Aman Preet Kaur and Another Vs Didar Singh and Others

F.A.O. No''s. 454 and 455 of 1997 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 25, 2012

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 166

Citation: (2013) ACJ 957

Hon'ble Judges: K.C. Puri, J

Bench: Single Bench

Advocate: S.D. Bansal, for the Appellant; Vishal Sharma, A.A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

K.C. Puri, J.
Vide this judgment, I intend to dispose of F.A.O. No. 454 of 1997 titled "Aman Preet Kaur v. Didar Singh" and F.A.O.

No. 455 of 1997 titled "Devinder Kaur v. Didar Singh", as both the appeals arise out of the same award dated 6.11.1996 passed by Mr. B.C.

Rajput, Motor Accidents Claims Tribunal, Rupnagar. For the sake of convenience, the facts are being taken from F.A.O. No. 454 of 1997.

Briefly stated, Aman Preet Kaur filed claim petition u/s 166 of the Motor Vehicles Act claiming compensation on account of injuries sustained by

her in a motor accident. Whereas Devinder Kaur also filed claim petition claiming compensation on account of injuries sustained by her.

2. The facts of the case are that on 21.12.1991, both claimants were travelling in Maruti car bearing registration No. PCK 35 from Mandi

Gobindgarh to Chandigarh. Car was being driven by Surinder Singh, father of Aman Preet Kaur and husband of Devinder Kaur. It was raining

heavily. When the car approached adjacent to the Tempo-Traveller, the driver of Tempo-Traveller struck the right side of Tempo-Traveller against

the left side of Maruti car. Maruti car was completely smashed and the direction of the car was changed. Ultimately, the Tempo-Traveller fell in the

ditches on the other side, i.e., right side of the road. Aman Preet Kaur and Devinder Kaur, claimants, received injuries.

3. On put to notice, respondent No. 1 filed reply and has submitted that accident did not occur as alleged by the petitioners. Vehicle of the

respondent was standing on the right side of the road on its kacha portion. Didar Singh was purchasing fruits from the fruit vendor. Car of the

petitioners was being driven by Surinder Singh at a very high speed. Due to rain, the car struck against the stationary Tempo-Traveller. The

accident took place due to negligence of the car driver.

4. Respondent Nos. 2 and 3 filed separate written statements on the same line as filed by respondent No. 1.

5. From the pleadings of the parties, following issues were framed:

(1) Whether Didar Singh caused injuries to Devinder Kaur and Aman Preet Kaur by driving Tempo No. CH 01-G 0633 rashly and negligently on

21.12.1991 in the area of Gharuan? OPP

(2) Whether the claimants are entitled to compensation? If so, to what amount and from whom? OPP

(3) Relief.

6. Claimants examined AW 1 Surinder Singh, driver of Maruti car, AW 2 Dr. A.S. Bajaj, AW 3 Dr. Gurminder Singh, AW 4 Head Constable

Mohinder Singh, AW 5 Devinder Kaur-claimant.

7. In rebuttal, Didar Singh, respondent, appeared as RW 1.

8. Learned Tribunal, after appraisal of the evidence, returned the finding on issue No. 1 against the claimants and it is held that claimants have failed

to prove that accident took place due to rash and negligent driving of respondent No. 1. So, in view of finding on issue No. 1, the claim petitions

were dismissed except granting amount under no fault liability to both the claimants.

9. Feeling dissatisfied, both the claimants have filed the present appeals against the award dated 6.11.1996 passed by Mr. B.C. Rajput, Motor

Accidents Claims Tribunal, Rupnagar.

10. Learned counsel for the appellants has vehemently assailed the finding of the Tribunal on issue No. 1. It is submitted that accident took place

due to rash and negligent driving of respondent No. 1. The finding of the Tribunal that Surinder Singh was at fault, is contrary to the record. It is

submitted that even if the case of respondent No. 1 is taken as it is, in that case also, it is a case of contributory negligence. According to the

respondent No. 1, he had parked the Tempo-Traveller on the right side of the road, whereas he was going from Chandigarh to Morinda. Maruti

car was coming from Morinda to Chandigarh. Parking of a vehicle on wrong side is itself a negligent act. The Tribunal lost sight of this fact. It is

further contended that amount of compensation has not been assessed and as such the case is required to be remanded to be decided afresh

regarding quantum of compensation.

11. In reply to the above said submission, learned State counsel has submitted that the Tribunal has rightly held that accident has not taken place

due to negligent act of Didar Singh. So, prayer has been made for dismissal of both the appeals.

12. I have considered the submissions made by counsel for both the sides and have also gone through the record of the case.

13. From the perusal of the award, it is revealed that case of the claimants is that Surinder Singh was driving Maruti car on its left side, whereas the

Tempo-Traveller struck against Maruti car due to rash and negligent act of respondent No. 1, Didar Singh. The case of respondent No. 1, Didar

Singh, set forth in the written reply itself is that he had parked the vehicle though on the wrong side and he went to fetch some fruits. Even if the

case of respondent No. 1 is taken as it is, in that case also, it cannot be said that respondent No. 1 is not negligent in parking Tempo on the wrong

side of the road. So, the case can be at the most a case of contributory negligence in that case. The Tribunal has not gone into this aspect of the

case. The Tribunal has simply stated that since the vehicle was not in motion and as such Didar Singh is not negligent. This approach of the Tribunal

is against the law.

14. The Tribunal has not even assessed the amount of compensation to the claimants. So, in these circumstances, both the appeals stand accepted.

Both the claim petitions stand remanded to the Tribunal to be decided afresh, in accordance with the evidence available on the record. In case,

after appreciating the evidence, the court comes to the conclusion that it is a case of contributory negligence, in that case, the amount of

compensation can be assessed accordingly.

15. Parties are directed to appear before the Tribunal on 27.8.2012. The lower court record of both the cases be sent back to the Tribunal.