

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

**1. FAO-4978-2003 (O&M)
Date of decision: 10.05.2016**

Raju @ Raj Kumar

...Appellant

Versus

Gurmukh Singh and another

...Respondents

**2. FAO-4979-2003 (O&M)
Date of decision: 10.05.2016**

Ram Phal

...Appellant

Versus

Gurmukh Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jagdish Manchanda, Advocate,
for the appellants.

Mr. Varun Sharma, Advocate,
for Mr. Ashwani Talwar, Advocate,
for respondent No.2.

JITENDRA CHAUHAN, J.

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. Whether to be referred to the Reporters or not ? Yes

3. Whether the judgment should be reported in the Digest? Yes

1. By this single judgment of mine, two appeals, as noticed above,
are being disposed of, having arisen out of the common impugned award
dated 16.08.2003, passed by learned Motor Accidents Claims Tribunal,
Karnal. Learned Tribunal, vide impugned Award, dismissed the claim

petitions filed by the appellants.

2. Raju @ Raj Kumar and Ram Phal have brought two different petitions under the Motor Vehicles Act before the Tribunal to the tune of Rs. 5 Lac each on account of injuries received by them in a motor vehicle accident which had occurred on 04.02.2001 in the vicinity of Village Agondh on Kaithal road.

3. It is the case of the petitioner-appellant(s) that petitioner-appellant, Raj Kumar was riding motorcycle with petitioner-appellant Ram Phal, pillion on Karnal-Kaithal Road near Agondh, where they were hit by a speeding jeep bearing registration No. HR-05A-9328. The mishap was allegedly the direct result of rash manner of driving on the part of respondent, Gurmukh Singh, who was driving the offending vehicle at the time of accident. The petitioner-appellants suffered multiple injuries on their persons.

4. The learned counsel for the appellants refers to Ex.P1, the copy of FIR No.24 dated 04.02.2001, registered under Sections 279, 337, 338, 427 of the Indian Penal Code, against respondent No.1-driver, as well as the testimony of Ashok Kumar, PW1, from the Court of Sh. Parveen Kumar, Judicial Magistrate, First Class, Karnal, to contend that the claimant-appellants have successfully proved the factum of the accident. He further states that there is no evidence in rebuttal produced by the respondents to deny the accident. At the most, it is a case of contributory negligence.

5. On the other hand, learned counsel appearing on behalf of the respondent-Insurance Company has vehemently opposed the present appeals. It is submitted that the learned Tribunal has rightly dismissed the

claim petitions as the appellants failed to prove the factum of the accident.

6. I have heard the learned counsel for the parties and gone through the case file.

7. At the time of the accident, appellant-Raju, PW6, was riding the motorcycle, whereas, appellant-Ram Phal, PW7, was pillion rider. Both of them have given different versions as regard the manner of accident suffered. The appellant, Raju, has stated that when they reached near Village Agondh on Kaithal Road, the offending jeep came from behind and hit against the motorcycle. On the contrary, Ram Phal has stated that when they reached near Agondh turning on the main road, the jeep came from the side of Karnal and struck against the motorcycle. He denied that they were hit from behind, as stated by Raju.

8. Even otherwise, it emerges from the pleadings and evidence that the accident took place due to the negligence of Raju, the driver of the motorcycle. He ought to have been more careful while merging with main road from the side road. Mere registration of FIR would not be sufficient to hold that respondent No. 1 was indeed negligent in driving the jeep in question. As noticed above, negligence of appellant-petitioner Raju is not large and he cannot take benefit of his own wrong.

9. In **Jayshree Vija Singhrao Kahalate Vs. Bhagivatal Attar Chand, 1996 (1) T.A.C. 513 (Bombay)**, it has been held that where deceased was himself negligent, as a result of which the accident took place, an application for compensation is not maintainable.

10. In the above background, this Court is of the considered opinion that the learned Tribunal has rightly rejected the claim petitions of

the appellants. There is no ground to interfere in the well-reasoned judgment of the learned Tribunal. The compensation has been rightly denied to them.

Dismissed.

Photocopy of this judgment be placed on the connected file.

10.05.2016
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(JITENDRA CHAUHAN)
JUDGE