

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

**FAO No.6187 of 2010 (O&M)
Date of Decision: February 02, 2015**

Sarabjit Singh (through LRs.)

..Appellant(s)

Versus

Mohd. Mujahid and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes

Present: Ms. Ekta Thakur, Advocate
for the appellant(s).

Mr. Sanjiv Pabbi, Advocate
for respondent no.2-insurance company.

ANITA CHAUDHRY, J.

CM-27544-CII-2010

1. For the reasons set out in the application, same is allowed and delay of 15 days in filing the appeal is condoned.

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2. This is the claimant's appeal whose claim petition was dismissed by the Motor Accident Claims Tribunal, Ambala (here-in-after referred to as the Tribunal), vide award dated 21.04.2010 and finding was returned against the claimant on issue no.1.

3. Before referring to the submissions made on behalf of the appellant, it is apposite to refer to the relevant facts. An accident took place on 27.01.2009 the claimant was a pillion rider on a motorcycle driven by his son Davinder. They met with an accident at the crossing at 4:00 PM. The claimant's plea was that his son started the motorcycle after the signals turned green and a Indica Car coming from behind, hit the motorcycle and they fell down and he sustained injury on both the legs. The claimant was shifted to Government Medical College, Sector 32 Chandigarh by a PCR van where he remained admitted till 29.01.2000. The claimant then got admitted in Orthonova Clinic, Sector 2, Panchkula for further treatment. The FIR was got registered by the claimant's son on 31.01.2009.

4. The respondents in their separate written statement denied the accident and pleaded that the FIR had been lodged in collusion with the police.

5. The Tribunal recorded a finding against the claimant on issue no.1 and the claim petition was dismissed.

6. Learned counsel for the appellant contends that the appellant had died during the pendency of the appeal and his legal heirs were brought on record. It was submitted that the police van had shifted the injured to the hospital but the police failed to record his statement and after discharge, the FIR was registered and the best witness was the driver of the offending vehicle who failed to step into the witness box and

the claim petition should not have been dismissed solely on account of the fact that there was a delay in lodging the complaint. It was urged that the Tribunal has ignored the judgment relied upon by them reported as 1994(1) ACJ 168.

7. The submission on the other hand was that injured was taken to the hospital by the PCR van and the son did not accompany the father to the hospital and his presence had not been recorded and there is nothing to suggest that the son was present. It was urged that the injured did not inform the doctors that it was a case of road side accident and after his discharge, after two days he went home and even then did not report the matter to the police and two days later, his son lodges an FIR and introduces a vehicle. It was urged that the Tribunal had rightly dismissed the claim petition and there was no evidence to show that the driver named by the claimant had been challaned by the police.

8. It is not disputed that the accident had taken place on 27.01.2009. The injured was taken to the Government Hospital in Sector 32, Chandigarh by a PCR van. The claimant remained admitted in the hospital for two days. The case of the claimant was that his son accompanied him. The son does not lodge an FIR and there is no explanation. No Ruka was sent from the hospital, because the injured did not inform the doctors on duty that it was a case of road side accident. The MLR does not show presence of the son. No explanation was given as to why Devinder Singh did not lodge the FIR. Sarabjit

Singh in the cross-examination had stated that the police did not record his statement even during investigation of the case. He had deposed that his son had reported the matter to the police. Kuldeep Singh HC-PW2 had stated that no Ruka had been received in this case. The Tribunal had rightly doubted the case. Considering the above, the Tribunal rightly concluded that the involvement of the vehicle or the driver was not proved. The judgment referred to by the appellant is of little help to them.

9. There is no reason to take a different view. The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

February 02, 2015
sunil