

**FAO No.2625 of 2019 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.300****Case No. : FAO No.2625 of 2019 (O&M)****Date of Decision : April 08, 2024**

Oriental Insurance Co. Ltd. Appellant

vs.

Sarvesh Singh Yadav and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Vinod Chaudhri, Advocate
for the appellant – Insurance Company.Mr. R. S. Duggal, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. Challenge in this appeal filed by Oriental Insurance Company Limited (hereinafter referred to as – Insurance Company) is to the Award dated 18.01.2019, whereby learned MACT, Chandigarh (for brevity – the Tribunal) allowed the petition filed by respondent no.1/claimant for grant of compensation on account of damage to the car bearing registration No.CH-01-BJ-9940.

2. In brief, the case of the respondent no.1/claimant is that on 04.12.2017, his car bearing registration No.CH-01-BJ-9940 was parked on the footpath in front of DPS School, Sector 40, Chandigarh. When he was sleeping at his house, he got a call from his friend that his car, which was parked on the footpath, was hit by another car bearing registration No.HR-



05-AF-7004 (hereinafter referred to as – the offending vehicle), driven rashly and negligently by respondent no.2, thereby causing huge damage to his car. Initially respondent no.2 admitted his negligence and fault and also agreed to pay repair charges of the car of the claimant. In that regard, DDR No.63 dated 04.12.2017 was lodged but thereafter, respondent no.2 resiled from his commitment and FIR No. 519 dated 13.12.2017 was registered at Police Station Sector 39, Chandigarh, under Sections 279, 427 of Indian Penal Code against respondent no.2.

3. Upon notice by Tribunal, respondent no.3 did not appear and was proceeded against ex-parte. Respondent no.2 – driver of the offending vehicle contested the petition and denied the accident by submitting that he was falsely implicated in the case. The offending vehicle was not involved in the accident. He was driving his vehicle at a very slow speed and on the correct side of the road by following necessary traffic rules. Rather, the car of the claimant was parked wrongly and illegally at the footpath. The insurer of the vehicle also filed separate written statement and contested the petition.

4. On the basis of the pleadings of the parties, following issues were framed :-

“1. Whether the vehicle of the claimant bearing registration no.CH01-BJ-9940 was damaged in a road side accident due to rash and negligent driving of car bearing registration no.HR05- AF-7004 by respondent no.1?

2. Whether the claimant is entitled to compensation, if so to what amount and from whom?



OPP.

3. *Whether respondent no.1 was not having valid and effective driving license at the time of accident ? OPR-3*

4. *Relief.”*

5. After framing of issues, respondent no.1/claimant himself stepped into the witness box as PW-1 and also examined Naveen Gill, eye-witness of the occurrence as PW-2, Mohan Singh, Manager from the Body & Paint Shop, Em Pee Motors Ltd., Plot no.71, Industrial Area, Panchkula as PW-3. On the other hand, respondent no.2 tendered in evidence copy of his driving license as Ex.R-3, copy of insurance policy as Ex.R-4, copy of registration certificate as Ex.R-5 and closed the evidence. The Insurance Company examined Kailash Chandra, Surveyor & Loss Assessor as RW-1 and closed the evidence.

6. After hearing the arguments of parties and appreciating the evidence on record, the learned Tribunal came to the conclusion that respondent no.2 caused the accident by driving the offending vehicle in rash and negligent manner and damaged the car of the claimant. So, the claimant was held entitled to compensation of Rs.4,75,850/- on account of damage caused to his car.

7. Learned counsel for the appellant Insurance Company has argued that the car of the claimant was parked on the road wrongly and the same was not insured. There was violation of the provisions of the Motor Vehicle Act and rules. The claimant is not entitled for any compensation. The claimant should have filed the claim with his insurer to get own damage

claim about the loss, if any, to his car. Moreover, as per the report of surveyor, the loss assessed was reported to be of Rs.3,04,000/- after making necessary deduction of salvage and excess clause etc. He proved the survey report Ex.R-2. So, it was contended that the Award amounting to Rs.4,75,850/- is not based on accepted parameters of law, whereas the claim was required to be in consonance of the report of independent surveyor.

8. I have heard submissions of learned counsel for the parties and perused the case file.

9. The learned Tribunal has granted the compensation to the claimant in the following manner :-

<u>Sr. No.</u>	<u>Particulars</u>	<u>Amount</u>
01.	Damage as per market value	Rs.4,50,000/-
02.	Toeing charge	Rs.4,000/-
03.	Expenses incurred on assessment of vehicle	Rs.21,850/-
<u>Total amount</u>		<u>Rs.4,75,850/-</u>

10. There is statement of an eye-witness namely Naveen Gill (PW-2), who proved that the car of the claimant was parked on the footpath and driver of the offending vehicle, while driving the offending vehicle, hit the car of the claimant, for which, he agreed to pay the repair charges. DDR No.63 dated 04.12.2017 was lodged but thereafter, respondent no.2 resiled from his commitment and FIR No. 519 dated 13.12.2017 was registered at Police Station Sector 39, Chandigarh, under Sections 279, 427 of Indian Penal Code against respondent no.2 for causing damage to the car of the claimant and dangerous driving.



11. On the other hand, respondent no.2 had denied the accident but did not step into the witness box to deny the same. Respondent no.2 could only explain the circumstances under which the accident in question had taken place. There is no evidence to rebut the evidence regarding accident, led by claimant.

12. An MACT case is like a Civil Case and facts are to be proved on the basis of preponderance of probabilities. The evidence recorded by the learned Tribunal is to be seen for disposal of the claim petition. In case **Sunita and others vs. Rajasthan State Road Transport Corporation and another** reported as **(2019) 2 ACJ 801**, it is held by Hon'ble Supreme Court that the opposite party failed to establish that the deceased was himself negligent. Driver of bus was held to be rash and negligent in causing the accident. In case **National Insurance Co. Ltd. vs. Chamundeswari and others reported as 2021 ACJ 2558**, it has been held by Hon'ble Supreme Court that if any evidence before the Tribunal runs contrary to the contents of FIR, then the evidence recorded before the Tribunal has to be given weightage over FIR. In case **Kusum Lata and others vs. Satbir and others** reported as **2011(3) SCC 646**, Hon'ble Supreme Court held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. In case **Ranjit Kaur vs. Chinder Pal Singh and others** reported as **2006(4) RCR (Civil) (Pb.) 702**, it is held that negligence has to be determined on the basis of evidence on the file and not merely on the basis of DDR or FIR. In the case in hand, the learned Tribunal has rightly held that the accident was caused



by respondent no.2 by driving the offending vehicle in rash and negligent manner and thereby damaged the car of the claimant. The claimant examined Mohan Singh (PW-3), Manager from the Body & Paint Shop, Em Pee Motors Ltd., Panchkula, an authorised dealer. He proved the copy of report Ex.P-4 issued by his Company and as per that estimate, total assessment for repair of damage caused was Rs.7,40,637/-. As per the assessment, there was damage to the visible part of the engine and any kind of internal damage could be assessed only after opening the engine and further, cost of repair might increase after the actual repairs. The said report is from the authorized dealer of the Company.

13. On the other hand, the appellant Insurance Company examined the Surveyor and Loss Assessor namely Kailash Chandra as RW-1, who proved the report Ex.R-2 and assessed the net loss of Rs.3,04,000/-. In his cross-examination, Kailash Chandra stated that he did not take any details of the cost of the parts of the vehicle in question from the Toyota Company. He did not open the parts of the vehicle at the time of assessment. He admitted that he was not expert of the Toyota Company and their cars.

14. Since the Make of car in question was Toyota and authorized dealer of the Company has given report Ex.P-4 that the assessment for repair of damage caused to the vehicle in question is to the tune of Rs.7,40,637/-, the learned Tribunal rightly considered both the reports, depreciation value and present market value of the car and came to the conclusion that market value of the vehicle in question, at the time of accident, after deducting the salvage value, could not be more than Rs.4,50,000/- and therefore, the

claimant was rightly held entitled to receive the said amount.

15. In view of the above discussion, I am of the view that there is no illegality or perversity in the impugned Award passed by the learned Tribunal. So, the appeal is held to be without any merit and the same is accordingly dismissed.

16. Pending applications, if any, shall stand disposed of along with this judgment.

April 08, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.