

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

FAO No.5765 of 2002.

Date of Decision: 15.03.2016.

Dilbag Singh

....Appellant.

VERSUS

Rajinder Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ramesh Hooda, Advocate for the appellant.

Mr. Raman Chawla, Advocate for respondents No.1 and 2.

Mr. Sandeep Suri, Advocate for respondent 3.

SNEH PRASHAR, J.

This appeal is directed against the award dated 05.09.2002 passed by learned Motor Accident Claims Tribunal, Hissar (for short, “the Tribunal”) in MACT Case No.11 of 2000.

A petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by appellant-claimant seeking compensation for the injuries allegedly sustained by him in a motor vehicular accident that took place on 05.11.1999. The claimant averred that he was going from Hissar to village Saharwa on his

motorcycle. When he was one kilometer short of village Mangali, he stopped the motorcycle on the side of the road for urination. In the meantime, a tractor bearing registration No.HR-17/1935 (hereinafter referred to as the “offending tractor”), being driven rashly, negligently and in a high speed by Rajinder Singh (respondent No.1), came and struck against his motorcycle. He sustained multiple injuries. After causing the accident, the driver of the tractor fled away but he was able to note the number of the tractor.

The driver, owner and insurer of the offending tractor, impleaded as respondents by the claimant, contested the petition. In the joint written statement filed by respondents No.1 and 2, occurrence of accident involving the offending tractor was denied. The insurance company filed a separate written reply. Apart from denying the factum of accident it also alleged that the offending tractor was being driven in violation of the terms and conditions of the insurance policy and therefore, it was not liable to indemnify the insured.

On the basis of the rival pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal dismissed the claim petition.

Feeling unsatisfied with the award dated 05.09.2002, the appellant preferred the instant appeal.

The submissions made by Mr. Ramesh Hooda, learned counsel

for the appellant, Mr. Raman Chawla, learned counsel for respondents No.1 and 2 and Mr. Sandeep Suri, learned counsel for respondent No.3 have been heard and record perused.

At the very outset, learned counsel for the appellant argued that driver of the offending tractor, namely, Rajinder Singh stepped into the witness box as RW-1. Although he deposed that the accident had not taken place with his tractor and that he had not gone in the area of village Mangali on the relevant date and time but on being cross-examined by the claimant he admitted that on 05.11.1999 he had gone to a brick kiln located in the area of village Mangali and had parked his tractor on left side of the road and in the meantime, a motorcyclist viz Dilbag Singh came and struck against the hind portion of his tractor. He also admitted that Dilbag Singh suffered injuries during the accident. Learned counsel asserted that admission of occurrence of accident by driver of the offending driver was sufficient to corroborate the testimony of the claimant for proving not only the factum of accident but also that the claimant had suffered injuries during the accident which took place due to the rash and negligent driving of the offending tractor by its driver. For the simple reason that the claimant had not lodged a report with the police in respect of the accident, learned Tribunal was wrong in dismissing his claim petition.

On the other hand, learned counsel for the respondents argued that the admission made by RW1 Rajinder Singh in his cross-examination cannot be accepted at its face value. In his written reply as well as in the first part of his deposition before the Tribunal he specifically denied

involvement of his tractor in any accident as presented by the claimant. Abruptly, during cross-examination by the claimant, he took a U-turn and admitted collision of his tractor with the motorcycle of the claimant. The intentional alteration in his statement clearly indicated his collusion with the claimant.

Admittedly, no report with regard to the accident was lodged with the police by the claimant. No doubt, registration of a First Information Report with regard to the accident is not a pre-condition for claiming compensation by a victim or in case of death by the legal heirs of the deceased victim of an accident under the provisions of the Act of 1988. However, the claimant is legally required to prove the occurrence of motor accident and to also prove that he had sustained injuries during the accident or in case of death that the deceased died due to the injuries received during the accident.

In the case in hand, the version of the claimant was that on 05.11.1999 when he was going from Hissar to his village Saharwa on his motorcycle he stopped his motorcycle on the road for urination but in the meantime the offending tractor, being driven rashly, negligently and in a high speed, came and hit his motorcycle. He did not mention whether the offending tractor hit the motorcycle from the front side or from the backside. Any how, as indicated above, the driver and owner of the offending tractor completely denied the factum of accident as well as involvement of the offending tractor in any such accident. Contrary to their stand taken in the written reply, when Rajinder Singh, driver of the

offending vehicle stepped into the witness box, on being cross-examined by the claimant, he outrightly admitted that the motorcycle of the claimant had struck into his tractor. It was crystal clear from the account of accident given by him that he had changed his version only with an intention to favour the claimant.

As observed above, the version of the claimant was that when he stopped his motorcycle on the side of the road, the tractor came and struck into his motorcycle whereas RW1 diagonally changing the stand taken by him earlier stated that he had stopped the tractor beside the road and the claimant came on his motorcycle and struck against the hind portion of his tractor. He too did not state from which direction the claimant came on his motorcycle. The version of RW1 with regard to the accident was completely contrary to the version of the claimant and that proved that none of them was trustworthy.

The matter does not end here. The claimant alleged that he suffered grievous injuries during the accident including fracture of left ankle and fracture neck of scapula i.e. shoulder blade. Admittedly, the claimant did not approach any Government Hospital for treatment of his injuries either immediately after the accident or subsequently. He took treatment at Chawla Nursing Home and to prove his injuries examined PW1 Dr. Parveen Chawla. Neither PW1 stated nor it was mentioned in the discharge cards Ex.P1 and Ex.P2 prepared by him that the claimant had suffered injuries, for which he had treated him, during a roadside accident.

In that manner, the medical document also do not indicate that the claimant

had suffered injuries during a motor accident.

At the time of accident, as stated by the claimant, he was working as lecturer in a Senior Secondary School, Hissar. When he appeared in the witness box, he stated that he had been appointed as Assistant Town Planner, Fatehabad. Being an educated person, he was well aware of his legal rights. He stated that he did not report the matter to the police because he was under agony. After one month he tried to lodge a report but the police did not register the same being delayed. He also stated that he gave an application in writing to the police but no such application was produced or proved. He did not move to any higher authority against refusal of the police to register his complaint. The said facts also did not find mention in his pleadings. In fact, he explained no reason for not lodging a report with any authority with regard to the accident.

Thus, seen from every angle, the finding of learned Tribunal that the claimant utterly failed to prove the occurrence of accident and also that he suffered the injuries during a motor accident are legal and call for no intervention. The appeal being devoid of merits is dismissed.

(SNEH PRASHAR)
JUDGE

15.03.2016.

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