

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

FAO-4059-2010

Date of decision: 08.04.2016

Suresh Kumar

...Appellant

Versus

Ranbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

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

Mr. Krishan Singh, Advocate
for respondent Nos.1 and 2.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.5.

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JITENDRA CHAUHAN, J.

This is claimant's appeal directed against the award dated 15.01.2010, passed by the learned Motor Accidents Claims Tribunal, Ambala (for short, 'the Tribunal').

The learned counsel for the appellant contends that the learned Tribunal has not considered the fact that in the alleged accident the appellant had suffered multiple injuries including fractures of right humerus and fibula. The injury has resulted into disability to the extent of 25% as noticed in the disability certificate Ex.PA. The appellant

spent more than Rs.50,000/- on his treatment and transportation. The learned Tribunal has passed the impugned award merely on the ground that the appellant could not explain on to which of the vehicles was being driven in rash or negligent manner. He states that being a victim of the accident, the appellant was not in a position to judge the negligence of either of them. Thus, the award passed by the learned Tribunal is liable to be set aside.

On the other hand, the learned counsel for the respondents state that the learned Tribunal has rightly dismissed the claim petition and passed the impugned award as the appellant has taken a contradictory stand qua the rash or negligence driving of the vehicles involved in the accident.

I have heard the learned counsel for the parties and perused the entire record on file.

The involvement of the vehicles i.e. TATA Sumo, Bus and Scooter is proved on record. In his statement (Ex.R1), suffered before the police and in the claim petition, the appellant had admitted and pleaded that there was negligence on the part of the driver of the bus. However, when it was revealed to the appellant that the bus was not insured, he immediately took a somersault and alleged that the driver of TATA Sumo was at fault. Except the bald statement of the appellant, he has not led any cogent evidence to prove on record that the drive of TATA Sumo was rash or negligent in any manner. In a claim petition under Section 166 of the Motor Vehicles Act, 1988, rashness or

negligence has to be proved by the claimant by leading cogent and convincing evidence. However, the claimant/appellant has miserably failed to do so. This Court feels that the learned Tribunal has rightly denied the claim of the appellant as he was inconsistent towards his stand with regard to the rash or negligent driving of the TATA Sumo and Bus.

Accordingly, the present appeal is dismissed.

08.04.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**