

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5727-2015 (O&M)
Date of decision : 22.04.2024

Sarwan Kumar ... Appellant(s)

Versus

Gainda Ram ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Gupta, Advocate for the appellant.
Mr. Parminder Singh, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant aggrieved by the Award dated 01.04.2015 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal').
2. Brief facts relevant to the present *lis* are that the claimant-respondent filed the claim petition averring therein that he was a labourer and on 16.06.2013 he was picked up by the appellant herein as his employer to take him to his place of work on his motor cycle bearing Registration No.HR-05-AA-7936. Accordingly, he got on to the motorcycle as a pillion rider. When they reached the main road, the motorcycle slipped as the appellant herein was driving the same at a high speed and in a rash, negligent and careless manner. As a result the claimant-respondent fell on

the road and struck against the hard surface due to which he suffered multiple and grievous injuries on vital parts of his body including injury on his chest, fracture of the right arm near the wrist. He was taken to his house by his son Jasbir, Sanjay son of Ajmer Singh, Vinod son of Isham Singh, Raj Kumar son of Chander Bhan and Shamsher son of Shri Chand. It was further averred that he was a labourer and earning a monthly income of Rs.10,000/-. It was further the case that Rs.2,00,000/- was spent on his treatment. On notice the appellant herein appeared and contested the petition. It was specifically averred by the appellant herein that he was neither the owner nor was he driving the motorcycle bearing Registration No.HR-05-AA-7936 at the time of the accident. He further took the stand that he never possessed the motorcycle in his name or in the name of any of his family members and that the case had been filed only to extort money from him.

3. On the basis of the pleadings, the following issues were framed:

1. Whether the motor vehicular accident which took place on 16.6.2013 was caused on account of rash and negligent driving of vehicle bearing registration No. HR-05AA-7936 by Sarwan Kumar respondent no.1 resulting into injuries to claimant Gaimda Ram. If so, its effect ? OPP
2. If issue No.1 is proved, whether the claimant is entitled to claim any compensation. If so, how much and from whom ? OPP

3. Whether the claim petition is not maintainable ?

OPR

4. Relief.

4. On issue No.1 the Tribunal held that the appellant herein was the owner of the motorcycle on the basis of the statement of PW2-Vinod Kumar. It was further observed that the appellant - Sarwan Kumar - had not made himself available for cross-examination. The Tribunal holding the appellant herein negligent, awarded an amount of Rs.37,000/- as compensation alongwith interest @ 7.5% per annum from the date of filing of claim petition. Aggrieved by the same, the present appeal has been preferred by the appellant.

5. Learned counsel for the appellant would contend that a specific stand was taken by the appellant herein that he was not the owner nor was he driving the motorcycle. The learned counsel for the appellant would further contend that Ex.R1, which is a Certificate of Registration, clearly reveals that the motorcycle is registered in the name of Ram Mehar son of Hari Chand. It is further the contention of the learned counsel that the appellant herein had presented himself for cross-examination. The learned counsel has also referred to the cross-examination of the appellant which is available on the record of the Tribunal at page 115.

6. *Per contra*, the learned counsel for the claimant-respondent has contended that PW2-Vinod Kumar had stepped into the witness box and he had maintained that he knew both Gainda Ram (claimant-respondent herein)

and Sarwan Kumar (appellant herein) and that the motorcycle was being driven by Sarwan Kumar, appellant herein.

7. I have heard the learned counsel for the parties.

8. In the present case it was observed by the Tribunal that Vinod Kumar had acquired the character of an eye-witness which is totally contrary to the record inasmuch as his affidavit in evidence nowhere mentions that he was an eye-witness to the accident. Further still, a specific stand was taken by the appellant herein that the motorcycle was not registered in his name and he further stated that he was not driving the motorcycle. Ex.R1 (Registration Certificate) was produced by the appellant herein which reveals that the motorcycle stood registered in the name of Ram Mehar son of Hari Chand. Despite the said evidence coming on the record, the claimant-respondent chose not to implead Ram Mehar and proceeded to pursue the case against the present appellant for reasons best known to him. Further, an observation has been made that Sarwan Kumar (appellant herein) had not stepped into the witness box, however, the same is totally contrary to the record inasmuch as on page 115 of the record of the Tribunal the cross-examination of Sarwan Kumar, appellant herein, has duly been recorded.

9. Hon'ble Supreme Court in the case of **Naveen Kumar vs. Vijay Kumar & Ors. [2018 (2) RCR (Civil) 74]** has held that it is the registered owner against whom the case is to be pursued. Para 12 of the said judgment reads as under :

12. *The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression 'owner' in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier Act of 1939. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' of the vehicle involved in*

the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured. The High Court has proceeded upon a misconstruction of the judgments of this Court in Reshma and Purnya Kala Devi.”

10. In view of the above, the findings recorded by the Tribunal are not sustainable in law and the same are accordingly set aside. The impugned award stands set aside and the present appeal is allowed. Pending applications, if any, also stand disposed off.
11. Statutory amount deposited by the appellant be refunded to him.

22.04.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO