

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

**FAO No.6623 of 2011 (O&M)
Date of decision : 09.02.2016**

Balwan Singh

.....Appellant

Versus

Sunil alias Sonu

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Mr. S.K. Tripathi, Advocate for appellant.

Mr. J.S. Ghuman, Advocate for respondent.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 30.05.2001, passed by learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter called the 'Tribunal') vide which the claim petition filed by the appellant-claimant under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') for grant of compensation has been dismissed on the ground that the claimant has not been able to establish that he has sustained the injuries on account of rash and negligent driving of the tractor in question by the respondent.

2. Learned counsel for the appellant contended that the claimant has himself stepped into the witness box as PW1 and has fully supported the mode of accident mentioned in the claim petition. Even a criminal case was registered against the respondent for causing this accident on the statement of the claimant bearing FIR No.247 dated 27.08.2009 under Section 279/337/338 of the Indian Penal Code, 1860 at Police Station–Sector 10, Gurgaon. He contended that from the statement of the claimant corroborated from the copy of the FIR Ex.P44, it is established that the accident has taken place due to rash and negligent driving of the tractor-trolley by respondent Sunil. He contended that the learned Tribunal has dismissed the claim petition simply on the ground that there was delay in lodging the FIR. The said delay is satisfactorily explained in the FIR itself as both the parties belong to the same village and efforts were being made for compromise.

3. On the other hand, learned counsel for the respondent contended that it is a case of false implication due to rivalry in the village. Respondent Sunil has stepped into the witness box as RW2 and has totally repelled the version of the claimant. It was alleged by the claimant that the accident has taken place in front of house of Ganpat. The respondent has examined Devi Lal son of said Ganpat as RW1. He has categorically stated that no such accident has taken place in front of their house. He contended that there is no satisfactory explanation for delay of more than one month in lodging the FIR. He further contended that mere registration of the FIR is no ground to establish the negligence and involvement of respondent. Thus, he contended that the learned

Tribunal has rightly dismissed the claim petition.

4. I have duly considered the aforesaid contentions.

5. As per the case of the claimant, on 20.07.2008 he was going to his farm. Respondent Sunil was also going to his fields on his tractor bearing registration No.HR-26-AF-5109 and he asked him to board his tractor after loading the Jawar and stated that he will drop him at his farm. It is further alleged that respondent started driving his tractor rashly and negligently ignoring the request made by the claimant. Due to which, when they reached in front of the house of Ganpat the trolley attached to the tractor turned turtle. The claimant came underneath the trolley and sustained the injuries. The respondent in the written statement pleaded that the false FIR has been got registered against him in collusion with the police on account of village rivalry with a view to extract money.

6. Claimant Balwan Singh has himself stepped into the witness box as PW1 and supported the version of the occurrence mentioned in the claim petition. He also produced in evidence the copy of the FIR Ex.P44.

7. Respondent Sunil has also stepped in the witness box as RW2 and reiterated his version as mentioned in the written statement. He also examined Devi Lal son of Ganpat as RW1.

8. It is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the respondent as the Tribunal is required to act upon the evidence adduced before it. To support this view reference can be made to case ***Ram Karan Vs. Zile Singh 2001(3) R.C.R (Civil)***

582. This accident has taken place on 20.07.2009. The FIR Ex.P44 has been registered on 27.08.2009 i.e. after 38 days of the occurrence. The only explanation given in the FIR is that the efforts of compromise were being made and when no compromise took place, the matter was reported to the police. There is no dispute with the proposition of law that the delay in lodging the FIR if explained satisfactorily is no ground to reject the claim. The claimant was discharged from the hospital on 25.07.2009. He was advised rest for 5 days. There is no plausible explanation as to why after that the FIR was not lodged with the police. It is alleged that some talks of settlement were going on but no member of the village Panchayat has been examined to support this plea. The claimant has categorically stated that the accident has taken place in front of the house of Ganpat. Respondent has examined Devi Lal the son of said Ganpat as RW1 who has categorically stated that on 20.07.2009 he was present in his house and was shifting the building material from the public street to his house with the help of labourers. He further deposed that no accident as alleged by Balwan Singh claimant has taken place in front of his house with tractor bearing registration No.HR-26-AF-5109 being driven by respondent Sunil. He further deposed that the claimant has levelled false allegation against Sunil Kumar. Respondent Sunil has also stepped into witness box as RW2 and deposed that he has been falsely implicated due to rivalry in the village to extract money from him.

9. There is the sole statement of the claimant with respect to the negligence and involvement of respondent No.1 and his tractor trolley in the present case. PW6 Jitender the son of claimant is not the witness of

occurrence, he has received information from one Niranjan but said Niranjan has not been examined. So, there is no corroboration to the statement of the claimant. In view of the unexplained delay of more than one month in lodging the FIR, there should have been some corroboration to the statement of the claimant on the mode of accident and involvement of respondent particularly when the case of the claimant has been rebutted by RW1 Devi Lal son of Ganpat in front of whose house the accident is alleged to have taken place, thus the solitary statement of the claimant cannot be acted upon. Therefore, there is no infirmity in the findings of learned Tribunal that the claimant has not been able to establish that he has sustained injuries on account of rash and negligent driving of the tractor in question by respondent.

10. Consequently, the present appeal is without any merits and the same is hereby dismissed.

09.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**