(2014) 05 P&H CK 0344

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order Nos. 4522 and 4814 of 2012 (OandM)

Harmesh Kumar		APPELLANT
	Vs	
Inderjit Singh		RESPONDENT

Date of Decision: May 19, 2014

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 163A, 166

Citation: (2014) 176 PLR 801

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Ashwani Arora, Advocate for the Appellant; A.S. Walia, Advocate for the Respondent

Judgement

K. Kannan, J.

I Reasoning of the Tribunal that gave place to dismissal of the claims.

1. The approach of the Tribunal evokes a subtle humour to an otherwise poignant situation emanating from a macabre road accident. Both these appeals are against the dismissal of the petitions of the appellants claiming compensation for the injuries suffered in a motor accident involving collision of a three wheeler in which the person injured was travelling and a car belonging to 1st respondent. The 1st respondent''s car was insured with the insurance company, which was arrayed as 3rd respondent. The accident had taken place on 1.12.2009, according to the claimants and in a DDR recorded two days later, it was stated that the parties were talking about a compromise between themselves and, therefore, did not want any investigation to be taken immediately. A week later another statement was given before the police by one of the claimants where they had recorded the fact that the driver of the vehicles could not help the accident, since a stray cattle crossed the road in the early hours of morning when the accident had taken place on 1.12.2009 and both the drivers had applied brakes but still could not help the collision. The

drivers have not been summoned by the insurance company and brought before the court to bind the claimants to a statement that the accident had not been the result of any negligence of either of the persons. The court took the statements recorded in DDR to constitute an estoppel against the claimants and dismissed the petitions.

II Three distinct circumstances that allow for successful claims: Aspect of negligence must be of human agency.

In the scheme of things under the Motor Vehicle Act that provides for compensation under three different circumstances, as contemplated under Sections 140, 163-A and 166, the issue of negligence will have to be established only in a claim under Section 166 but a claimant will be relieved of such obligation when a claim is made under ''no fault'' basis or while invoking provision of Section 163-A, if the claimant could obtain the necessary qualification of his income being less than Rs. 40,000/- per annum. The issue of negligence will have again to be examined whenever claim is made under Section 166 on evidence placed before the Tribunal and if a person who had originally given a statement that there was no negligence between the two drivers but he later resiled from the same and seeks prosecution of the case, looking for determination of the negligent act of the driver, a mere statement recorded by the police cannot be taken as sufficient for the Tribunal. It has to examine the nature of the evidence and the circumstances under which he seeks for resiling the statement. A statement can bind a person who makes it, but it cannot bind any other person who is not a privy. Consequently, yet another claimant would always have a right to contend that the drivers of the respective vehicles had been negligent in not being tactful to avoid hitting a cattle and still save themselves from the situation of a collision all accidents have a latent quality of want of care in some way. Negligence cannot be attributed to any person other than a human agency. A driver or passenger cannot say that an animal was negligent for it is illogical and does not come within the realm of legal reasoning. The reasoning is that any person that drives must factor his own driving skills and not looking for excuses of how another agency that is not human has created a situation that had diminished his own driving skills. Mechanical failure or nature''s intervention are different and wherever such factors raised, they must be pleaded and proved. That is how we must approach an issue where a cattle crosses the road. No driver can ever come to court to say that he carefully dashed against yet another vehicle. It is tautological. Careful driving of both drivers and collision do not marry, one annihilates the other. Therefore, if there was any statement by any of the parties that both the drivers were careful but it was an animal which was not careful and therefore, accident was caused, we must take that such statement lacks any sense and we cannot give a legal approbation to such a statement to deny a claim. The best that could be said is that there was no criminal negligence.

III Inference of collusion-Duty of insurer to gather details and circumstances of collision.

2. Counsel for the insurance states that the claimants and the 1st respondent have colluded together. It is merely statement brought out in the reply by the insurer. No attempt to prove such collusion were made. On the other hand, the insurer was anxious to put the statement recorded before the police. The statement was an admission of the accident, but it was trying to qualify the circumstance as inevitable that no rash and negligent elements were involved in the accident. The DDR records the fact of accident, but the statement of the 1st respondent went as far as to state that there was no accident at all involving the vehicles. Both the statements cannot be true. If the insurer was trying to prove that the DDR had been duly recorded, then it will not have a case to contend that there was no involvement of the insured vehicle. The insurer who wants to ride piggy-back on such a plea of the driver must bring affirmation of the statement by entering into the witness box and giving a statement to that effect or citing the driver on a witness. If the insurer claims that there was a collusion between the claimants and the driver/owner, there must be some manifest action on the part of the insurer to elicit details of the accident, which the law empowers the insurer to obtain. If there had been any show of apathy or unwillingness on the part of the driver or owner to part with the information, it could have provided an inkling for the insurer to suspect that the parties were colluding between themselves to make the insurer liable. As I have observed already, the insurer was merely contended itself with a fanciful inference that there must be collusion. I cannot see how a collusion was possible in a case where the driver did not make a written statement admitting the accident but was denying it. The case had been brought through the representatives after the death of the owner and none of them had a contention to make that their vehicle was not involved in the accident. I, therefore, reject he plea that there was any collusion between the owner/driver and the claimants.

IV Circumstances that force a remand.

3. I would have proceeded to decide the quantum of compensation on merits, but the Tribunal itself has not brought its decision on evidence on the nature of injuries and the quantum of compensation they were entitled to. The findings of dismissal of the Tribunal are set aside and the matter is remitted to the Tribunal for fresh consideration on the issue regarding apportionment of negligence between the drivers of both the vehicles. I find that the claimants had lodged case only against the insurance company and the owner of the car which was involved in the accident. The cases before the Tribunal are not decided on adversarial basis like civil litigations are. There is a duty cast on the Tribunal to elicit the truth and provide for compensation wherever death or injury results by the use of a motor vehicle. In case of collision between two vehicles, negligence must rest somewhere between the two. It cannot come to a conclusion that there exists an accident but still there was

no negligence, unless it was a case of bolt from the blue, as it were, which would be God''s dispensation. Any other accident must be taken as accident resulting from the negligence out of the drivers. I am not also examining a situation where the claimants themselves contributed to the accident by some willful act that prevented the driver from exercising due care. At least I believe that there is no such case that the claimants had done willful act that caused the accident. There is no case of mechanical defect, either. These points and the case that it was the animal which was responsible for the accident shall not be taken again. The matter of negligence between the drivers will be considered before the Tribunal in the light of the observations made. I direct suo moto impleadment of the owner and the insurer of the three-wheeler. The counsel for the appellants does not have the details and the claimants shall furnish the details before the Tribunal on the 1st date of hearing upon which notice of hearing shall also be made impleading them as respondents No. 4 and 5. The judgment of dismissal passed by the Tribunal is set aside and the matter is remitted for disposal in accordance with law. The parties are directed to appear before the Tribunal on 1.7.2014.