

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2127/2021

Date of decision:06/02/2023

Smt.Sumitra Devi

.....Appellant

Vs.

Manish Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Narender Kaajla, Advocate for the appellant

Nidhi Gupta, J.

Present appeal has been filed by the claimant/appellant against the dismissal of her claim petition bearing MACT Case NO.146/2017 filed u/s 166 of the Motor Vehicles Act,1988, vide Award dated 29.2.2020, passed by learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal').

Learned Tribunal on the basis of the pleadings and evidence adduced before it concluded that the appellant was unable to prove that the accident in question had occurred due to the rash and negligent driving of respondent no.1-driver of Bolero Jeep bearing registration No. HR-16-L-9041

(hereinafter referred to as 'the offending vehicle'), owned by respondent no.2, and insured by respondent no.3. Accordingly, Id. Tribunal had dismissed the claim petition.

Brief facts of the case are that on 12.8.2017 Om Parkash (hereinafter referred to as 'the deceased') alongwith Dalip son of Sh.Hari Singh, Manish son of Sh.Om Parkash was going to village Devsar from his village in the offending vehicle, which was being driven by Manish. It was pleaded case of the appellant before the learned Tribunal that the offending vehicle was being driven by Manish in a very rash and negligent manner, and when the said party reached between Village Gurera and Kikra then a Bluebuck (Neelgai) suddenly appeared on the road and Manish, driver of the offending vehicle lost his control over the vehicle and struck against a tree by the side of the road. The occupants of the jeep received injuries on their persons. They were shifted to G.H.Siwani, from where they were shifted to Jindal Hospital, Hisar. Om Parkash was shifted to SMS Hospital, Jaipur on 16.8.2017 where he succumbed to the injuries during treatment. Pursuant to the accident, DDR No.23 dated 28.10.2017 was lodged regarding accident in question at PS Siwani on the statement of Dalip Singh, injured.

It is submitted by the learned counsel for the appellant that the only ground on which the learned Tribunal has dismissed the appellant's claim petition is that the Tribunal has placed reliance on the DDR Ex.PW2/1; and has discounted and ignored the statement made by PW2 Dalip Singh in his affidavit Ex.PW2/A.

No other argument has been advanced on behalf of the appellant.

Heard Ld. Counsel.

A perusal of the impugned Award shows that the Id. Tribunal has scrutinized the evidence led before it in great detail. In respect of the testimony and cross-examination of said Dalip Singh PW2, the Id. Tribunal has given the following findings:-

“ 17. PW2 Dalip Singh, an eye witness has tendered in evidence his affidavit Ex.PW2/A in which he has narrated the manner of accident. In his cross-examination, he has denied that Bolero in question has been falsely involved after more than two months and six days from the date of the alleged accident. He did not lodge any FIR against respondent No. 1 till that day with regard to alleged accident. He does not know as to whether the Bolero in question was taken into possession by police or any mechanical examination or photograph was done by the police. Deceased was his cousin brother. Manish respondent No. 1 is his nephew in relation. He alongwith Manish and Sh.Om Parkash started on 12.8.2017 at about 11/11.30 am. However, one more person boarded vehicle from Galar whose name he does not know. He also received injuries but he has not brought any record of the same like BHT or MLR. He self stated that he shall produce the record of his injury through his counsel on next date. He became unconscious soon after the accident and he regained consciousness on the next day at night. Police recorded his statement on 18.10.2017 for first time at his village Gadra. Prior to this, police never recorded his statement. He had mentioned in his DDR that there was nobody at fault and the same was disclosed by him to the police. He does not know as to how the deceased was shifted to hospital as he had become unconscious. He denied that he has narrated wrong and improved facts in his affidavit and that Bolero in question has been falsely involved in collusion with respondents No. 1 and 2 and the police authority by lodging DDR after two months and ten days in order to get compensation from the Insurance company. He denied that he is a procured witness and he was not present at the time of alleged accident or that he did not suffer any injury or that the accident narrated in para no, 24 of the claim petition as well as in his affidavit is the result of afterthought and collusion and is twisted and improved version. He cannot produce DL of Manish and RC of Bolero in question”.

Further perusal of the impugned Award shows that learned Tribunal has recorded therein that as per the statement given by Dalip Singh PW2 on the basis of which DDR was registered, the accident had occurred

when a Bluebuck (Neelgai) suddenly appeared on the road and to save it, respondent no.1 had swerved as a result of which he lost control of the vehicle. In order to establish a case u/s 166 of the M.V. Act, the essential ingredient to prove is that the offending vehicle was being driven in a rash and negligent manner by the driver. However, in the present case as per DDR, it has nowhere been stated by PW2 Dalip Singh that offending vehicle was being driven in a rash and negligent manner by respondent no.1. Even other eye witness Ashok Kumar has not been examined. Therefore, in my view, it is clear that PW2 Dalip Singh has improved his case before the Tribunal by way of evidence/ Affidavit Ex. PW-2A, in order to bring the present case within the purview of Section 166 of the Act. There is no other explanation given as to why PW-2 Dalip Singh resiled from his previous statement and version as given by him while lodging the DDR EX. PW2/1, especially in view of the fact that respondent no.1 driver of the offending vehicle is son of deceased Om Parkash.

Learned counsel for the appellant is unable to controvert the above facts, or explain this discrepancy and loopholes in the case.

Accordingly, I find no merit in this appeal, and the same is hereby, dismissed.

06/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No