



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

216

FAO-1406-2007 (O&M)

Date of Decision: October 03, 2024

Makhan Singh

.....Appellant

Vs.

New India Assurance Company Ltd.

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Ritesh Tomar, Advocate
for the appellant

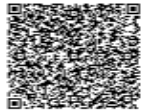
Ms. Simran, Advocate for
Mr. Pardeep Goyal, Advocate
for the respondent-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 4.10.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Gurdaspur (for short, 'the Tribunal') whereby the claim petition filed by the claimant/appellant for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 15.12.1996, Dalbit Masih while driving truck No. PAT-1874 was going from Babehali to Pathankot side. His truck was at a distance of 2-3 Kms. ahead of Village Rashpalwa, suddenly a car came in between the G.T. Road and to avoid



his control. Truck had struck against a mango tree and in the accident Dalbit Masih received multiple grievous injuries and had died on the spot. Truck was badly damaged and was taken to workshop. Investigator and surveyor were appointed by the company. Damage to the tune of Rs. 1.5 lacs was assessed by the surveyor.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1 Whether claimant is the owner of Truck No. PAT-1874 ? OPP

2 Whether Truck No. PAT-1874 driven by Dalbit Masih met with an accident and in the accident truck was damaged? OPP

3 Whether the claimant is entitled to compensation? if so how much? OPP

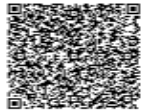
4 Whether the claim petition is not maintainable in the present form? OPR

5 Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the appellant-claimant filed the present appeal.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the appellant contends that the Ld. Tribunal did not appreciate all the facts and circumstances of the case and committed materiel error while discarding the material piece of evidence. Therefore, he prays



that the present appeal be allowed and award dated 04.10.2006 passed by Ld. Tribunal, Gurdaspur, be set aside.

7. *Per contra* learned counsel for the respondent-Insurance Company argues on the lines of the award and contends that the claim petition filed by the appellant has rightly been dismissed.

8. I have heard learned counsel for the parties and perused the whole record of this case.

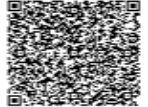
9. The relevant portion of the award dated 04.10.2006 is reproduced as under:-

“8 Case of the claimant is that on 15.12.1996 Dalbit Masih as driver on Truck No. PAT-1874 was going from Babehali to Pathankot side. Truck was at a distance of 2-3 Kms ahead of Village Rashpalwan in the area of P.S. Sadar, Pathankot then suddenly a car in between the G.T. Road. Truck driver had applied brakes to avoid accident and in that process truck went out of control of the driver and the truck had struck against a mango tree. Driver on receipt of multiple grievous injuries in the accident had died on the spot. Truck was badly damaged. Rs. 1,50,000/- is required for repair of the vehicle. Claimant being owner of the vehicle is entitled to get compensation whereas case of respondent is that there was no accident as alleged by the claimant. Claimant is not the owner. Claim petition is not maintainable U/s 163-A of Motor Vehicle Act. Now the main point is whether while driving Truck No. PAT-1874 by Dalbit Masih there was an accident and in that



accident truck was damaged and Dalbit Masih had died on the spot after he had received multiple grievous injuries in the accident.

9. Makhan Singh claimant on oath stated that on 15.12.1996 Dalbit Masih was driver on Truck No. PAT-1874 and was going from Babehali to Pathankot. Truck was in the area of village Rashpalwan, in the meantime suddenly a car came in between the road and driver had applied brakes with the result truck went out of control of the driver and had struck against a mango tree. Dalbit Masih received multiple grievous injuries and had died on the spot. Truck was also badly damaged. Vehicle was taken to authorized workshop. Intimation was given to the company. Investigator and surveyor were appointed to assess the damage. Damages assessed was to the tune of Rs. 1,50,000/-. Claim was lodged with the insurance company but respondent had refuted his claim. On cross-examination Makhan Singh admitted that he had purchased the truck in the year 1996. RC of the truck is in his possession but RC was not produced. Qua accident report was not lodged with the police. At the time of accident he was not the owner of the truck as per R.C. At this stage R.C. of the truck is not in his name. RC was not produced. So one thing is clear from the statement of Makhan Singh that at the time of alleged accident on 15.12.1996, he was not the owner of the truck involved in the accident. Makhan Singh categorically



stated "that he is in possession of R.C. but R.C. was not produced. As per R.C. Makhan Singh was not the owner of the truck. Qua accident DDR was not lodged by the claimant. Ex. A1 is the photocopy of the DDR lodged by Kulwinder Singh ASI. Ex. A2 is the policy and as per policy. Ramesh Kumar s/o Baij Nath is the registered owner of the truck in question. Ex. A3 is the copy of the order dated 26.7.2000 by the Commissioner Workmen Compensation Gurdapsur. Widow of the deceased had filed an application to get compensation. Application was accepted. Ex. A4 is the driving licence. Ex. A27 is the copy of the R.C. Claimant has also produced number of photographs and bills. Ex. A26 is the copy of the certificate to the effect that Truck No. PAT- 1874 of Makhan Singh was under hire purchase agreement with the company.

10. Company has also produced Ex. R1 i.e. copy of the verification report qua driving licence No. 56960 whereas driving licence of the deceased. Ex. A4 is bearing No. 6443. Driving licence was issued on 10.5.1991. Ex. R2 is the report of the Licensing Authority Ex. R3 is about the copy of the driving licence. That means Ex. R1 and R2 are not helpful to the company because driving licence number was 6443 issued on 10.5.91 in the name of Dalbit Masih whereas report is qua driving licence no. 56860. If we presume that driving licence of the deceased is valid then question is whether claimant is entitled to compensation on account of damage to Truck No.



PAT-1874. In AIR 1989 Kerala page 23 General Manager, Kerala State Road Transport Corporation Trivandrum Vs. K.P. Saradamma where it was held that loss of income from bus which was involved in accident cannot be termed as damages to property U/s 110 of Motor Vehicle Act. Such claim should be preferred before a Civil Court. In Vol. CXXXIII-(2003-1 The Punjab Law Reporter page 783 Regional Manager Vs Smt. Bimlesh and others it was held that application U/s 163-A of Motor Vehicle Act for claim in respect of life of the owner/insured who was himself driving the vehicle. Owner/Insured was not a third party. Petition is not maintainable. In 2002 ACJ page 2054 Dr. S.Jayaram Shetty Vs National Insurance Co. Ltd, it was held as under:-

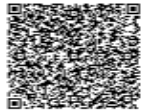
"Motor Vehicle Act, 1988, Section 147(1). Motor Insurance. Private Car. Injuries sustained by owner-insured. Liability of insurance company injuries sustained by owner-insured when the car driven by his driver, dashed against a road side tree. Contention that expression 'any person' occurring in Section 147(1) was wide enough to include within its meaning owner-insured and owner-insured who is not statutorily or contractually exclude from being treated as a third party could maintain a claim in that capacity. Whether the insurance company is liable. Held no.



Counsel for the claimant cited 1997 (3) RCR (Civil) page 473 Subhash Chander (Died) through his LRs Vs. United India Insurance Company wherein it was held as under:-

"Motor Vehicles Act, 1988 Section 166. Liability. Extent of liability. Whether the amount of insurance or more. Held the sum or which a vehicle is insured is the maximum amount which can be awarded. However, it is not a figure which would always be awarded even though the loss for that amount has not been proved."

But the authority cited by learned counsel for the claimant is not applicable to the facts of the present case because in the present case also claimant was not a registered owner at the time of accident. Truck was being driven by Dalbit Masih although the truck was insured. Counsel for the claimant failed to cite any authority to the effect that when the vehicle is insured and RC of the vehicle is not in the name of the claimant then claimant is entitled to get compensation. As discussed earlier as per documentary proof, RC of the vehicle alleged to be involved in the accident was in the name of Ramesh Kumar s/o Baij Nath Ajnala Road, Fatehgarh Churian. In the affidavit Makhan Singh did not state a word that he is the registered owner of the vehicle involved in the accident. If the vehicle was purchased in the year 1996 then why R.C. was not got transferred in his name. When claimant was not the owner of the vehicle alleged to be involved in the



accident, then I am of the opinion that claimant was not a third party. Claim petition is not maintainable. Resultantly issue No. 2 is decided in favour of the claimant and issues no.1 and 4 decided against the claimant.

10. A perusal of the record as well as bare reading of the award shows that the Ld. Tribunal has passed a detailed award and it has been rightly observed by the Ld. Tribunal that the claim petition under Section 163-A of the Act is not maintainable.

11. A perusal of the record further shows that the claimant was not a registered owner at the time of the accident and that the truck was driven by Dalbit Masih, who was driving the offending vehicle and died in the accident. The claim petition filed by the owner of the truck who as per the documentary record was not even the owner of the truck at the time of the accident would not be maintainable on account of damage to truck No. PAT-1874 in the accident.

12. In view of the above findings, I do not find any infirmity in the award passed by the Ld. Tribunal, Gurdaspur and the present appeal is **dismissed** being not maintainable.

13. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

October 03, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes