

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 7304 of 2010

Date of decision: January 28, 2015

Jagjiwan Singh

.....Appellant

versus

Rajinder Singh & others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Rajesh Bhateja, Advocate
for the appellant.

Mr. Vikas Mohan Gupta, Advocate
for respondent No.3.

JASPAL SINGH, J

1. Aggrieved against the award dated February 06, 2010 passed in MACT No. 16 dated April 10, 2009, whereby, claim petition preferred under Section 166 of Motor Vehicles Act (for short "Act") has been dismissed, Jagjiwan Singh has preferred the instant appeal seeking setting aside of award and grant of compensation on account of injuries sustained by him in a vehicular accident allegedly occurred in the area of Bus Stand Jagraon involving car bearing registration No. CH-03-K 3757 driven by respondent No.2-Navdeep Singh.

2. In response to notice of appeal Mr. Vikas Mohan Gupta, Advocate appeared and resisted the appeal on behalf of respondent No.3-Insurance Company, whereas respondents No.1 and 2 i.e. owner and driver of offending vehicle did not contest the appeal and

as such, they were proceeded against ex-parte. Tribunal's record was also requisitioned and received.

3. While assailing the impugned award, it has been argued vehemently by learned counsel for the appellant that claim petition has been dismissed by learned Tribunal solely on the ground that claimant/appellant has already been compensated by respondents No.1 and 2 i.e. owner and driver and in such a situation, he could not claim compensation for having sustained injuries in the same accident. In fact, the findings recorded by learned Tribunal in this regard are absolutely erroneous and against settled cannons of law. The learned Tribunal fell into grave error while relying upon affidavit allegedly executed by appellant.

4. It is proved on record by way of oral as well as documentary evidence that appellant incurred a sum of ₹2,00,000/- on his treatment. He was also treated for the fracture of his leg in Dayanand Medical College & Hospital, Ludhiana where he remained hospitalized for a long time. Moreover, if any compromise has been arrived at in between injured and owner of the offending vehicle, that will not act as a bar to seek compensation from Insurance Company, who is otherwise legally bound to indemnify the claim. Moreover, sustaining of injuries by appellant involving car No. CH-03-K-3757 is an admitted fact. Thus, findings and observations made by learned Tribunal while dismissing the claim petition are not sufficient to scuttle down the claim of appellant to seek compensation.

5. This Court has given an anxious thought to the aforesaid

submissions made by learned counsel for the appellant and have meticulously scanned the documents available on record.

6. The claim petition has been preferred by appellant/claimant under Section 166 of the Act and in such a situation, it was an obligatory on the part of claimant to prove that the accident occurred due to rash and negligent driving of car bearing registration No. CH-03-K-3757 by respondent No.2. But the admission of accident does not *ipso facto* mean that it had occurred due to any rashness or carelessness on the part of respondent No.2.

7. Moreover, neither any FIR nor DDR was got registered with the police immediately after the accident. Rather, compromise dated December 12, 2007 Ex.R4 was arrived at between the parties. Subsequent, thereto DDR No.5 dated December 16, 2007 was got registered in respect of compromise. Even another affidavit was executed by Jagjiwan Singh-injured/claimant admitting the receipt of sum of ₹1,25,000/- from respondent No.2-Navdeep Singh as compensation to meet the expenditure of his treatment. All these facts were concealed by appellant while filing the claim petition and these facts were only brought to fore by Insurance Company by examining various witnesses and production of compromise as well as affidavit etc. Except the bald assertion of claimant that accident occurred due to rash and negligent driving of respondent No.2 while driving the car, there is no evidence.

8. In fact, the claimant/appellant intends to kill two birds with one stone. Firstly, he has received a sum of ₹1,25,000/- from

respondents No.1 and 2 and now by way of filing this claim petition, he intends to extract money from Insurance Company. Here, it would be pertinent to mention that appellant did not suffer any permanent disability. Even the bills showing the expenditure incurred on the treatment are much less than that of amount already received by appellant from respondents No.1 and 2.

9. Respondents No.1 and 2 also did not contest the claim petition. Even they did not opt to appear in the witness box which clearly reflects that claim petition has been preferred by appellant/claimant with their collusion and connivance.

10. Thus, in the given circumstances, learned Tribunal was absolutely right in dismissing the claim petition. Therefore, no interference of this Court is justified in the impugned award dated February 06, 2010.

11. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. Accordingly, the same is dismissed whereby the impugned award dated February 06, 2010 is upheld. No order as to costs.

(JASPAL SINGH)
JUDGE

January 28, 2015
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- 1. Whether the Reporters of the Local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or? Yes**
- 3. Whether the judgment should be reported in the digest? Yes**