

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

FAO No.1763 of 2012 (O&M).

Date of Decision: 25.02.2016.

Deepak Sharma

....Appellant.

VERSUS

Karambir and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Saurabh Bajaj, Advocate for the appellant.

Mr. Rajbir Singh, Advocate for

Mr. Sanjiv Goyal, Advocate for respondent No.2.

SNEH PRASHAR, J.

CM-7340-CII-2012

This is an application under Section 5 of the Limitation Act for condonation of 403 days delay in filing the appeal.

In view of the averments made in the application, delay of 403 days in filing the appeal is condoned.

C.M. stands disposed of.

FAO-1763-2012

This appeal arises out of award dated 13.08.2010 passed by Motor Accident Claims Tribunal, Karnal (for short, "the Tribunal") in MACT case No.109 of 2008 vide which the claim petition filed by the appellant-claimant was dismissed.

A petition invoking the provisions of Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation for the injuries sustained by appellant-claimant from driver and insurer (respondents) of Car No.HR-99B-Temp 1172 (hereinafter referred to as “the car”) was filed by the appellant asserting that on 05.07.2008 he alongwith his servant Surinder son of Pala Ram was coming to Nissing from his village Amupur on his Mahindra tractor bearing registration No.HR-05S-1084. He was driving the tractor on normal speed and on its left side of the road. When they reached on the Karnal – Kaithal main road and were in front of the gate of Geeta Niketan School, Nissing, the car being driven in a rash and negligent manner by Karambir-respondent No.1 came from his backside and hit the tractor by coming on the wrong side as a result of which the tractor turned turtle and he came under the same. He was brought out by his brother Jagdish who was following his tractor.

The appellant further averred that he sustained multiple serious and grievous injuries on various parts of the body including fracture of ribs and dislocation of spinal code because of the injuries he had been suffering from tuberculosis and will have to take continuous treatment for two years or so. From the site of accident he was taken to Civil Hospital, Nissing from where he was referred to General Hospital, Karnal but his condition being serious he was taken to Haryana Nursing Home, Karnal where he remained hospitalized and was treated. His tractor also got totally damaged. Later, a First Information Report No.150 dated 06.07.2008 under Sections 279, 337

and 338 of the Indian Penal Code was registered against driver of the car at Police Station Nissing. An amount of Rs.10 lacs alongwith interest was claimed as compensation by the claimant.

The petition was contested by the respondents. Respondent No.1 denied involvement of the car in the accident of the claimant. Objections with regard to maintainability of petition and cause of action etc. were also raised. Respondent No.2-insurer of the car also denied the occurrence of accident and alleged that the claim petition had been filed in collusion with respondent No.1. It was also pleaded that the car was being driven in violation of terms and conditions of the insurance policy.

On the basis of the pleadings of the parties, following issues were settled:-

- (1) Whether the accident took place between Logan Mahindra HR 99B Temp.1172 and Mahindra Tractor HR 05 S 1084 on 5.7.2008, as alleged? OPP.
- (2) Whether the accident had taken place due to the rash and negligent driving of Logan Mahindra HR 99 B Temp. 1172 driven by respondent no.1 Karamveer? OPP.
- (3) Whether the claimant is entitled to compensation along with cost and interest as prayed for, if so how much and from whom? OPP.
- (4) Whether the offending vehicle was being driven against the terms of the insurance policy if so its effect? OPR.
- (5) Relief.

Considering the ocular and documentary evidence led by the parties and the submission made on their behalf, learned Tribunal dismissed the claim petition vide award dated 13.08.2010.

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

The submissions made by Mr. Saurabh Bajaj, learned counsel for the appellant and Mr. Rajbir Singh, learned counsel for respondent No.2 have been heard and record perused.

To prove that he sustained injuries in a vehicular accident caused by the car, the claimant himself appeared in the witness box as PW3 and deposing through his affidavit Ex.PW3/A he reiterated that on 05.07.2008 he alongwith his servant Surinder was coming to Nissing from his village Amupur by means of his Mahindra tractor and was going on Karnal – Kaithal road when his tractor was hit by the car which came from his backside and was being driven in a rash, negligent and careless manner. He also stated that the car came on the wrong side of the road and hit his tractor as a result of which it turned turtle. In his cross-examination, claimant-PW3 stated that he does not know the manner and mode in which the accident took place. Indeed, as per his own version he was driving the tractor and the car had come from his backside. In such a situation, he could obviously not know the manner and the mode in which the accident took place. From that it follows that he though was the victim of the alleged accident but was unable to explain the cause of the same. Otherwise also, his version that the car which came from his backside had come on the wrong side and hit his tractor was apparently wrong. When both the vehicles i.e. the tractor and the car were moving in the same direction, the car could not have gone on wrong side to hit the tractor. It was not his

version that the car in the process of overtaking the tractor had hit the same.

The other eyewitness to the accident, examined by the claimant, was his real brother PW2 Jagdish. Deposing through his affidavit Ex.PW2/A, he narrated the accident but in cross-examination he admitted that he reached the spot after the accident had already taken place. Meaning thereby that his eyewitness account of the accident contained in his affidavit Ex.PW2/A was based on hearsay and he had not witnessed the accident.

No other witness to prove the accident was examined by the claimant. As observed above, the claimant could not state the mode and manner in which the accident took place. His brother stated in a crystal clear manner that he was not an eyewitness of the accident. Surprisingly, Surinder, servant of the claimant, who was said to be accompanying him, did not step into the witness box and no reason was explained for not examining him whereas he was the actual eyewitness of the accident, if at all it had taken place as presented by the claimant. According to the claimant himself and also as mentioned in the First Information Report Surinder suffered minor injuries, yet he did not approach the police to lodge report with regard to the accident. It was also not mentioned in the First Information Report that he took out the claimant from underneath the tractor. Rather the version of the claimant was that his brother came and raised shouts and took him out from underneath the tractor with the help of passersby and school staff. In that manner, the report lodged appeared to be a well thought over and planned statement.

The First Information Report Ex.P5 in respect of the accident

was alleged to have been registered on 06.07.2008 at Police Station Nissing on the statement of the claimant. The said statement was recorded when the claimant was admitted in Haryana Nursing Home. According to the claimant himself, from the site of accident he was first taken to Civil Hospital, Nissing from where he was referred to General Hospital, Karnal but he was taken to Haryana Nursing Home, Karnal. It was mentioned in the First Information Report that the information regarding admission of injured in the hospital was telephonically received by the police from Haryana Nursing Home and reaching the said hospital the 'Ruka' of the doctor was obtained. Had the accident taken place as presented by the claimant, an information regarding his having suffered injuries in a motor vehicular accident would have been sent by the doctor who gave him first aid at Civil Hospital, Nissing. Importantly, PW1 Dr. K.L. Sachdeva, Orthopaedic Surgeon, who treated the claimant at Haryana Nursing Home, stated in his cross-examination that before coming to his hospital the patient had taken treatment at General Hospital, Karnal. He added that at the time of admission of the patient in his hospital he had seen the copy of medico legal report but the same was not in his record now. He expressed ignorance regarding the place where the medico legal report was prepared but he admitted that at the time of admission of the patient the history of accident was not narrated to him.

The medico legal report of the claimant, which admittedly was seen by PW1 Dr. K.L. Sachdeva at the time of admission of the claimant in his hospital was not tendered in evidence by the claimant for the reason best

known to him. The said document was important and material because that contained the history of injuries given by the claimant at the first instance. It may be mentioned here that neither the discharge slip Ex.P2 proved by PW1 Dr. K.L. Sachdeva nor the bill Ex.P1 raised by him at the time of discharge of the claimant from his hospital on 09.07.2008 contain a word to say that the multiple injuries for which the claimant was treated in the hospital (Haryana Nursing Home) had been sustained by him in a motor vehicular accident. According to PW1 Dr. K.L. Sachdeva, there was no external mark of injury on the chest and he stated that without seeing the medico legal report he cannot say that whether there was external mark of injury on any other part of body.

Last, but not the least, it is worthwhile to note that in his statement claimant Deepak Sharma admitted that Karambir-driver of the car was already known to him as he was resident of the same vicinity. They were so well known to each other but the claimant did not state that Karambir did anything to help him after the accident.

The above scrutiny of the ocular and documentary evidence of the claimant shows that he not only failed to prove the factum of accident but could also not establish that he sustained injuries in a motor vehicular accident. Learned Tribunal rightly dismissed his claim petition.

Thus, there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

25.02.2016.
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