

(2014) 07 P&H CK 0813

High Court Of Punjab And Haryana At Chandigarh**Case No:** FAO No. 2805 of 2004(O&M)

Roshan Aggarwal

APPELLANT

Vs

Pawan Kumar

RESPONDENT

Date of Decision: July 25, 2014**Hon'ble Judges:** Harinder Singh Sidhu, J**Bench:** Single Bench**Advocate:** Pritam Singh Saini, Advocate for the Appellant; Aseem Aggarwal, Advocate for the Respondent

Judgement

Harinder Singh Sidhu, J.

This appeal has been filed against the Award dated 18.3.2004 passed by Motor Accident Claims Tribunal, Ambala (for short "the Tribunal"), whereby, the claim petition filed by the appellant, was dismissed. The appellant is Managing Director of Aayush Chemicals Limited, Ambala City.

2. As per the case set up in the claim petition, on 5.10.2000, Sodium Silicate Liquid, worth Rs. 60,124/- was got loaded by the appellant in Tanker No. HR-37-2042 for transporting the same from Lalru to New Delhi. One truck HR-37-5211, driven by respondent No. 1 was behind the Tanker and was being driven rashly and negligently. When the tanker reached near the bridge of Shahbad Markanda on GT Road, light from some other vehicle, dazzled the eyes of the driver of the tanker, who had to apply brakes suddenly. The truck coming behind the tanker could not be controlled by its driver and it struck against the tanker, as a result of which the outlet of the tanker was broken and the Sodium Silicate Liquid spilled on the road. The accident was alleged to be caused due to rash and negligent driving of the truck by Pawan Kumar-respondent No. 1. After the accident, respondent No. 1 ran away. The driver of the tanker Didar Singh got a DDR recorded in Police Station Shahbad on 8.10.2000.

3. The claim petition was filed by the appellant claiming compensation for the damage caused due to the spilling of the Sodium Silicate Liquid due to rash and

negligent driving of the truck by respondent No. 1. In order to prove its case, the appellant examined himself as PW1 and one Naveen Kumar was examined as PW2. In his evidence, the appellant has narrated the facts as set out in the claim petition. He stated that the accident took place due to rash and negligent driving of the truck by respondent No. 1 and after the accident the driver of the truck had run away. He admitted that no FIR was lodged regarding the accident, but only a DDR was lodged. He admitted that the accident had not taken place in his presence. PW2 Naveen Kumar had stated that on 5.10.2000, Sodium Silicate Liquid was loaded in the tanker. He reiterated the factum of the accident as stated in the petition. He stated that he was present at the time of the accident. He also stated that the accident was caused due to rash and negligent driving of the truck. He further stated that he had accompanied the tanker after loading Sodium Silicate Liquid in the same. He admitted that neither the driver of the truck was arrested, nor the truck was taken into possession by the Police. He also stated that driver of the truck had run away after the accident leaving the truck on the spot.

4. The Tribunal returned a finding that from the material on record, it could not be said that the accident in question was caused because of the rash and negligent driving of the truck by respondent No. 1. For reaching this conclusion, the Tribunal referred to the contents of the DDR No. 28 dated 8.10.2002 (Exhibit PX), which was got recorded in Police Station Shahbad by Didar Singh, driver of the tanker. In the said DDR, it had been stated that when the tanker reached near the bridge of Shahbad Markanda, all of sudden light from some other vehicle dazzled his eyes, and he had to apply sudden brakes and the truck which was coming from behind struck it from back side and the liquid outlet was broken and the Sodium Silicate spilled on the road. In the DDR, it was stated that no one was at fault and the accident had occurred because of the fact that he had applied sudden brakes due to dazzling of his eyes by the light of another vehicle. The Tribunal further did not believe the version of PW2 Naveen Kumar and held that his presence at the time of the accident was doubtful. For this finding, the Tribunal based itself on the fact that in the DDR, it was no-where mentioned that PW2 Naveen Kumar was present in the tanker at the time of the accident. Also in his statement, the appellant (PW1) also did not state that Naveen Kumar was present in the tanker at the time of the accident. The Tribunal further held that PW1 had himself admitted that he himself was not present at the time of accident. Neither the driver Didar Singh, nor the cleaner of the tanker had been examined in support of the claim raised in the petition. The Tribunal further noted that in the DDR, no mention was made of any person being injured in the accident, but in the claim petition, the appellant has pleaded that the appellant was an injured person. For all these reasons, the Tribunal concluded that there is no material on record to substantiate the claim that the accident in question was caused due to rash and negligent driving of the truck by respondent No. 1.

5. The learned counsel for the appellant has contended that the Tribunal has erred in returning the aforesaid finding. The factum of the accident has not been denied

even by respondent No. 2 in the written statement. The Tribunal has further wrongly discarded the testimony of PW2 Naveen Kumar, solely on the ground that his name was not mentioned in the DDR or in the statement of PW1 and further that the Tribunal has given undue weightage to the contents of the DDR that the accident was not caused because of the fault of respondent No. 1. It is further contended that the non-examination of Didar Singh, driver of the tanker which has weighed heavily with the Tribunal, has been adequately explained in the statement of PW1-appellant, who stated that Didar Singh had left his service after about 10-15 days of the accident.

6. I am inclined to agree with the arguments of the learned counsel for the appellant. PW1, no doubt, was not present at the time of the accident, but he narrated the sequence of the accident, as he was informed about the same by the driver of the tanker. He had categorically stated that driver Didar Singh had been sent to the Police to report about the accident and he was not authorised to compromise with the owner of the truck. The driver was sent by him to lodge the FIR and that Didar Singh had left their service after about 10 to 15 days of the accident. PW2 Naveen Kumar has categorically stated that he was present in the truck at the time of the accident and he had informed the owner about it. He has further stated that the accident had been caused due to rash and negligent driving of the truck by its driver Pawan Kumar-respondent No. 1 and he had not visited the Police Station, so, his statement was not recorded by the Police since the day of the accident till his deposition before the Tribunal. He had also stated that the driver of the truck had run away from the spot after the accident.

7. There does not appear to be any reason to doubt the presence of Naveen Kumar (PW2) at the time of the accident only on the ground that in the DDR, his presence at the spot was not mentioned and similarly, such a claim was not made in the claim petition or in the statement of PW1. In any event, the factum of the accident has not been denied. Even going by the version in the DDR that the driver of the tanker was forced to apply sudden brakes in the face of dazzling light of some vehicle coming from opposite side, resulting in the truck coming behind the tanker, striking the back side of tanker, the driver of the truck cannot be absolved of the charge of negligent driving. Any vehicle which is going behind another vehicle is expected to maintain a safe distance from such vehicle in order to meet any emergency situation necessitating sudden application of brakes by the vehicle in front. If such vehicle is to strike against the vehicle in front, in the absence of any other explanation, the negligence on the part of the vehicle, which strikes the vehicle in front, has to be ordinarily presumed. Thus, I don't agree with the finding of the Tribunal that the accident was not caused due to rash and negligent driving of the truck by respondent No. 1.

8. The Tribunal further appears to have not correctly appreciated the statement of the appellant (PW1) regarding his assertion that he was an injured party. What the

appellant was intended to say was that he was injured as his property was damaged and not that he had sustained a physical injury to his person, in the accident. Thus, the conclusion of the Tribunal that the appellant was untruthful in making this assertion when in the DDR, the factum of any person being injured was not mentioned, also does not appear to be correct.

9. In view of above, the finding of the Tribunal on issue No. 1 that the accident in question was not caused by the rash and negligent driving of the truck by respondent No. 1, is set aside.

10. In view of its finding on issue No. 1, the Ld. Tribunal had not returned any finding on issue No. 3 and also regarding the quantum of compensation to be paid and by whom. Therefore, the impugned award is set aside and the matter is remanded to the Tribunal for a fresh Award after adjudicating on these issues.

11. The parties are directed to appear before the Tribunal on 21.8.2014.