



FAO-441-2007 (O&M)

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

FAO-441-2007 (O&M)

Date of Decision: November 06, 2024

Shri Bhagwan

.....Appellant

Vs.

Ranjeet and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kartar Singh Malik-I, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for the respondent-Insurance Co.

SUDEEPTI SHARMA J.

1. This is an old matter pertaining to the year 2006 but no one has put in appearance on behalf of the Insurance Company.
2. Previously vide order dated 18.07.2024 in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, the Court would request the counsel empanelled with the Insurance Companies, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.
3. On the asking of the Court, Mr.Suvir Dewan, Advocate accepts notice on behalf of respondent-Insurance Company.

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4. Learned counsel for the appellant has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent- Insurance Company.

5. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr. Suvir Dewan, Advocate, the counsel engaged by this Court in the present case.

FACTS NOT IN DISPUTE

6. The present appeal has been preferred against the award dated 14.11.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal') for enhancement of compensation, awarded to the claimant-appellant.

7. The brief facts of the case are that on 20.12.2002, the appellant was going from Jhajjar to Ahmedabad while driving truck bearing registration No. HR-46-A-7727 at a very moderate speed. When, he reached near Madanganj by passing District Ajmer (Rajasthan), a truck bearing registration No. HR-38-C-6315 being driven by respondent No. 1 came from the opposite side in a rash and negligent manner and struck against the truck of the appellant. As a result of which, the appellant suffered grievous injuries.

8. Upon notice of the claim petition despite service, respondent No. 1 and 2 did not appear and were proceeded against ex parte.

Respondent No. 3 filed written statement, in which apart from taking various preliminary objections denied the allegations made in the claim petition.

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

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- 1) Whether the accident took place due to rash and negligent driving of truck bearing Registration No. HR-38-C-6315 by respondent No. 1 Ranjeet resulting into injuries to claimant? OPP
- 2) If Issue No. 1 is proved, whether the claimant is entitled for any compensation? If so, to what amount and from whom? OPP
- 3) Whether the petition is bad for non joinder of necessary parties? OPR
- 4) Whether the petition is not filed in accordance with provisions of law? OPR
- 5) Whether respondent No. 1 was not holding a valid driving licence and truck in question was being driven in violation of the terms and conditions of the insurance policy? OPR-3
- 6) Relief.

10. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.25,000/- under Section 140 of the Motor Vehicles Act, 1988 alongwith interest @ 7.5% per annum. However, the appellant was granted compensation of Rs. 12500/- on the ground that liability of both the vehicles was equal. Hence the claimant/appellant filed the present appeal for enhancement of compensation awarded by the Tribunal.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

11. The learned counsel for the claimant-appellant contends that the appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988. The appellant suffered disability to the extent of 4%. He contends that the case of the appellant be considered under Section 164 of the Motor Vehicles Act, 1988 as per latest law and the appellant be granted compensation to the tune of Rs.2.5 lacs.

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12. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted.

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

14. The relevant portion of the award reads as under:-

“Issue No. 1

6 In order to prove this issue, petitioner Shri Bhagwan while appearing as PW1 has supported the version given in the petition. No other evidence has been led. The cross examination of this witness reveals that FIR was registered against him. He has also admitted that he is facing trial with regard to this accident. In another petition bearing No.72/5.4.2003, filed by Smt. Shanti Devi wife of conductor of the same truck of which petitioner was driver, I have held him negligent while driving the truck bearing registration No.HR-46A/7727. In this case, petitioner has not been able to prove any document or circumstance to show that in fact he was not negligent and the driver of truck no.HR-38C/6315 was negligent in causing the accident. Simply because respondent no.1 and 2 who were from Himachal Pradesh and Delhi respectively have been proceeded against exparte, it would not absolve the petitioner from proving that it was negligence on the part of the respondent No.1. In nut shell, I hold that petitioner has failed to prove that accident occurred due to rash and negligent driving of respondent no.1 while driving truck bearing registration No.HR-38C/6315 as to cause him injury, as such this issue is decided against the petitioner.



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7. The onus to prove all these issues was upon the respondent-insurance company but it has failed to discharge its onus. Even otherwise, these issues were not pressed during the course of arguments. Hence all these issues are decided against the respondents.”

15. After going through the copy of the award, it is noticed that the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 but the appellant failed to prove the negligence on the part of the driver of other vehicle, therefore, his case has rightly been treated under Section 140 of the Motor Vehicles Act, 1988 by awarding him compensation to the tune of Rs.12,500/-. The appellant was bound to prove the negligence on the part of respondent No. 1. He failed to prove that the accident occurred due to rash and negligent driving of the offending vehicle by respondent No. 1.

16. Accordingly, this Court finds no merit in the present appeal and the same is dismissed. The award dated 14.11.2006 passed by the learned Motor Accident Claims Tribunal, Chandigarh is upheld.

17. Before parting with the judgment, this Court extends its appreciation to Mr. Suvir Dewan, Advocate, for his able assistance to the Court in the present matter.

18. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

November 6, 2024
G Arora

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No