

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

FAO No. 214 of 2015

DECIDED ON: DECEMBER 17, 2015

AZHARUDDIN

.....APPELLANT

VERSUS

SAHABU AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Present:- Mr. Virendra Rana, Advocate
for the appellant.

JASPAL SINGH, J

Aggrieved against award dated October 07, 2014 passed by Motor Accident Claims Tribunal, Mewat, whereby, claim petition preferred by appellant under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'Act') seeking grant of compensation to the tune of ₹10,00,000/- alongwith interest on account of injuries sustained by appellant in a motor vehicular accident on February 21, 2013 in the area of village Tauru, District Mewat involving vehicle bearing registration No. HR-27-C-4909, was dismissed.

2. Briefly, stated the facts giving rise to the instant appeal are that on February 21, 2013, appellant was returning to his house from his school at Patel Nagar, Tauru on foot. At about 3.30 PM, when he reached on Bawla road, Tauru, a vehicle bearing registration No. HR-27-C-4909 (hereinafter referred to as the offending vehicle) came from the front side being driven by respondent No.1 in a rash and negligent manner and struck against the appellant, as a result of impact, appellant fell on the road and suffered multiple injuries including fractures in his right leg. After the accident respondent No.1/driver of the offending vehicle accelerated the truck and fled away from the spot. The accident was witnessed by Hamid who noted down the registration number of the offending vehicle. It has further been averred that accident took place due to the sole rash and negligent driving of offending vehicle by respondent No.1. It has further been unfolded by the appellant that he was rushed to Vinayak Hospital, Bhiwani by Jameel Khan where he was treated and he incurred an amount of ₹1,50,000/- on his treatment, medicines, transportation and special diet. Due to sustaining injuries in the accident, appellant has become permanent disabled.

3. The claim petition was resisted by respondents. Respondents No.1 and 2 filed written statement raising preliminary objections *inter-alia* on the ground that claim petition is not maintainable; that the claimants have

no *locus standi* to file the petition; that they have concealed the actual and factual facts and that there is an inordinate delay in lodging the FIR. On merits, the accident has been denied. It has been specifically alleged that no accident took place with the vehicle in question by respondent No.1. It has further been averred that FIR has been falsely got registered against respondent No.1 by the claimants in connivance with police and the witnesses. Respondent No.3-Insurance Company has also denied the accident and has alleged that in fact the appellant might have sustained injuries while crossing the road and was dashed by unknown vehicle. It has further been pleaded by respondent No.3 that respondent No.1 was not having a valid and effective driving licence at the time of accident. On merits, age, income and occupation of the appellant and expenses incurred by him on his treatment are also denied.

4. From the pleadings of the parties, following issues were framed by learned Tribunal on April 16, 2014:

1. Whether the accident in question resulting into multiple injuries to petitioner took place on 21.2.2013 in the jurisdiction of Police Station Tauru, because of rash and negligent driving of vehicle bearing registration No. HR-27-C-4909 by its driver/respondent No.1? OPP.
2. If issue No.1 is proved, whether the petitioner is entitled to compensation. If so, to what amount and from whom? OPP.
3. Whether respondent No.1 was not having a valid and effective driving

licence at the time of accident. If so, to what effect? OPR-3

4. Relief.

5. To substantiate his claim, appellant examined Zamil Khan as PW1 and the alleged eye witness Hamid as PW2 and thereby, close the evidence after placing on record various documents Ex.P1 to Ex.P62.

6. On the other hand, respondents did not led any evidence despite the fact that they afforded ample opportunities. Ultimately, learned Tribunal closed the evidence by order.

7. After hearing learned counsel for the parties and appraisal of the evidence, learned Tribunal dismissed the claim petition while holding that petitioner has failed to prove that accident had taken place due to rash and negligent driving of respondent No.1, which necessitated the filing of instant appeal.

8. While assailing the findings recorded by learned Tribunal especially, on issue No. 1, it has been argued by learned counsel for the appellant that the same are absolutely against the evidence available on record and overwhelming evidence adduced by appellant has been ignored and disbelieved by learned Tribunal without assigning any cogent reason. In order to prove that the accident took place due to rash and negligent driving of offending vehicle by respondent No.1, appellant examined the alleged eye

witness Hamid as PW-2 who has stranded his sworn affidavit Ex.PW-2/A clearly attributing the rashness and negligence on the part of respondent No.1 while driving the vehicle in question, which resulted into accident. The learned Tribunal has discarded his testimony simply for the reason that there is a delay of five months in lodging the FIR, which is unexplained. It is well settled that registration of FIR is not *sine qua non* for seeking compensation under the provisions of Motor Vehicle Act and if the accident is otherwise proved by way of cogent evidence, the compensation deserves to be awarded but in the case in hand learned Tribunal has committed an error while disbelieving the evidence. Thus, the impugned award is not sustainable in the eyes of law and the appeal deserves to be accepted and appellant is entitled to just compensation.

9. This Court has given an anxious thought to the submissions made by learned counsel for the appellant and has also minutely scanned the impugned award.

10. The claim petition has been preferred under Section 166 of the Act and in such a situation it is obligatory upon the appellant/petitioner to prove that he sustained injuries due to rash and negligent driving of vehicle No. HR-27-C-4909 by respondent No.1 but in the case in hand it can be said that there is no cogent or convincing evidence adduced by the appellant.

The accident is alleged to have taken place on February 21, 2013. It is alleged to have been witnessed by Hamid-PW2 but to the utter surprise the matter was not reported to the police. However, it is alleged that an application Ex.P60 was submitted to SHO, Police Station Taura, in respect of accident on February 24, 2013. But to the utter surprise, neither identity of driver nor the description of offending vehicle i.e. registration number etc was unfolded in the said application. Had the accident was witnessed by Hamid-PW2 and the registration number of the vehicle was noted down by him, that must have been reflected in the application Ex.P60. So, it appears that after conniving with respondents No.1 and 2 just to extract the compensation from respondent No.2 a story was coined and a complaint was moved to learned Jurisdictional Magistrate who ordered the registration of FIR vide Ex.P61 while resorting the provisions of Section 156 (3) of Cr.P.C. There is no explanation with regard to noting down the registration number of the offending vehicle in FIR, what to talk of any plausible explanation for explaining the delay in registration of FIR. Here, it would also be pertinent to mention that Hamid-PW2 is the only eye witness. Even, as per the case of appellant/petitioner when he subjected to cross-examination he has stated that accident was witnessed by him from a distance of 2 acres. It is highly improbable that from a distance of two acres a person would be able to note

down the registration number of the vehicle. More so, respondent No.1 was not known to him prior to the alleged accident. It appears that he being a co-villager has come forward just to support the case of appellant. Had he been present at the time of accident, he must have reported about the accident to the police in time, called the police at the place of accident, accompanied the injured to hospital but nothing was done by him. Thus, this Court is of the considered view that learned Tribunal has rightly concluded that appellant has failed to prove the involvement of respondent No.1 as well as that of vehicle bearing registration No. HR-27-C-4909. The findings recorded by learned Tribunal do not call for any interference of this Court being absolutely in consonance with the evidence available on file as well as the legal proposition. Therefore, the same are affirmed.

11. In view of what has been discussed above, this Court does not find any merit in the instant appeal. As such the same is dismissed.

(JASPAL SINGH)
JUDGE

DECEMBER 17, 2015

sham