

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

FAO No.417 of 1996.

Date of Decision: 28.04.2016.

Manphool Singh

....Appellant.

VERSUS

Dilsukh and and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

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

Respondent No.1 was proceeded against exparte vide order dated 09.03.2015.

Appeal qua respondent No.2 was dismissed vide order dated 05.04.2016.

Service upon respondents No.3 to 5 was dispensed with vide order dated 12.09.2014.

SNEH PRASHAR, J.

Assailing the award dated 20.05.1995 passed by learned Motor Accident Claims Tribunal, Bhiwani (for short, “the Tribunal”) by virtue of which claim petition No.73 of 1992 was dismissed, the appellant-claimant preferred the instant appeal.

The narration of accident, as presented by appellant-claimant Manphool Singh was that on 05.01.1992 he was travelling as a pillion rider on the motorcycle bearing registration No.HR-19-1216 (for short, “the

motorcycle”) driven by Suraj Bhan. At about 9:45 p.m., when they were on Loharu road in the area of Charkhi Dadri, a car bearing registration No.RRK-8899 (hereinafter referred to as “the offending car”), being driven rashly and negligent, came from the opposite direction and hit into their motorcycle, as a result of which they both fell down. He suffered fracture of both bones in his right leg whereas Suraj Bhan did not sustain any injury. A liquor vend contractor took him to the hospital at Charkhi Dadri.

In the petition filed invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation on account of the injuries suffered by him, the appellant impleaded the driver, owner and insurer of the offending car as well as driver and insurer of the motorcycle. The insurer of the offending car though was arrayed as respondent No.3, but its particulars were not disclosed. The petition was contested by respondent No.1-driver of the offending car and respondent No.5-insurer of the motorcycle. In his written statement, respondent No.1 denied involvement of his car in the accident of the appellant. He alleged that Suraj Bhan (respondent No.4), who was driving the motorcycle, was drunk and the motorcycle slipped on the road because of which the other occupant of the motorcycle suffered injuries. After three days of delay, the appellant in collusion with respondent No.4 got a false case registered against him in order to claim compensation. Respondent No.5 raised all preliminary and legal objections available to the insurer under the Act of 1988 and denied that it was liable to pay any compensation.

On the basis of 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 petition.

It may be mentioned that the appeal already stands dismissed against Subhash Kumar-respondent No.2 (owner of the offending car) vide order dated 05.04.2016 and respondent No.1 is exparte.

Feeling unsatisfied with the award dated 20.05.1995, the appellant preferred the instant appeal.

The submissions made by Mr. Ramesh Hooda, learned counsel for the appellant have been heard.

At the very outset, learned counsel for the appellant argued that the appellant had suffered grievous injuries and was admitted in the hospital. As he was declared unfit to make statement, the police recorded statement of Suraj Bhan, eyewitness and registered a First Information Report on 07.01.1992. The delay in lodging the report was not to be attributed to the appellant and learned Tribunal erred in suspecting version of the appellant on that ground. No medical document was produced by the respondents to support their allegation that Suraj Bhan, who was driving the motorcycle, was in drunk condition. There is also no evidence to indicate that the motorcycle had slipped and was not hit by the offending car. The appellant remained in the hospital for about eight months. The delay of five months in filing the claim petition was duly explained in the application filed by the appellant for condonation of delay and it was wrongly observed

by learned Tribunal that the delay has remained unexplained.

The accident was alleged to have taken place on 05.01.1992 at about 9:45 p.m. in the night. Suraj Bhan, who was driving the motorcycle when the accident took place, did not suffer any injury, is an admitted fact. However, it was stated by PW2 Suraj Bhan that one Ram Mehar, a liquor contractor had taken injured Manphool Singh to Civil Hospital. It is not the case that the appellant had become unconscious at the time of accident or that while admitted in the hospital he remained unconscious for two days. In any case, Suraj Bhan, being driver of the motorcycle was undoubtedly a natural eyewitness of the accident, yet neither the appellant nor Suraj Bhan made any effort to lodge a report with the police in respect of the accident on the same day or atleast on the next day when admittedly the police visited the spot of accident. The silence of Suraj Bhan remained unexplained and for that reason the delay in lodging of the First Information Report gains importance and renders the version of the appellant with regard to the accident suspicious. Apparently, the First Information Report contained a well planned, consulted and manipulated version with regard to the accident.

Otherwise also, the testimony of PW2 Suraj Bhan and PW3 Manphool Singh (appellant) is so inconsistent on material particulars that they fail to inspire truth. PW2 Suraj Bhan at the first instance stated that the offending vehicle was a jeep. He improved his version and stated that the offending vehicle was a car but it appears strange that according to him the offending car which came from the opposite direction, straight hit into his

motorcycle yet he, though was driving the motorcycle, escaped totally unhurt and the pillion rider sustained multiple injuries. He was unhurt, still he did not take the injured to the hospital and also did not lodge report with the police. The injured was shifted to the hospital by some liquor vend contractor. That person was not named either by the appellant or by Suraj Bhan. On the contrary, the person, who got admitted Suraj Bhan in the hospital, was named as his wife in the medico legal report. All the said facts, go a long way to prove that the alleged story of accident presented by the appellant was not true.

Thus, seen from every angle, there is no merit in the appeal and it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

28.04.2016.
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