

FAO-1342-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1342-2017

Date of Decision: December 6, 2022

Sh. Ram Rattan

... Appellant

Versus

Dharmender and another

... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Lekh Raj Nandal, Advocate for the appellant.

DEEPAK GUPTA, J.(Oral)

This appeal is directed against the Award dated 21.05.2016 passed by learned Motor Accident Claims Tribunal, Rohtak, whereby claim petition No.72 of 2014 titled as ***“Ram Rattan vs Dharmender and another”*** filed by appellant-claimant seeking compensation for injuries sustained by him in a motor vehicular accident, was dismissed.

2. Facts, in brief, as pleaded by the appellant-claimant are that he is a mason. On 08.10.2013, after finishing his construction work at village Chamaria, as he was moving towards Rohtak on his cycle through Nasirpur road, a three-wheeler bearing registration No.HR-46C-3870 came from opposite side being driven by respondent No.1 at high speed and in rash & negligent manner and hit his cycle. Due to the impact of the accident, appellant-claimant sustained injuries. Sombir, who was coming behind him witnessed the accident and shifted him to the hospital. FIR No.365 dated 09.10.2013 u/s 279, 336 & 337 IPC was registered at Police Station Rohtak Sadar on the statement of the appellant-claimant himself. Appellant-claimant submitted further that inadvertently, he

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mentioned the registration number of the offending three-wheeler as HR-46B-1404, instead of HR-46C-3870, in the FIR. He became disabled on account of the injuries and was deprived of his income. He sought compensation of ₹30,00,000/-.

3. Respondent No.1 i.e. driver-cum-owner denied the involvement of his vehicle and opposed the claim petition. Respondent No.2-Insurance Company also denied the accident as well as involvement of the offending vehicle. It was further pleaded that in case factum of accident and involvement of the offending vehicle is proved, even then it was not liable to indemnify the owner- respondent No.1, as he was not having a valid and effective driving licence to drive the vehicle.

4. Necessary issues were framed. Evidence produced by the parties was taken on record. Learned Tribunal on analysing the evidence came to the conclusion that appellant-claimant had failed to prove the involvement of the offending vehicle in the accident and so, decided the issue pertaining to negligence against the appellant-claimant. No finding was recorded on other issues in view of the finding on the issue pertaining to negligence. The claim petition was accordingly dismissed.

5. It is submitted by the counsel for the appellant-claimant that evidence of PW4 has not been considered by the Tribunal despite the fact that he was a material witness being and eye witness and who specifically deposed about the involvement of three-wheeler bearing registration No.HR-46C-3870. The Tribunal wrongly relied upon the evidence led by the respondents. With these submissions, prayer is made to set aside the impugned Award and to grant compensation to the appellant-claimant.

6. I have considered submission of learned counsel for the appellant and have also perused the record.

7. As per settled position of law, mere filing of the challan and framing of the charge and even recording the judgment of conviction by the criminal Court is not sufficient to hold that accident was caused by the vehicle mentioned in the petition. Onus is upon the petitioners, seeking compensation under Section 166 of the Motor Vehicles Act to prove that accident was caused due to rash or negligent driving of the respondent-driver.

8. Reliance in this regard can be placed upon ***Minu B. Mehta and another Vs. Balkrishna Ramchandra Nayan 1977 A.C.J. 118***, wherein it has been held by Hon'ble Supreme Court that it is incumbent upon the claimants to prove negligence before the owner or insurance company could be held liable for compensation because the liability of owner of vehicle to compensate the victim is based on law of Tort. Hon'ble Supreme Court held further that if compensation is awarded without proof of negligence, it would lead to strange results. Further, the concept of vicarious liability without any negligence is opposed to the basic principles of law.

9. In ***Chameli Devi Vs. Mukesh 2016 ACJ 27 (P&H)***, it has been held that the fact of driver facing trial in a criminal case in relation to the accident and the finding arrived therein would not ipso facto establish any negligence on the part of driver.

10. In ***Mukesh Devi Vs. Sandeep 2018 (2) RCR (Civil) 629 (P&H)***, it was held that in a petition filed under Section 166 of Motor

Vehicles Act, initial onus is always upon the petitioners to prove the negligence of the offending vehicle. Mere filing of the challan against respondent no.1, facing of the trial by him or even the conviction recorded in criminal proceedings, cannot be sufficient to hold him responsible for causing the accident in the absence of any evidence produced in the petition. This High Court held further that result of criminal proceedings should not affect claim proceedings under the Motor Vehicles Act and rather, it is to be established on the evidence produced.

11. In **Ram Karan Vs. Zile Singh, 2001 (3) RCR (Civil) (P&H) 582**, it was held that mere an FIR, framing of charge and even judgment of conviction or acquittal of criminal court is not binding on the Tribunal and that onus of proving negligence is always upon the claimants and they have to discharge it before the Tribunal.

12. In **Anguri Devi v. Lakhvinder Singh 2017(3) PLR 86 (P&H HC)**, this High Court held as under:

“16. It is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the driver as the Tribunal is required to act upon the evidence adduced before it. To support this view reference can be made to case ***Ram Karan v. Zile Singh 2001(3) RCR (Civil) 582***. In a latest judgment titled as ***Kamlesh and others v. Attar Singh and others 2016(1) RCR (Civil) 24***, the Hon’ble Apex Court has laid down that though the police has registered a case against the driver of the Tempo and filed the charge sheet but the same cannot be said to be conclusive.”

13. In the light of above legal position, evidence on record of this case is to be analyzed.

14. The accident took place on 08.10.2013 at about 6.30 p.m. FIR was lodged on the basis of statement made by the appellant-claimant himself, wherein he specifically disclosed the registration number of the offending vehicle to be HR-46B-1404. It was further stated in the FIR that accident was also witnessed by Sombir s/o Ram Kumar.

15. Appellant-claimant Ram Rattan, when entered the witness box as PW1, disclosed during his cross-examination that he himself had noticed the registration number of the offending vehicle to be HR-46B-1404 and the same was not disclosed to him by anybody else. In later part of his cross-examination, PW1 Ram Rattan says that correct number of the offending vehicle to be HR-46-C-3870 was disclosed to him by one Surajmal. This Surajmal, to be the eye witness of the accident, has been introduced for the first time by the appellant-claimant during his cross-examination. Although, PW1 says that in the evening of 09.10.2013 itself, he had come to know that registration number of the offending vehicle was HR-46C-3870 but he did not approach the police prior to 30.11.2013. It is only on 30.11.2013 that he made supplementary statement before the police to the effect that correct number of the offending vehicle was HR-46C-3870. He further stated that owner of the said vehicle had approached him.

16. Interestingly, Surajmal, who is stated to have disclosed to the appellant-claimant the number of the offending vehicle to be HR-46C-3870, has not been examined by the appellant-claimant. It is only Sombir,

also referred as an eye witness in the FIR, who was produced as PW4. In his affidavit tendered as examination-in-chief, said Sombir disclosed the registration number of the offending vehicle to be HR-46C-3870 and in his cross-examination, he says that he had noted the said registration at the spot itself. He further says that he did not make any statement to the police. However, respondents in their cross-examination examined Shri Jatinder, Criminal Ahlmad to the Court of learned JMIC, Rohtak, where the trial of the criminal case was pending, who proved documents Ex.R-2 to R-9. PW4 Sombir had made a statement before the police (copy Ex.R-2) on 9.10.2013 itself, in which he clearly stated that number of the offending vehicle was HR-46B-1404. Thus, the statement made by him before the Tribunal that he had noted at the spot registration number of the offending vehicle to be HR-46C-3870 is not at all reliable.

17. As per statement of RW1, witnesses Surajmal and Naresh had been given up by the prosecution on the ground that they had colluded with the accused and that Ram Rattan had not appeared in the witness box despite service several times.

18. A perusal of the police challan also reveals that it is on 30.11.2013 i.e. after one month and 21 days of the accident that appellant-claimant had made a supplementary statement to the effect that correct number of the offending vehicle was HR-46C-3870.

19. It is also important to notice that Surajmal, who was introduced by the appellant-claimant to be the eye witness of the accident and who allegedly told him the correct registration number of the offending vehicle is none else than the father of respondent No.1

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Dharmender. It is, thus, clear that a friendly match was being played between the appellant-claimant and respondent No.1 in order to extract compensation from the Insurance Company. At the instance of Surajmal, the father of respondent No.1 i.e. driver-cum-owner, vehicle number HR-46C-3870 was introduced to be offending vehicle and then, said Surajmal did not appear in the witness box in the criminal trial in order to ensure the acquittal of Dharmender.

20. Learned Tribunal has correctly appreciated the evidence on record and has rightly dismissed the claim petition by disbelieving the version of the appellant-claimant. It has been rightly held that the appellant-claimant failed to prove the involvement of the vehicle bearing registration No.HR-46C-3870 in the accident. The claim petition has been rightly rejected.

21. As such, finding the present appeal to be devoid of merits, the same is hereby dismissed.

December 6 , 2022
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No