

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

302

FAO-3115-1996

Date of Decision: 08.09.2022

Shashi Kumar Garg

..... Appellant

Versus

Ravinder Kumar Garg and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr.Rakesh Chopra , Advocate
for the appellant.

Mr. Raj Kumar Bashamboo, Advocate
for respondent No.3- Insurance Company.

JAGMOHAN BANSAL, J. (Oral)

1. The appellant through instant appeal is seeking quashing of award dated 19.07.1996 passed by Motor Accident Claims Tribunal, Kurukshetra (for short 'Tribunal') whereby learned Tribunal has dismissed the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short '1988 Act').

2. The facts emerging from record and necessary for the adjudication of present appeal are that on 22.04.1993, the appellant was travelling in a car which met with an accident, resulting into substantial loss of car and injuries to appellant. The appellant filed a claim petition under Section 166 of 1988 Act before learned Tribunal seeking compensation. The appellant contended that car was driven by Ravinder Kumar Garg and due to his rash and negligent driving,

the car met with an accident. Question framed by learned Tribunal which is necessary for the adjudication of the present appeal is reproduced as under:-

“1. Whether the accident in question occurred due to rash and negligent driving of respondent No.1? OPP”

3. Learned Tribunal found that accident did not occur due to rash and negligent driving of respondent No.1- Ravinder Kumar Garg and in fact Ravinder Kumar Garg was not driving the vehicle. The findings recorded by learned Tribunal are reproduced as below :-

“In the petition, the petitioner has stated that they were going on the road and a bus was coming from the opposite direction. That another bus tried to overtake the bus and the car was taken on the extreme left by the driver and hit with a tree near the pits. This version is totally changed by him while appearing in the witness box as PW3. Because, here he states that in fact the driver of the Car was overtaking the bus, that in the meanwhile a bus came from the opposite direction. The driver of his car could not control it and the car went on the berm and became uncontrolled and and striked in the tree standing on the right side of the road while coming from Rajpura. These both versions are contradictory. There is another major contradiction in the statement of both these witnesses. Shashi Kumar Garg while appearing as PW 3 has stated that while the driver was driving the car he was sitting on the rear seat near the left window; whereas when Ravinder Kumar Garg

appeared in the witness box as RW1, he has stated that Shashi Kumar Garg was sitting on the front seat parallel to his own seat. The petition showing accident on the left side was filed with a view to corroborate the fact that the left side of the car could hit with the tree only when the car is taken on the left side of the kutcha road. However, the claimant even did not stick with these allegations and has turned the whole story by alleging that the vehicle went on the berm and thereafter it hit with the tree on the right hand side of the road. Ravinder Kumar Garg, respondent No.1 has although stated that he received minor injuries, but no such certificate etc has been produced to show that he was at all injured. Moreover, there being total damage of the car, it is not expected that Ravinder Kumar would be spared by infliction of minor injuries. This all story of driving the car by Ravinder Kumar has been introduced, because the car stands registered in the name of claimant himself as partner of M/s Globe Industries, knowing well that if the car is shown to be driven by Shashi Kumar Garg he would not be entitled to compensation from the insurance company. Ravinder Kumar Garg has been falsely introduced. It is pertinent to mention that Ravinder Kumar Garg while appearing as RW1 has stated the address to be of Gaziabad; whereas in the petition, the address is shown to be c/o M/s Kalu Ram Kailash Chand, Rurke(UP).

10. The argument of the counsel that the insurance company could have pleaded and proved facts otherwise, is without force. Because,

*it was for the claimant to prove that the accident occurred due to negligence of respondent no. 1. In view of **Shingara Sigh Vs. Ajit Singh and another (1992-1) P.L.R.(P&H) 233**, even if the accident is proved and there is total denial by the driver, the onus to prove that the accident took place due to the negligence of the driver is still on the claimant. The claimant has not been able to discharge his onus.*

11. Resultantly, thus I hold that the accident did not occur due to rash and negligent driving of respondent no 1. In fact Ravinder Kumar Garg was not driving the vehicle at the relevant time. The issue, as such, is returned against the petitioner.”

4. Learned counsel for the appellant contended that learned Tribunal wrongly and without any basis has held that Ravinder Kumar Garg was not driving car in question. In support of his contention, he pleaded that insurer has sanctioned claim with respect to damage to car and in the claim application, it was submitted that Ravinder Kumar Garg was driving the car. By releasing the claim on account of damage to car, the insurer has accepted the fact that Ravinder Kumar Garg was driving the car at the relevant point of time. Thus, insurer is precluded from contending that car was not being driven by Ravinder Kumar Garg.

5. Per contra, learned counsel for the respondent-Insurance Company contended that learned Tribunal has recorded well reasoned findings and there is no ground to interfere. On the question of release of compensation qua damage to car, he pleaded

that release of compensation on account of damage to car does not mean that insurer had accepted that Ravinder Kumar Garg was driving the car and even otherwise, the findings recorded by the Court cannot be ignored simply because an employee of the company has released the funds. The damage to car cannot be equated at par with injury to the occupants.

6. I have perused the record and heard arguments of both sides.

7. Learned Tribunal after considering arguments of both sides has concluded that evidences led by claimants are totally contradictory to stand raised in the claim petition. It is also undisputed fact that claimant and Ravinder Kumar Garg are real brothers and appellant in the memo of parties has not disclosed this fact. The insurer has specifically pointed out this fact. It has further been brought on record that no FIR was lodged against alleged driver of the car. The appellant has intentionally concealed father's name of the alleged driver i.e. Ravinder Kumar Garg because it would have disclosed the fact that they are real brothers.

The only contention of appellant is that insurer has released compensation qua damage to car, thus, insurer is precluded from denying claim of the appellant. Merely fact that claim qua damage to car has been released does not preclude the respondent from disputing facts narrated by appellant. No principle of estoppel is applicable especially when a judicial forum has recorded findings after considering documentary as well as oral

evidences on record.

8. I do not find myself able to form any opinion contrary to opinion expressed by learned Tribunal. The findings recorded by learned Tribunal are fair and reasonable, thus, there is no ground to interfere. The present appeal deserved to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

08.09.2022
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>