



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3140-2011(O&M)
Date of Decision: July 24, 2024

Kailash Sharma
...Appellant

VERSUS

United India Insurance Company Ltd. and another
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Abhishek Yadav, Advocate
for the appellant.

Mr.Sahej Mahajan, Advocate for
Mr.R.K.Bashamboo, Advocate
for respondent No.1.

Respondent No.2 proceeded against ex parte

ARCHANA PURI, J.

The appellant-claimant has filed the present appeal to assail the judgment of dismissal of the claim petition by learned Motor Accident Claims Tribunal.

The facts germane, to be noticed, are as follows:-

That, on 26.05.2004, the appellant-claimant came from Gurgaon, in the late hours at about 9.00 p.m.. As there was no conveyance available for going to his village Kamalpur, so he borrowed a Maruti Alto car bearing registration No.HR-36B-2090 from his friend Sunil Rao, from his residence in Sector-3 Rewari. While he was proceeding towards village Kamalpur in the aforesaid car and reached on Bawal road, a Nilgai (bluebuck) suddenly came in front of the car and in order to save the same, the appellant-claimant lost his control, as a result of whereof, the car struck against the tree, on a

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road side and he suffered multiple grievous injuries, on his person. In the meantime, PCR Van came there, in which the appellant-claimant was brought to the Civil Hospital, Rewari. Regarding the accident, DDR No.13 dated 22.06.2004 was recorded in Police Station Model Town, Rewari.

The claimant, thereafter, filed claim petition under Section 163-A of the Motor Vehicles Act, thereby, seeking compensation to the extent of Rs.10,00,000/- along with interest as 18% per annum.

In the claim petition, it was averred that the claimant was 40 years old, at the time of accident and was earning Rs.3,000/- per month, while indulging in the business of property dealing.

In pursuance of the notice issued, the respondents made appearance and filed their respective replies. Respondent No.1-insurance company, in its reply, had denied the factum of the accident. Besides the same, age, income and occupation of the claimant has also been denied for want of knowledge. Rather, it was asserted that the amount of compensation claimed is excessive. Also, the insurance company disputed about the maintainability of the claim petition, as it asserted that the claimant was driving the car in question, at the time of alleged accident, cannot be considered as third party.

Respondent No.2-Sunil Rao, owner of the car in question had asserted that Maruti Alto car bearing registration No.HR-36B-2090 was taken by the claimant on 26.05.2004 from his residence and he had suffered injuries in the accident, which took place on the same day at about 9.30 p.m., on Bawal road, Rewari, with the aforesaid car.

After framing of the issues, on appraisal of the evidence,

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brought on record, learned Tribunal concluded about the accident in question, resulting into injuries to the claimant, having not arisen out of the use of the car bearing registration No.HR-36B-2090 and that the claim petition has been filed by the claimant in collusion with respondent No.2, in order to grab the amount of compensation. Furthermore, learned Tribunal had also concluded about the claim petition under Section 163-A to be not maintainable and hence, the claim petition was dismissed.

Feeling aggrieved, appellant-claimant has filed the present appeal.

In pursuance of the notice issued, respondent No.1-insurance company appeared through counsel. However, respondent No.2 was proceeded against ex-parte.

It is categorical claim of the appellant-claimant that the accident had taken place, out of the use of the offending car. To so substantiate his plea, the appellant-claimant had himself stepped into witness box as PW-1 and further also examined PW-2 Ranbir Malik, Medical Incharge, Jeewan Mala Hospital, PW-3 Rajinder Singh, Lab Attendant, Bajaj Blood Bank, who proved various bills, vis-a-vis, treatment of the claimant. PW-4 ASI Surjit Singh, had brought the record of DDR No.13 dated 22.06.2004, copy whereof is Ex.P1. Besides the aforesaid witnesses, PW-5 Dr.Mukesh Kumar, Jeewan Mala Hospital, was examined, who had brought the original treatment record of the claimant and proved discharge summary as Ex.PW5/A.

While in the witness box, the claimant himself had deposed that on 26.05.2004, at about 9.30 p.m., he was coming from Gurgaon and was



proceeding towards his village Kamalpur, while driving car bearing registration No.HR-36B-2090. A Nilgai came from the side, all of a sudden and to avoid the accident, he turned his vehicle towards right side, as a result whereof, the car hit the tree and he sustained injuries.

Also, it is specifically pleaded in the claim petition as well as deposed by the claimant that PCR came at the spot and he was taken to the General Hospital, Rewari, by the PCR, where from, he was referred to Safdarjung Hospital, New Delhi. Besides the same, the claimant has proved the DDR, copy whereof is Ex.P1. Though, it is pleaded that the accident was witnessed by Partap Singh s/o Duli Chand of his village, but however, he has not been examined. In fact, PW-4 ASI Surjit Singh has been examined, who proved the certified copy of DDR No.13 dated 22.06.2004 Ex.P1.

It is pertinent to mention that as per the pleaded case in the claim petition, the claimant had borrowed the car from his friend Sunil Rao-respondent No.2, from his residence at Sector-3, Rewari, when he could not find any conveyance, for going to his village, after his return from Gurgaon, in the late hours, at about 9.00 p.m. and thereupon, while he was driving the said car, the accident had taken place, on account of sudden appearance of Nilgai, in the middle of the road. However, it is pertinent to mention that while in the witness box, in his examination-in-chief, the claimant has nowhere, stated, the fact of borrowing of the car in question from his friend Sunil Rao-respondent No.2, as pleaded by him in the claim petition. Rather, he had straightway stated about coming in the car in question from Gurgaon and proceeding to his village, while driving the aforesaid car. Even, Partap Singh, alleged eye witness to the accident, has also not been examined.



Furthermore, even Sunil Rao has not been examined.

Proceeding further, it is also pertinent to mention that it is categorical claim of the claimant that at the spot of accident, soon after the accident, PCR had come on the spot and he was taken to General Hospital, Rewari for his treatment. If it be so, then it is quite obvious that the report must have been made by the local police in the roznamcha, on that very day, but however, it was not so. The DDR so relied upon by the claimant is dated 22.06.2004 i.e. after the delay of 26 days of the alleged accident.

At this juncture, it is pertinent to mention that the treatment record produced by PW-5 Dr.Mukesh Kumar, clearly reveals about the date of admission of the claimant in the hospital as 27.05.2004 and he was discharged on 14.06.2004. Even if it be so, then also, there is no reason assigned, as to what prevented the claimant from making a report to the police, about the accident, immediately after the accident or after his discharge from the hospital on 14.06.2004. If the PCR had come at the spot, then also, the question arises, why DDR was not recorded qua the accident, on that very day, at the instance of the police. For this, there is no explanation, as such, coming on record. The very fact of DDR having got lodged, after a period of 26 days, sufficiently is a pointer to an afterthought, on the part of the claimant, to have cooked up the version about manner of taking place of the accident and sustaining of injuries by him.

Besides the aforesaid, it has been appropriately observed by learned Tribunal that even, own property damage claim was never filed by respondent No.2-Sunil Rao, whose car was allegedly involved in the accident. He also had no cheeks to step into witness box, to substantiate the



version of the claimant. No mechanical report or other evidence, was brought on record to establish about the involvement of the car in question, in the alleged accident.

Considering all the aforesaid circumstances, learned Tribunal had appropriately concluded about the accident to have not taken place, out of the use of the offending car, which caused injuries, on the person of the claimant and that the claim petition has been filed in collusion with respondent No.2. Thus, the findings so recorded by learned Tribunal, on issue No.1, are hereby affirmed.

Besides the aforesaid, it is pertinent to mention that undisputedly, the car in question, was not the ownership of the appellant-claimant. Even if, the version of the claimant about having borrowed the car from his friend Sunil Rao is believed, then also, the petition under Section 163-A of the Motor Vehicles Act is not maintainable, as the appellant-claimant, in any manner, could not be considered as third party to the offending car. Being borrower of the car, he stepped into the shoes of owner of the vehicle and therefore, Section 163-A of the ibid Act, cannot apply, wherein, owner of the vehicle himself is not involved.

Thus, on the question of maintainability of the claim petition also, the findings, so recorded by learned Tribunal are hereby affirmed.

As a result of the aforesaid observations, learned Tribunal had correctly dismissed the claim petition. Hence, the present appeal sans merit and the same is hereby dismissed.

July 24, 2024
Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)
JUDGE
Yes
Yes/No