

201.

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

FAO No.6515 of 2010 (O&M)

Date of decision:18.01.2016

Dr. Kuldeep Lamba

... Appellant

versus

Vikas Bansal and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Diwan S. Adlakha, Advocate,
for the appellant.

Mr. Munish Mittal, Advocate,
for respondent No.1.

Ms. Kaavya Jariyal, Advocate,
for Mr. T.K. Joshi, Advocate,
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. In a suit claiming compensation for injuries alleged to have been sustained in a road accident involving the respondent's vehicle, the defence was that the vehicle had not been involved at all. The claimant had to explain a situation of an accident having taken place on 28.02.2008 and FIR had been lodged only on 09.03.2008. The delay was explained by the claimant as arising out

of the fact that the respondent was making promises to compromise the matter and only when he failed to make any such term as compromised by him, the complaint had to be given by the claimant's brother Yoginder Lamba (PW9) as a person who has been actually a witness to the incident. He claimed that he was waiting in a doctor's clinic and he saw the accident from the clinic and he rushed him to some other hospital for getting him admitted. This version of the brother was disbelieved by the Tribunal and found to be artificial. The Tribunal observed that if he could see the accident, any other person from the clinic about the same time should have also seen and it was inconceivable as to how and why the incident was not reported to be immediately. The Tribunal also observed that the doctor, who had admitted him on a statement by the claimant that it was a roadside accident, had also not complained to the police which was unusual, for, if it was medical legal case, it must have been so reported. The so-called eyewitness was able to give the details of the registration number and the name of the driver in the complaint and the Tribunal reasoned that if he had known the identity of the driver, none of the distinguishing features of such identity were mentioned in the FIR. The driver examined himself and stated that he had never caused any accident and there was no attempt at any point of time to compromise the matter with the petitioner.

2. When there were rival contentions with reference to the involvement of the vehicle, the fact that the appellant had not registered a complaint immediately could obtain some relevance in situations where other surrounding factors and evidence given would support a cogent case of an involvement of a particular vehicle as responsible for the accident. Standard of proof before a Tribunal was surely less rigorous than the proof requisite for a criminal court conviction but even the quality of evidence tendered before the Tribunal was fragile and the witness stated to be an eyewitness did not evoke the confidence of the Tribunal. I am afraid, I am not able to supplant any better reasoning to accept the case of the appellant. The dismissal that has resulted would require to be supported.

3. However, the Tribunal has proceeded to even assess the compensation as payable if the accident were to be taken as proved. It has definitely come to the conclusion that it was a case of roadside accident and that the claimant had suffered a permanent disability. If the identity of the vehicle could not be taken as established, I would only take that the present case to be one of 'hit-and-run' and make possible for the claimant to apply to the Government under Section 163 of the Motor Vehicles Act for compensation from out of the fund created by the State Government. The plea for compensation shall be presented in the requisite format within a

period of 4 weeks from the date of receipt of copy of this order. If such a request is made, the authority shall not require any further proof that the injury was account of roadside accident. This judgment itself must be taken as securing the said proof for the complainant that there is a case for processing the claim in the manner provided under the scheme. If such an application is filed within the time stipulated above, the authority will dispose of that application and pay such compensation for permanent disablement assessed by the Tribunal already within a period of 8 weeks from thereon.

4. The appeal is dismissed but the appellant will have the liberty to secure compensation in the manner directed above.

(K.KANNAN)
JUDGE

18.01.2016
sanjeev