

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

FAO No.6469 of 2011.

Date of Decision: 28.03.2016.

Vikram

....Appellant.

VERSUS

Ramesh Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sansar Kundu, Advocate for the appellant.

Mr. Shailender Mohan, Advocate for respondents No.1 and 2.

Mr. D.K. Prajapati, Advocate for

Mr. R.S. Madaan, Advocate for respondent No.3.

SNEH PRASHAR, J.

Assailing the award dated 30.08.2011 passed by Motor Accident Claims Tribunal, Jind (for short, “the Tribunal”) by virtue of which claim petition No.57 of 04.09.2010 was dismissed, the appellant-claimant preferred the instant appeal.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) the claimant averred that on 21.02.2010 he alongwith his elder brother Randhir Singh had gone to his in-laws house at Shankerpura. At about 4:00 p.m., when they were returning home, he was driving motorcycle No.HR-31C-2118 (for short, “the

motorcycle”) and his brother was following him on another motorcycle. As they reached in the area of village Mugalpura, an Alto-LX car bearing registration No.HR-22E-8382 (hereinafter referred to as the “offending car”) being driven rashly, negligently and in a high speed came from the opposite side and rammed into his motorcycle. He fell down with the motorcycle and sustained multiple serious and grievous injuries all over the body. Ramesh Kumar, driver of the offending car (respondent No.1), fled away leaving the car at the spot. His brother shifted him to Goyal Hospital, Barwala. A First Information Report No.56 dated 24.02.2010 under Sections 279/337 of the Indian Penal Code was registered on his statement against Ramesh Kumar.

Pleading that due to the injuries sustained in the accident he had become permanently disabled and that he had spent lacs of rupees on his treatment, medicine etc., the appellant claimed compensation to the tune of Rs.10 lacs.

The driver, owner and insurer of the offending car (respondents No.1 to 3) contested the petition. Respondents No.1 and 2 denied occurrence of accident involving the offending car as pleaded by the claimant. Respondent No.3 raised all preliminary objections available to the insurer under the Act of 1988 and besides denying the occurrence of accident with the offending car also raised objection that the driver of the car was not holding a valid and effective driving licence and that the said car was being driven in violation of the terms and conditions of the insurance policy.

On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus on them. 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 30.08.2011.

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

The submissions made by learned counsel for the parties have been heard and record perused.

To begin with, learned counsel for the appellant argued that the claim petition filed by the appellant was dismissed by learned Tribunal on the sole ground that while the accident was alleged to have taken place on 21.02.2010, the First Information Report in respect of the accident was registered on 24.02.2010 i.e. after a delay of three days. Learned counsel asserted that the delay was duly explained in the First Information Report Ex.P1 itself. In the police proceedings recorded at the bottom of the First Information Report, it was mentioned that on 21.02.2010 the police had received a telephonic message from Police Station Barwala that Vikram son of Chander Singh, resident of village Kalta, District Jind was admitted with injuries on his person suffered in a roadside accident in Goyal Hospital, Barwala. Due to odd hours, the Investigation Officer could not go to the hospital on that day. On 22.02.2010, he went to the hospital and obtained opinion of the doctor who declared the injured unfit for making statement. Similarly, on 23.02.2010, the injured was opined to be unfit and it was on

24.02.2010 that when the appellant regained consciousness and was declared fit for making statement that his statement was recorded by the police and on the basis of the same the First Information Report was registered. Learned counsel urged that since the appellant was unconscious and was under treatment in the hospital, there was delay in lodging the First Information Report.

It was further submitted by learned counsel for the appellant that the offending car was seized by the police from the site of accident and was taken on superdari by respondent No.2-owner. The car also got damaged during the accident and the owner had taken "own damage claim" from his insurer (respondent No.3). The statements made by the appellant and his brother in the criminal case registered against respondent No.1 have been produced by him as Annexure-A2 and Annexure-A3 which also prove that the accident of the appellant had taken place with the offending car.

Nothing has been produced to prove that the offending car was seized by the police from the site of accident on the day the accident had taken place. As regards statements of the appellant and his brother given before the Magistrate, the same were made after dismissal of the claim petition by the Tribunal. Perusal of the statements shows that not a word was stated either by the appellant or by his brother Randhir Singh to hold Ramesh Kumar (respondent No.1) driver of the offending car, liable for causing the accident. In fact, Randhir Singh did not even state that he was eyewitness of the accident. For that reason no document has been produced to show fate of the criminal case. Otherwise also, the claim petition is to be

decided on the evidence led by the parties during trial before the Tribunal.

Discussing the explanation regarding delay of three days in lodging the First Information Report, the findings of learned Tribunal are as under:-

“As per FIR Ex.P1 on 21.2.2010 a telephonic information was received in P.S. Barwala regarding injuries sustained by Vikram in an accident. Due to odd hours investigating officer could not go to Goyal Hospital, Barwala. On 22.2.2010 he went there and obtained opinion of doctor, who declared him unfit to make statement on 22.2.2010 and 23.2.2010. So, his statement was recorded on 24.2.2010.

It means he was not fit to make statement on these two days. Now see statement of Dr. Navneet PW7. He stated in his cross-examination that patient Vikram was fully conscious, well oriented and can easily reply every question when he was brought in his hospital. During hospitalization also he remained fully conscious. It makes thing worse for petitioner. When he was fully conscious at the time of admission in hospital and during treatment then story put forth by him and investigating officer cannot be believed. Moreover, eye witness Randhir Singh, brother of injured was with him at the time of accident. He got him admitted in hospital. Petitioner has also said same thing. Randhir Singh while appearing as PW6 also supported this claim that he remained present at Goel Hospital, Barwala upto 25.2.2010. So, investigating officer if visited Goel Hospital, he could have recorded in his statement being an eye witness. But it was not done. It supports respondents case that this story has been concocted only to meet out delay and get compensation. Who had telephoned to police is also a mystery. FIR has been recorded after a delay

of 3 days. This period was used to find out a suitable vehicle to claim compensation. It is, therefore, not proved that this vehicle is involved in this case. Issue is, therefore, decided against petitioners.”

Learned counsel for the appellant failed to demonstrate any kind of misreading or misappreciation of evidence on part of the Tribunal. In fact, in addition to the evidence discussed by learned Tribunal there is other documentary evidence also available on record which proves that the offending car was subsequently introduced as the vehicle involved in the accident. Ex.PW7/B is the medico legal report of the appellant prepared at Goel Orthopaedic and Dental Hospital where according to the appellant and his brother Randhir Singh he was taken for treatment from the site of accident. As per the contents of the said document, the appellant had reached the hospital at 6:30 p.m. on 21.02.2010. The name of the relative accompanying him was mentioned as Vijay (brother-in-law). The alleged history of accident given to the doctor was as under:-

“Alleged history of roadside accident at Uklana-Bhuna road at bus stand VPO Mugalpura at speed breaker at about 4:30 p.m.”

Similar is the history of accident mentioned in the police information slip Ex.PW7/C and the case history Ex.PW7/D prepared at the aforesaid hospital.

It is apparent from the above documents that in the history of accident given to the doctor at the first instance there was no mention of involvement of any other vehicle in the accident. Also importantly, it was

not the brother of the appellant namely Randhir Singh who accompanied the appellant to the hospital, rather he was taken to the hospital by his brother-in-law named Vijay. The case history Ex.PW7/D contains the statement of Vijay (brother-in-law) dated 21.02.2010 recorded at the hospital whereby consent for operating upon the appellant was given. That not only renders the presence of brother of the appellant at the time of accident doubtful but also proves that the very narration of accident by the appellant in his statement recorded after 3 days of accident was result of manipulations, concoction and consultation. The offending car was fakely introduced as the offending vehicle involved in the accident only with a view to grab compensation.

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

(SNEH PRASHAR)
JUDGE

28.03.2016.

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