

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

**FAO No.637 of 2012
Date of decision: 18.12.2015**

Sudershan

....Appellant

Versus

Attar Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Navneet Singh, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. Sanjeev Goyal, Advocate
for respondent No.3.

RITU BAHRI J. (Oral)

This appeal has been filed by the appellant against the award dated 18.11.2011, passed by Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as 'the Tribunal') on account of injuries sustained by him in a motor vehicular accident, which took place on 26.10.2009.

Brief facts of the case are that on 26.10.2009, the appellant, namely, Sudershan was coming from Sonapat to his village Bhainswal Kalan, District Sonapat along with other person in a three-wheeler which was being driven by respondent No.4,

namely, Rohtash. It was about 04:30 p.m., when the three-wheeler reached in the area of village Karewari, Tehsil and District Sonapat. In the meantime, a maruti swift car bearing registration No.HR-22-E-9595, driven by respondent No.1, namely, Attar Singh, at a high speed rashly and negligently came from the opposite side. At the same time, one motorcycle also came from the side of village Karewari. On seeing the motorcycle, the respondent No.1 turned his car to the wrong side of the road and struck against the three-wheeler in which the appellant and others were travelling. Due to the said impact, the appellant fell down on the road and sustained serious and grievous multiple injuries on his person. After the accident, he was shifted to Janta Charitable Hospital, Sonapat and then, shifted to General Hospital, Sonapat from where he was shifted to Sri Ganga Ram Hospital, Delhi, thereafter, he took treatment in B.L. Kapoor Medical Hospital, Delhi and remained under treatment for a period of about six months.

After service, respondents No.1 and 2 in their written statement pleaded that the FIR No.174 dated 07.11.2009, under Sections 279 and 337 IPC, Police Station Mohana, was falsely registered against the respondent No.1. In fact, the accident had taken place due to rash and negligent driving of three-wheeler which was being driven by respondent No.4 rashly and it hit against the car.

Respondent No.3 in its written statement besides taking various preliminary objection has not disputed the fact that on the date of the alleged accident, the car was insured with it. Whereas, respondent No.4 in his written statement blamed the respondent No.1 for causing the accident as he was driving the car rashly and negligently.

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

- 1. Whether Sudershan suffered injuries in an accident which took place on account of rash and negligent driving of car bearing No.HR-22-E-9595, by respondent No.1 or three-wheeler No.HR-69-6522, by respondent No.4, as alleged? OPP.***
- 2. Whether the petitioner is entitled to get compensation, if so, to what amount and from whom? OPP.***
- 3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of the accident and the insured violated the terms and conditions of the insurance policy as alleged, if so, to what effect? OPR-3.***
- 4. Relief.***

After the registration of the FIR (Ex.P-3) and from the written statement of respondents No.1 and 2 as well as statement of respondent No.4 who has appeared as RW-1, the accident stood proved. The Tribunal has to examine as to who was responsible in

causing the accident. The claimant-appellant was employed in the Sales Tax Department, Haryana and this fact has been admitted by him. As per the claimant, while travelling prior to the accident he had seen a motorcycle ahead of the car of respondent No.1 and the car took the wrong side in order to save the motorcyclist which ultimately struck against the three-wheeler. Joginder Singh appeared as PW-4 and PW-5, namely, Manjit Kumar, who was an eye-witness to the accident is the brother of the claimant and the version of the claimant and PW-5 has not been corroborated by any other witness to the accident and no passenger of the three-wheeler who was travelling in the said three-wheeler has been produced. In the petition, the claimant-appellant has alleged that in the same three-wheeler, his cousin was also travelling, but he introduced this fact for the first time in his statement dated 06.06.2011. The accident took place on 26.10.2009 and in the FIR as well as in the claim petition, no reference was made that his cousin-PW-5, was also travelling in the three-wheeler. Hence, the statement of the appellant was not admissible into evidence being not pleased. Apart from this, many other person were travelling and sitting in the three-wheeler and by the impact of accident, no another person sustained injuries and the appellant fell down from three-wheeler. Due to the multiple injuries sustained in the accident, the claimant-appellant was not in a position to make the statement before the police, but after his discharge from Dr. B.L.

Kapoor Medical Hospital at Delhi on 31.10.2009, he did not reported the matter to the police. Head Constable Joginder Singh-PW-4, went to the house of the claimant-appellant on 31.10.2009, told to him that his brother had gone out of station and on his return he would inform as he wanted to give his statement in the presence of his brother. Thereafter, on 07.11.2009, the claimant summoned Head Constable Joginder Singh-PW-4, at his resident and he recorded his statement. But, even this statement was not recorded in the present of his brother.

Once the Tribunal has discarded the version of the claimant-appellant that his brother Manjit Kumar was travelling along with him and the fact that HC Joginder Singh-PW-4, was summoned by him to get his statement recorded on 07.11.2009 after his discharged on 31.10.2009, makes out a case that the claimant has been making statements at his own convenience and has introduced Manjit Kumar (eye-witness) to support his case. Thus, the Tribunal came to the conclusion that Manjit Kumar, PW-5, being the cousin of the claimant was boarding in the same three-wheeler and had not suffered any injuries then why the claimant-appellant had not reported the matter to the police on the date of occurrence i.e. 26.10.2009, rather his statement was recorded on 07.11.2009 and according to his examination-in-chief, the claimant-appellant gained consciousness after two days of the accident and he had told the registration number of the car to him.

He further admitted that in order to save the motorcyclist, the driver of the car turned his car towards the right side.

Since, the claim petition under Section 166 of the Motor Vehicles Act, it was necessary that the claimant had led sufficient evidence to show that the accident had occurred on account of rash and negligent driving of the car i.e. by respondent No.4. Learned counsel for the respondent has further placed on record the judgment dated 24.03.2011, passed by Judicial Magistrate Ist Class, Sonapat, whereby the respondent No.1, was facing the trial and has since been acquitted by the charges levelled against him.

A perusal of this judgment shows that neither the complainant nor any eye-witness has been examined and the prosecution version was held to be unreliable.

The judgment of acquittal cannot be made basis to dismiss the claim petition, but in the facts of the present case, the claimant himself has stated that the motorcycle was coming ahead of the car and in order to save the motorcyclist, the driver of the car turned his car towards right side, which hit the three-wheeler. None of the injured in the accident have been examined and even the complainant made the statement to the police on 07.10.2009, when he was discharged from the Hospital on 31.10.2009. There is no explanation as to why the statement could not be recorded earlier. Hence, the finding on Issue No.1 given by the Tribunal

does not call for any interference by this Court as the evidence has rightly been examined by the Tribunal in the correct prospective.

However, as per the deposition of PW-3, namely, Dr. Versha, Medical Officer, Civil Hospital, Sonapat, Sudershan was brought by one Ravinder with a history of road side accident and she medico legally examined the patient vide MLR Ex.P-4. The patient was having total six injuries as mentioned in MLR No.VR-511/09. Anoop Kumar Kaushik appeared as PW-1 and deposed that Sudershan was admitted in his hospital on 27.10.2009 and was discharged on 31.10.2009. He was admitted with the history of road side accident and at that time he was having head injury with left frontal EDH and his discharge summary in this regard is Ex.P-1. He further proved the bills Ex.P-2 which bears the signatures of Dr. Ashish Kumar Srivastva. The claimant himself has stated that the motorcycle was coming ahead of the car and in order to save the motorcyclist, the driver of the car turned his car towards right side, which hit the three-wheeler.

So, keeping in view the above facts and circumstances and the fact that the claimant-appellant has suffered injuries in the said accident, he is held entitled to claim Rs.50,000/- from the respondents No.1 to 3.

The amount of compensation of **Rs.50,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

18.12.2015
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