

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

**FAO No.4093 of 2009 (O&M).
Date of Decision: 16.02.2016.**

Vinod KumarAppellant.

VERSUS

Sunder Singh and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.P. Sharma, Advocate for the appellant.

Respondents No.1 and 2 were proceeded against exparte vide
order dated 08.09.2014.

Mr. Vipul Sharma, Advocate for respondent No.3.

SNEH PRASHAR, J.

This appeal arises out of an award dated 18.04.2009 passed by Motor Accident Claims Tribunal, Rewari (for short, “the Tribunal”) in MACT case No.49 of 2007 vide which the claim petition titled “Vinod Kumar vs. Sunder Singh and others” filed under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was dismissed.

The relevant facts are as under:-

On 10.09.2006 appellant Vinod Kumar alongwith his wife Sunita Devi was going from Rewari to his village Usmapur by means of his

motorcycle bearing registration No.HR-36C-408. At about 1:30 p.m. when they reached near Kishore Hotel, a truck bearing registration No.HR-47-6177 (hereinafter referred to as the “offending truck”) being driven rashly and negligently came on wrong side of the road and hit the motorcycle. Because of the impact, appellant and his wife sustained injuries.

A First Information Report No.72 dated 10.09.2006 under Section 279 and 337 (section 338 added lateron) of the Indian Penal Code was registered at Police Station Rohrai.

The appellant-claimant filed a petition invoking the provisions of Section 166 of the Act of 1988 for claiming compensation to the tune of Rs.15 lacs.

The petition was contested by the respondents (driver, owner and insurer of the offending truck).

Considering the ocular and documentary evidence led by the parties and finding that the claimant had failed to prove that the motor accident that took place on 10.09.2006 was an outcome of rash and negligent driving of the offending truck by respondent No.1-driver, dismissed the petition vide award dated 18.04.2009.

Feeling aggrieved, the claimant-appellant has preferred the instant appeal.

The submissions made by Mr. J.P. Sharma, learned counsel for the appellant and Mr. Vipul Sharma, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellant argued that learned Tribunal

committed an error in holding that the accident in question had not taken place due to rash and negligent driving of the offending truck by respondent No.1. It was duly proved on record that on registration of the First Information Report the driver of the offending truck (respondent No.1) was arrested and the offending truck was impounded and after submission of challan, respondent No.1 was charge sheeted by learned Judicial Magistrate taking cognizance against him.

Elaborating his argument, learned counsel urged that the only ground taken by the Tribunal for rejecting the claim petition was that the wife of the claimant in her statement before the police, which formed the basis of First Information Report No.72 dated 10.09.2006, had mentioned the number of the offending truck as “HR-63B-6845”. The fact is that she is an illiterate lady and had stated the registration number at the instance of a passerby. During investigation, the police found that the number of the offending truck was “HR-47-6177” and it was the said number mentioned by the claimant in his claim petition and evidence. Moreover, wrong mentioning of the number cannot be a ground for rejection of the claim as the settled law is that even in absence of First Information Report the compensation can be awarded.

Indeed, the First Information Report regarding the accident in question was lodged on the statement of Smt. Sunita who is none else but wife of the claimant-injured. She in her statement before the police mentioned the number of the truck as “HR-63B-6845” whereas the claim petition was filed by the appellant-claimant against driver, owner and

insurer of the offending truck i.e. truck No.HR-47-6177. In the instant case, the one and only eyewitness of the accident was Smt. Sunita and it was only she who could explain the reason of mistake, if any, in mentioning the number of the truck, but for the reasons best known to the appellant-claimant she did not step into the witness box to make a statement on oath. Although a report under Section 173 of the Code of Criminal Procedure was filed against respondent No.1 being driver of the offending truck, but in the final report Ex.P30 there is no mention of the circumstances in which the number of the offending truck involved in the accident was changed from HR-63B-6845 to HR-47-6177.

There was no clerical error in stating the number rather as is apparent on the face of it the registration number of the vehicle involved was totally changed. The appellant-claimant while appearing in the witness box did not utter a word regarding change of number of the truck. The investigation officer of the case was also not examined. Thus, it could not be proved that the accident was caused by rash or negligent driving of the offending truck by respondent No.1. Since the appellant-claimant could not prove identity of the truck involved in the accident, he was rightly held not entitled to any compensation from the respondents. Considering the evidence available on record, although learned Tribunal assessed the compensation amount but at the same time held that the claimant would not be entitled to recover the same, therefore, there is no ground to go into that issue.

Thus, the award passed by learned Tribunal is very much in accordance with law and calls for no intervention. Accordingly, the appeal is dismissed.

(SNEH PRASHAR)
JUDGE

16.02.2016.
jitender