

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

FAO-4721-2007 (O&M)

Date of Decision: May 15 2015

Dalbir Singh

.....Appellant

Versus

Sandeep Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.J.S.Saneta, Advocate
for the appellant.

Mr.Parminster Singh, Advocate
for the respondent.

.....

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Naresh Kumar Sanghi, J.(Oral)

The present appeal has been filed by Dalbir Singh, driver/owner of the offending 3-wheeler bearing registration No.HR-45-7251, challenging the award, dated 02.11.2007, passed by learned Motor Accidents Claims Tribunal, Karnal (for brevity, 'learned Tribunal').

The only argument of learned counsel for the appellant is that at the first instance it was narrated to the police that no one

was to be blamed for the accident but at subsequent stage mother of Sandeep Kumar, injured-claimant, twisted the facts and lodged the report with the police on the basis of which FIR was registered. He further submitted that on account of blowing of horn by another vehicle, the appellant had brought his 3-wheeler on the *kutchra* berm of the road and as a result thereof, the 3-wheeler turned turtle and the claimant, Sandeep Kumar, received injuries. The appellant was not at fault in causing the accident.

Learned counsel for the respondent submits that it is an admitted fact that injured/claimant Sandeep Kumar had received injuries in the accident and when he appeared as PW2 before learned Tribunal, it was specifically deposed that on account of rash or negligent driving of the 3-wheeler by the respondent (appellant in present appeal), the accident had occurred. The police had registered the first information report with regard to the accident in which the appellant was arrayed as an accused and after thorough investigation, charge-sheet (report under Section 173, Cr.P.C.) was presented before learned Area Judicial Magistrate for prosecution of the appellant. He further argued that from the material available on record,

learned Tribunal concluded that the accident in question had taken place on account of negligence of the appellant and, as such, the argument raised by the learned counsel for the appellant cannot be sustained.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

After appearance of the appellant before the learned Tribunal, he filed the reply. On the basis of the pleadings of the parties, the following issues were framed:-

“1. Whether the accident in question took place on 19.05.2005 due to rash and negligent driving of vehicle No.HR-45-7251 by respondent No.1 Dalbir Singh in which claimant Sandeep had received injuries as alleged ? OPP

2. If issue No.1 is proved, whether the petitioner is entitled to any compensation, if so, how much and from whom? OPP

3. Relief.”

In order to meet the argument raised by the learned counsel for the appellant, it is necessary to narrate the facts in

brief:-

On 19.05.2005, Sandeep Kumar (injured/claimant) along with other passengers was travelling in the 3-wheeler bearing registration No.HR-45-7251 being driven by the appellant, rashly or negligently and at a very fast speed. At about 11.30 a.m. when the said 3-wheeler had reached near brick kiln on the road leading from Gharaunda to village Khora Kheri, the appellant lost control over the vehicle and it turned turtle. Injured/claimant Sandeep Kumar and other occupants of the 3-wheeler received multiple simple and grievous injuries on their respective persons. The matter was reported to the police on the basis of which FIR No.282 of 2005 for the offences punishable under Sections 279, 337 and 338, IPC, was registered at Police Station, Gharaunda, District Karnal.

In order to substantiate his claim, Sandeep Kumar injured/claimant appeared as PW2 and in his deposition Sandeep Kumar reiterated the facts mentioned in the claim petition with regard to the manner of accident. It was averred that on 19.05.2005, he along with Naresh Devi and Om Devi etc. was going to village Shahjanpur from Gharaunda in the 3-wheeler bearing registration No.HR-45-7251 being driven rashly or

negligently and at a very fast speed by the appellant. When the said 3-wheeler reached near brick-kiln on the road leading from Gharaunda to Khora Kheri, the appellant lost control over the vehicle and it turned turtle and as a result thereof the witnesses as well as the other occupants sustained simple and grievous injuries.

In addition to the above deposition of PW2, a copy of the FIR (Ex.P8) relating to this very accident was also placed on record.

In order to rebut the case of the injured/claimant, the appellant appeared as RW1 and deposed that on 19.05.2005, he was driving the 3-wheeler and in the meantime a motor-cycle came from the back side (rear side) and started horn at loud voice, as a result thereof he (appellant) lost control over the 3-wheeler and it turned turtle. The passengers including the injured/claimant had sustained injuries. The appellant had also produced Joginder and Sita Devi as witnesses and they too supported his stand.

From the perusal of the rival depositions of the injured/claimant (PW2) and that of the appellant and his witnesses, it is very much clear that the injured-claimant along

with other persons was travelling in the 3-wheeler being driven by the appellant and it turned turtle and as a result thereof, the injured/claimant had sustained injuries. Even if the stand taken by the appellant is assumed to be correct, then also it is well proved that he lost control over the vehicle and as a result thereof the 3-wheeler turned turtle. The negligence while driving the 3-wheeler is writ at large. This Court has no material to disbelieve or reject the deposition of Sandeep Kumar, injured/claimant (PW2) with regard to the fact that the appellant was driving the 3-wheeler rashly or negligently and at a fast speed.

In view of the material available on record, this Court affirms the findings of learned Tribunal with regard to issue No.1 where it was held that the accident in question had occurred due to rash or negligent driving by the appellant.

No other argument has been raised.

As a sequel to the above discussion, there is no merit in the present appeal and the same is hereby dismissed.

May 15, 2015
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(NARESH KUMAR SANGHI)
JUDGE