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

1. **FAO-2696-2006 (O&M)**

Ram KumarAppellant

Vs.

Ramesh Kumar and othersRespondents

AND

2. **FAO-2697-2006 (O&M)**

Hoshiar SinghAppellant

Vs.

Ramesh Kumar and othersRespondents

**Reserved on : 22.11.2024
Pronounced on : 10.01.2025**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Kanchan Sindhu, Advocate for
Mr. Pritam Singh Saini, Advocate,
for the appellant(s).

Mr. Suman Jain, Advocate for
Ms. Swati Singal, Advocate,
for respondent No.3-Insurance Company.

SUDEEPTI SHARMA J.

1. Vide this common judgment, the aforesaid two appeals are being decided as the same have arisen out of the common award dated 10.02.2006 passed by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') and the common question of law is

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involved in both the appeals. For brevity, facts have been taken from **FAO-2696-2006**.

2. The present appeals have been preferred against the award dated 10.02.2006 passed in the claim petitions filed under Sections 140 and 166 of the Motor Vehicles Act, 1988, by the learned Tribunal, whereby, the claim petitions filed by the appellant(s)/claimant(s), were dismissed.

FACTS NOT IN DISPUTE

3. The brief facts of the case are that on 12.05.2004, appellant/claimant-Ram Kumar was coming from Sadaura to his village Sarai Sukhi, Tehsil Thanesar, in a Maruti car bearing registration No.DL-ICC-6200, which was owned by appellant/claimant-Hoshiar Singh. On the way, when he reached at Shahabad, Pradeep and Subhash met him and they also boarded the said car. When they reached near Dhantori cut on G.T.Road at about 11:30 p.m., appellant/claimant-Ram Kumar while he was turning his car near the cut, a Canter bearing registration No.HR-45-4955 being driven by respondent No.1-Ramesh Kumar at a very high speed and in a rash and negligent manner struck against the said Maruti car. As a result thereof, appellant/claimant-Ram Kumar received multiple, grievous and serious injuries on his head and other parts of the body. The driver of the offending vehicle (respondent No.1) fled the scene, leaving the Canter parked at a nearby hotel. After the accident, appellant/claimant-Ram Kumar rushed to the CHC Shahabad and thereafter, he was shifted to Sachdeva Hospital, Jagadhri for treatment. In this regard, FIR No.179 dated 15.05.2004 under Sections 279 and 337 of the Indian Penal Code, 1860 was



registered at Police Station Shahabad, District Kurukshetra, against respondent No.1. Appellant/claimant-Hoshiar Singh also filed a claim petition seeking compensation on account of damage to his car in the above alleged accident. He further alleged that the said Maruti car was being used to run the business.

4. Upon notice of the claim petitions, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

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

“1) Whether the accident in question resulting injuries of Ram Kumar in (MACT Case No.53 of 2004 now 302 of 2005) and damage of Car bearing No.DL-ICC-6200) in (MACT Case No.54 of 2004 now 303 of 2005) was caused due to rash and negligent driving of canter No.HR-45-4955 by its driver, Ramesh Kumar respondent No.1 or by car bearing No.DL-ICC-6200 driven by Hoshiar Singh or of both? OPP

2) If issue No.1 is proved whether the claimants are entitled to compensation, if so to what extent and from whom? OPP

3) Whether respondent No.1 and driver of the canter was not holding any valid and effective driving licence at the time of accident in question? OPR3.

4) Whether the claim petitions have been filed by the claimants in collusion with respondents No.1 and 2? OPR.

5) Relief.”



6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petitions. Hence, the present appeals.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

7. Learned counsel for the appellant(s)/claimant(s) contends that the learned Tribunal failed to consider the material evidence on record, specifically the appellant/claimant's (Ram Kumar) statement that he was traveling from Sadaura to his village, Sarai Sukhi, in a Maruti car bearing registration No.DL-1CC-6200. While taking a turn towards his village near Shahabad, the appellant's vehicle was struck by a Canter bearing registration number HR-45-4955, driven in a rash and negligent manner by Respondent No. 1, Ramesh Kumar. The Canter, which was being operated at an excessive speed, collided with the appellant's car, causing the appellant/claimant-Ram Kumar to sustain multiple and grievous injuries on his head and other parts of the body. Furthermore, it has been overlooked that Respondent No.1 fled the scene, abandoning the Canter, which underscores his negligence. The learned Tribunal has completely disregarded these critical facts and, as a result, has erroneously and unjustly dismissed the appellant's claim petition. Therefore, she prays that the present appeals be allowed.

8. *Per contra*, learned counsel for respondent No.3-Insurance Company, however, vehemently argues on the lines of the award dated 10.02.2006 and submits that the claim petitions have rightly been dismissed



by the learned Tribunal. Therefore, he prays for dismissal of the present appeals.

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

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

7. On this issue, Ram Kumar (PW8) has tendered in evidence his affidavit Ex. PW8/A stating therein on 12.5.2004, he was coming from Sadhaura to his village Sarai Sukhi in maruti Car No. DL-ICC-6200 and on the way at Shahabad Pardeep, Subhash and Bablu met him and they also boarded the said car. At about 11.30 p.m. when they reached near Dhantori cut on G.T. road and while he was turning the car en cut on G.T. Road in the mean time a canter No. HR-45-4955 driven by respondent no.1 rashly and negligently and at a very high speed came and dashed his car. As a result of which he received multiple, grievous and serious injuries on head and other parts of the body and car was also badly damaged. Thereafter, passerby helped him and respondent no.1 ran away from the spot after parking his canter in a hotel after some distance and he was admitted to CHC Shahabad and thereafter he was shifted to Sachdeva Hospital, Jagadhri. Hoshier Singh (PW7), though he is not an eyewitness but has also deposed in his affidavit Ex. PW7/A on the similar lines as that of Ram Kumar. HC Rohtash (PW9) has brought out that on 13.5.2004 he was posted at police Station Shahabad and on that date, he moved an application dated 13.5.2004 to the Medical Officer, CHC Shahabad for seeking the fitness of injured Ram Kumar but the Medical Officer opined the injured unfit to make statement vide opinion Ex. P3. Next day, he went to CHC



Shahabad and was told that patient has been referred to PGI. On the next date i.e. 14.5.2004, after enquiry from the village of injured Ram Kumar, he came to know that the patient is admitted in Sachdeva Hospital, Jagadhri and he recorded his statement Ex. P21 on which formal FIR Ex. P22 was recorded on 15.5.2004. Apart from this, the petitioners have tendered in evidence copy of report under Section 173 Cr.P.C. as Ex.P. 17, mechanical test report as Ex.P. 18 on this issue.

8. *On the other hand, the respondents have examined Shri Deepak Saini, Advocate (RW1) who brought out that he prepared the investigation report on the basis of the investigation conducted by him. Ajmer Singh, Criminal Ahlmad (RW3) has produced the summoned report of case FIR No. 179 dated 15.5.2004, under Sections 279, 337 TPC, police station Shahabad titled as State Vs. Ramesh and produced on record copy of site plan as Ex. RW3/A.*

9. *After carefully analyzing the evidence on record, it is seen that as far as accident is concerned, the same stands fully proved on record. Immediately, after the accident, Ram Kumar was taken to CHC Shahabad and a ruqa was sent in pursuance of which an application Ex. P2 was made by the police on which vide opinion Ex.P3 the patient was opined to be unfit to make statement on the same date. Learned counsel for the Insurance Company has argued that there is cutting, on the date on this application and this application has been deliberately prepared later on. However, there is no merit in this contention of the learned counsel for Insurance Company because though there is cutting in the date on the application under the signature of HC Rohtash Kumar, however, as far as the date under the opinion of the doctor is concerned, there is no such cutting at that place and date 13.5.2005 has been*



recorded. Still further another dated 14.5.2004 has also been recorded vide which the patient was referred to PGI Chandigarh. Therefore, it cannot be presumed that this application was fabricated later on i.e. on 15.5.2004 and date 15.5.2004 was changed to 13.5.2004.

10. Before deciding on identity of the vehicle with which the accident has taken place, it is appropriate to examine the mode and manner of the accident as brought out by the claimants themselves. It may be mentioned that Ram Kumar was coming from Sadhaura towards Shahabad side and was taking turn to go towards his village. Meaning thereby that as per site plan Ex. RW3/A, he was coming from Ambala side and was going towards Karnal side. It is important to mention here that authenticity of the site plan has not been disputed by any of the parties. Thus it is evident Ram Kumar was to turn towards other side of the road and for that he had to cross the cut of the divider and then go towards his village and the accident took place at Point-A. In that case, once Ram Kumar was to take turn on his right side then it was incumbent upon him to see that the road is clear and there is sufficient space for him to pass especially when it was a night time at 11.30 p.m. it was his duty to have stop at the intersection and to wait for some time in order to allow the traffic on the main road to pass and then only he should have entered the main road but eh car driver did not wait and came to the main road without taking note of the fact that alleged canter in question was approaching the intersection from Karnal side. It is well settled law that whenever a person from main road takes a turn to go side road on its right hand, then it is his duty to slow down, wait and not to enter intersection until he has become aware that he may do so without danger to others on the main road i.e. to give way to



the traffic approaching intersection of the main road. The regulations 6 & 7 of the Traffic Regulation contained in 10th Schedule of the Act framed under sections 77 and 78 of 1939 Act are reproduced as under:-

“6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall on entering a road intersection, if the road entered in a main goad designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.”

11. Thus a perusal of aforesaid regulations impose a duty on the driver of a motor vehicle entering a road intersection to give way to the vehicles proceeding on the main road and to give way to all traffic approaching the intersection on his right hand. However, in the present case. Ram Kumar while turning towards right side failed in his bounden duty of circumspection and turned towards right without caring for the canter approaching on the main road from Karnal side. In that case, no fault can be attributed to the canter driver. While discussing aforesaid rule 6 and 7 in similar case of M/s Sachdeva Rice Mills Vs. Smt. Rai Anand 2003 (1) CCC 582, where the learned Tribunal had held contributory negligence of both drivers in such a case, the Division Bench of our Hon'ble High Court reversed the findings and absolved the driver going on main road and held the driver on left side taking turn towards right side. Reliance in this regard can be also be placed on the judgment in 1995 ACJ 679 Rawat Singh and another V. Sube



Singh and others. Still further, in N.K.K. Siva Begum and others Vs. P.V. Kalliani Amma and others, 1991 ACJ 283, the Hon'ble Division Bench of Kerala High Court in somewhat similar situation, held that vehicle on main road had the right of way and the vehicle driver coming from bylane should have ensured clear passage before entering main road and as such it was held that accident occurred entirely due to the negligence of the driver of vehicle coming from bye-lane and the driver on main road cannot be held liable. In view of the foregoing discussion, it is safe to conclude that petitioner Ram Kumar was himself rash and negligent in driving his own vehicle.

ANALYSIS OF RECORD

11. A perusal of the record shows that appellant/claimant-Ram Kumar was traveling from Sadhaura towards Shahabad and intended to execute a right turn to proceed towards his village. The site plan (Ex. RW3/A), the authenticity of which has not been disputed by either party, establishes that Ram Kumar while approaching from the Ambala side, attempted to cross the road divider to enter the route leading to his village. The collision occurred at Point-A, as indicated in the site plan. The circumstances of the case necessitate that Ram Kumar, prior to taking a right turn, was under a duty to ensure that his maneuver could be performed safely without obstructing or endangering oncoming traffic. The incident occurred at approximately 11:30 p.m., a time when reduced visibility demands heightened vigilance. Appellant/claimant-Ram Kumar was required to stop at the intersection, carefully assess the flow of traffic on the main road, and proceed only when it was prudent and safe to do so.



However, his failure to exercise the requisite degree of caution and his rash entry onto the main road disregarded the approaching Canter from the Karnal side. The legal framework governing this scenario is found in the Tenth Schedule of the Motor Vehicles Act, 1939 (Sections 77 and 78), particularly Regulations 6 and 7, which impose clear obligations on drivers and the same is reproduced as under:

1. Regulation 6: A driver must reduce speed when approaching a road intersection or junction and must not enter unless assured it is safe to do so without compromising the safety of other road users.
2. Regulation 7: A driver entering a main road from a side road is required to yield the right of way to vehicles traveling on the main road and to give precedence to traffic approaching from the right.

12. In the present case, Ram Kumar's conduct constituted a blatant violation of these statutory duties. His actions demonstrated a failure to observe the standard of care expected of a prudent driver, particularly at an intersection involving a main road. By entering the main road without ensuring the safety of the maneuver, Ram Kumar directly caused the collision.

13. It is a settled preposition of law that the driver attempting a right turn bears the primary responsibility for ensuring safety, particularly when entering a main road.



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14. In light of the foregoing analysis, it is evident that the accident was solely attributable to the rash and negligent driving of appellant/claimant-Ram Kumar. The learned Tribunal correctly concluded that no fault could be attributed to the driver/respondent No.1 of the canter. The findings of the Tribunal are well-founded and require no interference. Accordingly, the appeals stand dismissed being devoid of merits.

15. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Ms. Swati Singal, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

16. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

10.01.2025

Virrendra

Whether speaking/non-speaking : Yes/No

Whether reportable : Yes/No