

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

FAO No.4077 of 2005(O&M)

Date of decision:16.8.2016

Somnath

....Appellant

VERSUS

Som Bir and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. J.S. Maanipur, Advocate for the appellant.

Mr. Sandeep Suri, Advocate for respondent No.3.

REKHA MITTAL, J.

The present appeal has been directed against the award dated 22.03.2005 passed by the Motor Accident Claims Tribunal, Fast Track Court, Kurukshetra (in short 'the Tribunal') whereby claim petition filed by Somnath – injured for grant of compensation in respect of injuries sustained by him in a motor vehicular accident is ordered to be dismissed.

As per the case set up by the claimant, on 08.12.2000, he along with Amrik Singh was coming towards Pipli on motorcycle driven by Amrik Singh at a normal speed and on left side of the road. At about 6 AM, when they reached in the area of village Jhiverheri, tractor No.HR-07A-8905 driven by Som Bir - respondent No.1 came in a rash and negligent manner on wrong side of the road and front portion of the tractor struck against the motorcycle and both the motorcyclists fell on the road and received injuries. The claimant was shifted to Nagpal Nursing Home, Kurukshetra from where he was referred to PGI, Chandigarh. He received multiple grievous injuries on legs, knee, head and other parts of body. He spent an amount of Rs.1 lakh on his treatment. First Information Report

(in short 'FIR') No.299 dated 09.12.2000 under Section 279, 304-A IPC was registered against respondent No.1 in Police Station Sadar Thanesar. The claimant prayed for compensation to the tune of Rs.3,00,000/- under Section 166 and Rs.50,000/- under Section 140 of the Motor Vehicles Act, 1988 (in short 'the Act').

The driver and owner of the offending vehicle filed the reply controverting the allegations that the accident was caused with tractor of answering respondents. All other material allegations of the petition were denied with a prayer for dismissal of the petition.

The National Insurance Company Ltd. (hereinafter referred to as 'the Company') raised preliminary objections inter alia locus standi, cause of action, jurisdiction, maintainability, non-joinder and misjoinder of parties and collusion. It is averred that no such accident took place with the tractor and the accident, if any, took place due to sole rash and negligent driving of motorcycle by its driver who hit the motorcycle in the standing tractor. The driver of the tractor was not holding a valid and effective driving licence at the time of accident and the tractor was not being driven in accordance with the standard terms and conditions of the policy of insurance.

The learned Tribunal framed the following issues for determination:-

- 1). Whether the petitioner Som Nath and Amrik Singh received injuries in an accident which took place on 8.12.2000 on account of rash and negligent driving of tractor No.HR-07A-8905? OPP.
- 2) If issue No.1 is proved, whether the petitioners are entitled to 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? OPP3
- 4) Whether the petition has been filed by the petitioner in collusion of respondent No.1 and 2? OPRs
- 5) Relief.

The parties were permitted to adduce evidence in support of their respective claims. After having heard counsel for the parties in the light of materials on record, the learned Tribunal answered issue No.1 against the claimant/appellant and as a consequence, the petition was dismissed without recording any findings on issues No.2 and 3.

Counsel for the appellant has submitted that the learned Tribunal committed a gross error rather illegality by relying upon an entry in the records of PGI, Chandigarh produced by Dr. Sameer Aggarwal (PW-6). It is argued that Dr. Sameer Aggarwal deposed before the Tribunal on the basis of records without having any personal knowledge as to how the accident in question took place. It is further submitted that an entry in the records of PGI with regard to history of roadside accident at around 5.45 AM where the motorbike on which he was pillion rider colluded with Jeep at Bausa is not sufficient to discard and disbelieve testimony of the injured/victim corroborated by Gurinder Pal Singh (PW-7) coupled with the factum that after due investigation of FIR (Ex.P26), report under Section 173 Cr.P.C. was submitted before the Magistrate for trial of Sombir in regard to causing the accident due to his rash and negligent driving.

Counsel for the contesting respondent has supported the findings recorded by the learned Tribunal on issue No.1 with the submissions that Amrik Singh driver of the motorcycle did not appear in

the witness box to corroborate testimony of the injured that the accident took place with the tractor in question at village Jhiverheri instead of a Jeep near Bausa.

I have heard counsel for the parties, perused the paper-book and records of the Tribunal.

The learned Tribunal has non-suited claim of the appellant primarily by relying upon entry in the records of PGI, Chandigarh that the motorbike collided with a Jeep. Dr. Sameer Aggarwal (PW-6) from PGI could not possibly tell as to whose instance this entry was made while recording history of the patient Somnath. There is nothing on record suggestive of the fact that the said factum was disclosed to the doctor by the injured. On the contrary, Somnath in his testimony has categorically stated that he did not give his history to the doctor as he was not fully conscious. Somnath – injured/victim and Gurinder Pal Singh, an eye witness to the occurrence, have strongly corroborated each other that the occurrence in question took place as the tractor driven by respondent No.1 struck against the motorcycle driven by Amrik Singh on which Somnath was a pillion rider. It is also an undisputed position of the case that on the next day of the occurrence i.e. 09.12.2000, FIR No.299 dated 09.12.2000 was registered in Police Station Sadar Thanesar. After due investigation, challan was presented in the Court for trial of Sombir – respondent No.1. There is no material on record that Sombir or owner of the tractor ever raised an issue with the police authorities complaining false implication of Sombir and offending vehicle. Sombir has not alleged any hostility against him by the injured of the accident in order to get him falsely indicted in criminal proceedings just for the sake of getting compensation in the proceedings under the Motor Vehicles Act. Simultaneously, there is

nothing on record suggestive of the fact that the tractor has been involved as a result of collusion between the injured and driver or owner of the offending vehicle. In view of the discussion made hereinbefore, I find it difficult to accept the conclusions drawn by the Tribunal that accident in question did not take place due to rash and negligent driving of the tractor or the accident had taken place with a jeep but the tractor has been falsely implicated later. That being so, findings of the Tribunal on issue No.1 cannot be allowed to sustain and accordingly set aside.

The learned Tribunal has not recorded any findings on issues No.2 and 3 with regard to assessment of compensation or driver of the offending vehicle not holding a valid driving licence. As assessment of compensation requires appreciation of entire evidence on record, the matter is remitted to the Tribunal for recording its findings on issues No.2 and 3.

For the foregoing reasons, the appeal is partly allowed. The findings recorded by the Tribunal on issue no.1 are set aside and the matter is remitted for decision on issues No.2 and 3 on the basis of evidence already adduced on record. As the claim application filed in the year 2001 has been remitted to the Tribunal for decision on aforesaid issues, the Tribunal is directed to decide the matter within a period of two months from the date of parties putting in appearance. The parties through their counsel are directed to appear before the Tribunal on 14.09.2016.

AUGUST 16, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no