

In the High Court of Punjab and Haryana at Chandigarh

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F.A.O. No.6056 of 2012

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Date of decision:22.4.2015

Kapil and another

.....Appellants

v.

Nafe Singh and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Ramesh Sharma, Advocate for the appellants.

Mr. R.N. Lohan, Advocate for respondent No.1.

Mr. Banny Thomas, Advocate for respondent No.2.

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Inderjit Singh, J.

Kapil and Satbir-appellants have filed this appeal against Nafe Singh-claimant and the Oriental Insurance Company Limited-Insurer (hereinafter referred to as 'the Insurance Company')-respondents against the award dated 27.7.2012 passed by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal').

The brief facts of the case are that Nafe Singh-petitioner/claimant (respondent No.1 herein) filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') against Kapil son of Satbir-Driver of Hero Honda Splendor motorcycle bearing registration No.HR-31C-1240, Satbir son of Lehna-owner of Hero

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Honda motorcycle and the Oriental Insurance Company Ltd.-insurer of the motorcycle. The case of the petitioner-claimant in the claim petition is that on 2.5.2005, he was going from the office to his house at Village Julana. When he had reached near rivulet (Rajbaha) of Village Julani, a Hero Honda Splendor motorcycle being driven by respondent No.1 came from Jind side and hit him. He sustained injuries. Accident was witnessed by Jagdish son of Dalip and Birbhan residents of Julani. Respondent No.1-Kapil left him at his house. Kapil and Satbir had assured him to provide better treatment. They took him to a "Vaidya". Next day, due to heavy pain, he was brought to General Hospital, Jind, where a fracture of right leg was found. Respondents No.1 and 2 in the claim petition refused to bear expenses of treatment. No FIR and DDR was registered by the Police despite claimant's several requests. He moved an application to Superintendent of Police, Jind, but of no use. This accident was caused by respondent No.1 (appellant No.1-Kapil), while driving motorcycle in rash and negligent manner. The claimant filed claim petition claiming compensation of ₹5 Lacs.

On the other hand, respondents No.1 and 2 in the written statement taken the plea that no accident had taken place, So, the petition is not maintainable in the present form. The petitioner has no locus standi and cause of action to file it. He has concealed true and material facts from the Court. No DDR/FIR has been registered against respondent No.1. No 'ruqa' has been sent to Police Station on that day. No MLR or treatment record of any injury has been shown. A false MLR has been obtained in collusion with Medical Officer, Jind. Opinion of doctor is "No apparent

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injury” seen. Respondent No.3-Insurance Company before the Tribunal also mainly taken the same plea. It is also stated that the Driver of the said motorcycle was not holding a valid and effective driving licence and it was being plied in contravention of terms and conditions of insurance policy.

From the pleadings of the parties, following issued were framed:-

- “1. Whether the accident took place due to rash and negligent driving of Kapil driver of Hero Honda Splendor No.HR-31-C-1240 in which Nafe Singh petitioner had suffered injuries on his person.
2. Whether the petitioner is entitled for compensation and if yes from whom and to what amount he is entitled to receive? OPP.
3. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of accident? OPR-4.
4. Relief.”

The petitioner in support of his case has examined Dr. Dhan Kumar, Officiating Civil Surgeon, Jind as PW-1. He examined PW-2 Kehar Singh Hammer Man, PW-3 Dr. Satyawan Sharma, PW-4 Nafe Singh-petitioner himself, PW-5 Jagdish, PW-6 Dharambir Singh, ASI, PW-7 Om Parkash, SI and PW-8 Ajay Goel, Orthopaedic Surgeon.

On the other hand, respondents examined Satbir as RW-1 and closed their evidence.

The learned Tribunal after going through the evidence on

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record decided issues No.1 and 2 in favour of the petitioner. Issue Nos.3 and 4 are also decided in favour of the petitioner and the claim petition was allowed partly and a sum of ₹1,23,500/- along with interest at the rate of 7.5% per annum was awarded and respondent No.2 being owner of Hero Honda Splendor motorcycle was held liable to pay compensation to the petitioner.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find merit in the present appeal. The claimant (respondent No.1) has filed claim petition and he is to prove his case by leading cogent evidence. First of all, in this case admittedly, no FIR or DDR has been registered regarding the accident on 2.5.2005. There is no document on record to corroborate the version of the claimant that the accident took place on 2.5.2005 and Nafe Singh received injuries as alleged by him in that accident. The claimant has examined PW-1 Dr. Dhan Kumar, Officiating Civil Surgeon, Jind, who stated that on 4.8.2005, he radiologically examined Nafe Singh and found fracture of both bones of right leg and proved his report Ex.P.1, but in cross-examination, he stated that the fracture was aged about within two weeks at the time of examination of X-ray, which means these injuries were suffered in the second fortnight of July 2005, whereas the claimant has stated that the accident had taken place on 2.5.2005. There is also no reason or ground as to why the claimant-injured has not got himself examined immediately after receiving of the injuries. This claim petition had been filed regarding the

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injuries received on 2.5.2005, but there is no MLR or any other medical record regarding those injuries showing that the injured has immediately got himself examined. Whatever medical evidence, the claimant had produced, it is of August 2005 after three months of the accident and in view of the cross-examination of PW-1 that this fracture was of within two weeks, means that these injuries regarding which medical record has been placed had not been suffered on 2.5.2005. PW-3 Dr. Satyawan Sharma, Sharma Eye Hospital, Jind, also deposed that patient Nafe Singh was medico-legally examined by him on 3.8.2005 and has proved the MLR. There is no explanation in the oral statement of PW-4 Nafe Singh as to why he has not got examined himself immediately after receiving of the injuries. From this statement, it looks unnatural that a person will not get treated his injuries for three months after receiving the same. Otherwise also, in the claim petition, the claimant has stated that on next day, he went to General Hospital, but that record is not available nor produced. In the absence of any FIR, DDR and the MLR and the medical record, immediately after the accident, I find that the mere oral statement of the eye witnesses cannot be believed. The counsel for respondent No.1-claimant has argued that the FIR has not been registered as Satbir-appellant No.2 is in Police Department. But there is no record to show that any application was given immediately for registration of the FIR. Nafe Singh got himself examined in the month of August 2005 after three months of the accident and the application to the Superintendent of Police, Jind were given in the month of September and October 2005.

So, keeping in view the evidence on record, specially the

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statement of PW-1 that the injuries, which were radiologically examined by him on 4.8.2005 had been suffered within two weeks shows that no injury has been suffered by the claimant on 2.5.2005.

Therefore, in view of the evidence on record, I find that the claimant has failed to lead cogent evidence in the written statement. There is specific case of appellants No.1 and 2 that no such accident had taken place. The counsel for respondent No.1-claimant cannot take the benefit that appellant No.1-driver has not been examined. It is for the claimant to prove his case by leading cogent evidence. He cannot rely upon the defects of the appellants. The counsel for respondent No.1-claimant also pointed out that in appeal, it has been admitted by Satbir that he was driving the motorcycle. A perusal of the grounds of appeal also nowhere shows that appellant No.2-owner has admitted the accident and receiving of injuries by Nafe Singh. Otherwise also, claimant-respondent No.1 has not led any evidence to show that he had received any injury on 2.5.2005 in motor vehicle accident.

Therefore, finding merit in the appeal, the same is allowed. The award dated 27.7.2012 passed by the Tribunal is against the evidence and the same is set aside and the claim petition is dismissed.

April 22, 2015.

(Inderjit Singh)
Judge

hsp