukesh Kumar happens to be the most material and star witness who claims himself to be the eye witness of occurrence. If the testimony of this witness is glanced through minutely, it would be revealed that presence of this witness is highly improbable and there appears no reason to differ with the finding recorded by the Tribunal that his testimony was not believable and his presence at the spot could not be established.

PW-2, Mukesh Kumar has admitted in his cross examination that the driver of the tractor was known to him. He further admitted that he was inside his residence and till he came out of his residence, the tractor kept standing over the body of the injured for about 1-1/2 minute. He further stated that the tractor driver had fled away from the spot along with the tractor. He did not go to the police station and his statement was never recorded by the police. If the statement of this witness is considered in totality, a reasonable and irresistible conclusion can be drawn that he had come at the spot after the accident. This witness failed to specify the mode and manner of the accident and has merely stated that the accident was caused on account of the rash and negligent driving of respondent No.1.

There is one another circumstance which goes to the root of the case and

fortifies the claim of respondent No.1 that the matter was never reported to the police and even at the time of admission of the claimant in the hospital, it was nowhere mentioned that the injuries have been caused on account of any motor vehicular accident.

Admittedly, the FIR or DDR is an important piece of evidence in case of accidental injuries/death but in the absence of the same, the Court has to scrutinize the evidence before it very minutely. The sole eye witness of the occurrence i.e. PW-2-Mukesh Kumar has miserably failed to attribute the rash and negligent driving on the part of respondent No.1 in causing the accident.

As per the case of the claimant, many other people had also assembled at the spot but none of them except PW-2-Mukesh Kumar was examined for the reasons best known to the injured claimant.

In the light of aforesaid discussion, it can be conclusively said that the findings recorded by the learned Tribunal do not warrant any interference. There is no illegality or infirmity in the impugned award and the present appeal being devoid of any merit is dismissed.

24.01.2020
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(Sant Parkash)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No