

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

FAO No.2855 of 2010 (O&M)

Date of decision : 22.09.2016

Karam Singh alias Parveen

.....Appellant

Versus

Sham and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: None for the appellant.

None for respondents No.1 & 2.

Mr. Vikas Chatrath, Advocate with
Ms. Neeru Thakur, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 06.10.2009 passed by the learned Motor Accidents Claims Tribunal, Karnal (hereinafter called the “Tribunal”), whereby the claim petition filed by the appellant under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the “Act”) for grant of compensation on account of the injuries suffered by him in the motor vehicular accident which took place on 21.10.2007 has been dismissed.

2. As per the case of the appellant-claimant, on 20.10.2007 he had gone to attend the Jagran at village Mirzapur, Distt. Kurukshetra along with Krishan and Rattan Singh. After finishing their job of Confectioner

(Halwai) in the Jagran, the injured-claimant along with one Ratna, Karma and respondent No.1 Sham, was returning to their village from village Mirzapur on motorcycle bearing registration No.HR-07J-7949. The appellant-claimant was pillion rider on the said motorcycle and the same was driven by respondent No.1 Sham in a rash, careless and negligent manner. The claimant requested respondent No.1 to drive the motorcycle at a moderate speed and on the left side of the road, but he did not pay any heed to his request. At about 08:30 a.m., when they reached just ahead of village Mirzapur near Rajbaha on Dhand-Kurukshetra road, in the meanwhile, a buffalo came in front of the motorcycle and due to the rash and negligent driving, respondent No.1 could not control the motorcycle, which struck against the buffalo. Due to the impact, the occupants of the motorcycle fell down on the road and suffered injuries. The appellant suffered serious, grievous and multiple injuries. Hence, this claim petition.

3. Respondent No.1 Sham, the motorcyclist, and respondent No.2 Ram Kumar, the owner of the motorcycle, contested the claim petition by filing the joint written statement on the grounds *inter alia* that neither any such accident has ever taken place with the offending vehicle nor the injured-claimant sustained any injuries. The FIR was registered in collusion with the claimant. The injured-claimant was not involved in any accident with the motorcycle in question. The motorcycle was falsely implicated. Moreover, the claimant has himself compromised the matter with the answering respondents and had given them in writing that he will not file the claim petition, as he has taken Rs.25,000/- from them. With these pleas,

they pleaded for dismissal of the claim petition.

4. Respondent No.3 the New India Assurance Company Limited in its written statement denied that any such accident has taken place due to the rash and negligent driving of respondent No.1. The alleged accident has taken place on 21.10.2007, whereas the FIR was got registered on 26.10.2007 *i.e.* after five days of the accident. It was further pleaded that a false case was got registered by the claimant in collusion with respondents No.1 and 2 to extract the amount of compensation from the answering respondent-Insurance Company. All other pleas raised in the claim petition were controverted.

5. From the pleadings of the parties, following issues were framed by the learned Tribunal vide order dated 31.07.2008:-

1. Whether the accident in question causing injuries to claimant Karam Singh alias Parveen took place due to rash and negligent driving of motorcycle No.HR-07J-7949 by respondent No.1? OPP
2. Whether the claimant is entitled to compensation, if so, how much and from whom? OPP
3. Whether the offending vehicle was being driven against the terms and conditions of the insurance policy, if so, its effect? OPR
4. Relief.

6. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned Tribunal decided issue No.1 against the claimant and consequently, dismissed the claim petition.

7. Aggrieved with the aforesaid award, the present appeal has been preferred.

8. Notice of this appeal was issued to all the three respondents. Respondents No.1 and 2 were duly served, but none appeared on their behalf. The appeal has been contested by respondent No.3 the New India Assurance Company Ltd.

9. Learned counsel for the appellant has not appeared to address the arguments.

10. I have heard learned counsel for respondent No.3-Insurance Company and have meticulously examined the record of the case.

11. Learned counsel for respondent-Insurance Company contended that the claimant has examined PW-3 Krishan Kumar, the eye witness of the occurrence, but in the cross-examination, this witness has admitted that he had reached at the spot after 15 minutes of the accident. It shows that he was not a witness to the occurrence and cannot depose about the mode of the accident. Thus, he contended that the version of the claimant has been rightly disbelieved by the learned Tribunal. He further contended that there was delay of five days in lodging the FIR. The claimant has not given any explanation for this long delay, which is also fatal to his case.

12. I have duly considered the aforesaid contentions.

13. It is well known that in a case relating to the motor accidents, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. The claimant has merely to establish his case on the touchstone of preponderance of probabilities. The standard of proof beyond shadow of

reasonable doubt cannot be applied to the claim cases under the Act. To support this view reference can be made to cases ***Bimla Devi and others Vs. Himachal Road Transport Corporation and others, 2009 (3) RCR (Civil) 805*** and ***Kusum Lata and others Vs. Satbir and others 2011(2) ACJ 926***.

14. In the instant case the learned Tribunal has non-suited the claimant simply by referring the statement of PW-3 Krishan Kumar, the alleged witness of the occurrence, that too only one sentence in his cross-examination wherein he has stated that he had reached to place of accident after 15 minutes and the learned Tribunal concluded that as PW-3 Krishan Kumar, the witness of the occurrence, had reached at the spot after 15 minutes of the occurrence, so he was not in a position to ascertain as to how the accident occurred and who was at fault.

15. The learned Tribunal has totally ignored the other evidence brought on record by the claimant. It is a case where the appellant has filed the claim petition to claim compensation on account of the injuries suffered by him in this accident. The claimant has himself stepped into the witness box as PW-4 and he has deposed in detail with respect to the manner of the accident. He categorically deposed that respondent No.1 was driving the motorcycle at fast speed, rashly and negligently. He asked him to drive the motorcycle at the moderate speed, but he tried to cross the buffalo from the front side at a fast speed and in that process, his left arm struck against the horn of the buffalo. As a result of which, he fell down on the road and suffered the injuries. The testimony of the claimant in the cross-examination has virtually gone unchallenged on the mode of accident.

16. From the statement of PW-1 Hardwari Lal, Assistant Adlhmad in the Court of Judicial Magistrate First Class, Kurukshetra, it comes out that respondent No.1 Sham is facing the prosecution for causing this accident and charges against him for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code, 1860 have been settled. The testimony of the claimant is also corroborated from the copy of the final report under Section 173 of Code of Criminal Procedure, 1973 Ex.P44. Even the medical evidence *i.e.* the statement of PW-2 Dr. Ashok Gupta, Orthopedic Surgeon shows that appellant had suffered head injury, fracture femur, fracture tibia left side and fracture fibula right side.

17. There is no rebuttal to the aforesaid evidence adduced by the appellant-claimant. Respondent No.1 Sham, the motorcyclist, has not stepped into the witness box, which raises the adverse inference against the respondents.

18. Even if the statement of PW-3 Krishan Kumar, the eye witness of the occurrence is ignored, there is sufficient evidence on record to establish the negligence on the part of respondent No.1. PW-4 claimant Karam Singh alias Parveen is an injured witness/victim of the accident. The medical evidence shows that he has received serious injuries in this accident. So, his presence cannot be disputed at all. He has categorically deposed about the negligence on the part of respondent No.1 for causing this accident. As already mentioned, his statement is also corroborated from the factum that respondent No.1 is facing the criminal prosecution for causing this accident as well as the medical evidence.

19. Moreover, in the written statement filed by respondents No.1 and 2, the factum of accident is impliedly admitted. They have pleaded in preliminary objection No.5 of the written statement that claimant has himself compromised the matter and had given in writing that he shall not file any claim petition as he has taken Rs.25,000/- from them as medical expenses. These averments in the written statement establish the factum of accident as well as negligence on the part of respondent No.1, otherwise there was no need to pay Rs.25,000/- by them to the claimant. It is very surprising that all the aforesaid evidence and glaring circumstances coming on record have been totally ignored by the learned Tribunal and the claim petition has simply been dismissed by referring the statement of PW-3 Krishan Kumar.

20. Once the factum of the accident is admitted, the delay of five days in lodging the First Information Report with the police cannot be a ground to non-suit the claimant. Reference can be made to case ***Sudesh and others Vs. Naresh and others 2011(3) Law Herald 2010.***

21. Thus, keeping in view my aforesaid discussion, it is established that appellant-claimant Karam Singh alias Parveen has suffered the injuries as a result of rash and negligent driving of motorcycle bearing registration No.HR-07J-7949 by respondent No.1 Sham. Therefore, the findings of the learned Tribunal on issue No.1 are hereby reversed.

22. The learned Tribunal has not recorded any finding on issues No.2 and 3 and has simply disposed of these issues being redundant in view of his findings on issue No.1. As the findings of the learned Tribunal on

issue No.1 have been reversed, so the present case has to be remanded to the learned Tribunal for deciding issues No.2 and 3 afresh on merits.

23. Thus, keeping in view my aforesaid discussion, the present appeal is hereby allowed. The findings of the learned Tribunal qua negligence are hereby reversed. It is held that respondent No.1 Sham the motorcyclist has caused this accident by driving the motorcycle bearing registration No.HR-07J-7949 in a rash and negligent manner, which resulted into the injuries to the claimant. However, the case is remitted/remanded to the learned Tribunal for recording the findings afresh on merits on issues No.2 and 3. The copy of this judgment be communicated to the learned Tribunal to proceed further in accordance with law.

22.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No