

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

**FAO No. 5523 of 2009 (O&M)
Date of decision: 16.08.2016**

Krishna Devi

..... Appellant

Versus

Krishan Chand and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.P.L.Singla, Advocate
for the appellant.

Mr. U.K.Agnihotri, Advocate
for respondent no.1.

Ms. Monika Jhangra, Advocate
for Ms. Vandana Malhotra, Advocate
for respondent no.2.

DARSHAN SINGH,J

The present appeal has been preferred by appellant-claimant against the award dated 09.01.2009 passed by the learned Motor Accident Claims Tribunal (for short 'Tribunal'), Panchkula, whereby the claim petition filed by the claimant for grant of compensation on account of the injuries suffered by her in motor vehicular accident which took place on 20.10.2007 has been dismissed.

2. As per the case of the claimant, on 20.10.2007 in the morning she took lift on the motorcycle of respondent no.-1-Krishan Chand bearing registration no. HR-03-G-4368 for going to Amabala. When they reached near the turn of Mauli village suddenly a dog came in front of the

motorcycle. Respondent no.1-Krishan Chand applied the breaks to save the dog but could not control his motorcycle. Appellant, respondent no.1, the motorcyclist fell down along with motorcycle and suffered injuries. Hence this petition.

3. Respondent no.1 contested the claim petition. He denied the factum of accident and pleaded that the story has been concocted by the appellant to grab the compensation.

4. Respondent no.2-IFFCO TOKIO/Insurance Company also contested the claim petition by refuting the allegations levelled in the claim petition.

5. From the pleadings of the parties, the following issues were framed by the learned Tribunal vide order dated 02.04.2008:-

1. Whether petitioner Krishna Devi had suffered injuries in vehicular accident that took place on account of rash and negligent driving of motorcycle bearing registration no.HR-03-G-4368 by the respondent no.1, as alleged?OPP
2. If issue no.1 is proved, whether the petitioner is entitled to compensation, if so to what amount and from whom?OPP
3. Whether respondent no.1 was not holding a valid and effective driving license on the date of accident, if so to what effect? OPR-2
4. Relief.

6. On appreciation of the evidence on record and contentions raised by learned counsel for the parties, the learned Tribunal came to the conclusion that the claimant has not been able to prove that respondent no.1 was driving the motorcycle rashly and negligently. So, she was not entitled for any amount of compensation. Thus, the claim petition was dismissed. Hence this appeal.

7. I have heard Mr. P.L.Singla, Advocate, learned counsel for the appellant, Mr. U.K.Agnihotri, Advocate, learned counsel for the respondent no.1, Ms. Monika Jhangra, Advocate for Ms. Vandana Malhotra, Advocate

for respondent no.2 and have carefully gone through the record of the case.

8. Initiating the arguments, learned counsel for the appellant contended that from the evidence brought on record, it is established that respondent no.1-Krishan Chand, the motorcyclist was negligent in driving the motorcycle and caused the accident. He contended that if respondent no.1 would have been driving the motorcycle carefully, he must have been able to control the motorcycle. Thus, it is established that the accident has taken place due to rash and negligent driving of motorcycle no. HR-03-G-4368 by respondent no.1-Krishan Chand and the learned Tribunal has wrongly dismissed the petition.

9. On the other hand, learned counsel for the respondents contended that after the occurrence, the Daily Dairy Report No.5 dated 10.11.2007 (for short 'D.D.R.') was recorded on the statement of appellant-claimant, wherein she has categorically stated that nobody was at fault for this accident. Now, the appellant cannot wriggle out of her version in the D.D.R. So, respondent no.1 was not at fault for causing this accident.

10. I have duly considered the aforesaid contentions.

11. Appellant-claimant has filed this petition under Section 166 of Motor Vehicle Act for grant of compensation on account of the injuries suffered by her in the motor vehicular accident which took place on 20.10.2007. In order to maintain the claim petition under Section 166 of the Motor Vehicle Act, it was incumbent upon the appellant-claimant to establish the negligence in causing the accident on the part of respondent no.1. To support this view reference can be made to case **Oriental Insurance Co. Ltd. Vs. Prem Lata Shukla and others 2007 (4) PLR 93 (SC)**.

12. It is an admitted fact that on the statement of appellant-claimant the D.D.R no.5 dated 10.11.2007 was recorded with respect to this accident. As per the statement of appellant-claimant made to the police, when the motorcycle reached near Mauli turn suddenly a stray dog came in front of the motorcycle. Respondent no.1-Krishan Chand applied the breaks. Due to that she fell down from the motorcycle and suffered the injuries. It is further categorically stated that this occurrence has suddenly taken place as stray dog come in front of the motorcycle which is accidental and nobody is at fault for this accident. So, in the D.D.R No.5 dated 10.11.2007 which is the first version of the claimant with respect to this accident, it has been categorically stated that the occurrence is purely accidental which took place as the stray dog has suddenly come in front of the running motorcycle and nobody was at fault for this accident. So, the claimant has clearly exonerated respondent no.1-Krishan Chand of any negligence for causing the accident in her version in the D.D.R Ex.P-3.

13. In case **Dharam Chand Vs. Shiv Pat and others 1966 ACJ 319**, this Court has laid down as under:-

“All the same it has, to be remembered that Dharam Chand himself made a statement before the police to the effect that the death of his son was accidental and while it is just possible that at that time Dharam Chand may not have minded to press the culpability of Shiv Pat, at the same time it is extremely difficult to believe him when he turns round and maintains that Shiv Pat was civilly liable for the supposed rash and negligent act of crushing Jagdish Chander under the tractor.”

14. In case **Surinderjit Singh vs. Kuldip Rai Thapar and others 1982 P.L.R. 711**, this Court has laid down that where the claimant made a statement before the police that occurrence was accidental, he could not turn round and alleged to maintain civil action for compensation. Even in her

statement recorded by the Tribunal, the same version has been put-forward by the claimant. In her affidavit Ex.PA, she has categorically stated that the dog came in front of the motorcycle. Respondent no.1-Krishan Chand suddenly applied the breaks to save the dog and due to sudden break, the motorcycle fell down on the road, as a result of which she fell down on the ground and suffered the fracture in her right upper arm. Even, in her affidavit, she has not specifically attributed any negligence to respondent no-1-Krishan Chand.

15. Thus, keeping in view my aforesaid discussion, this Court has no reason to differ with the findings recorded by the learned Tribunal that the appellant-claimant has not been able to establish that the present accident has taken place due to rash and negligent driving of the motorcycle no. HR-03-G-4368 by respondent no.1-Krishan Chand.

16. So, certainly the appellant-claimant was not entitled to receive any amount of compensation from the respondents and no fault can be found with the impugned award dismissing the claim petition filed by the appellant-claimant.

17. Therefore, the present appeal being devoid of merits, is hereby dismissed.

August 16, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No