

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

FAO No.2005 of 2013 (O&M).

Date of Decision: 15.03.2016.

National Insurance Company Limited

....Appellant.

VERSUS

Umesh Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vipul Sharma, Advocate for the appellant.

Mr. Suresh Mankotia, Advocate for respondent No.1.

Ms. Deepali Puri, Advocate for respondents No. 2 and 3.

SNEH PRASHAR, J.

By way of this appeal, the appellant-insurance company assailed the award dated 17.12.2012 passed by learned Motor Accident Claims Tribunal, Chandigarh (for short, “the Tribunal”) in MACT Case No.183 of 2009 awarding compensation to the claimant on account of injuries sustained by him in a motor vehicular accident.

In the claim petition under Section 166 of the Motor Vehicles Act 1988 (for short, “the Act of 1988”) filed by respondent No.1-Umesh

Kumar (claimant), he pleaded that on 20.03.2009 he was going from S.D. College, Sector-32, Chandigarh to his residence driving his motorcycle bearing Registration No.CH-03-F-7061 (hereinafter referred to as the motorcycle). After he had crossed the small round about, his motorcycle was hit from behind by a Maruti Swift car bearing Registration No.CH-04-E-3117 (hereinafter referred to as the “offending car”) as it was being driven rashly, negligently and at a high speed by Sanjay Gupta (respondent No.2). He fell down and suffered multiple serious injuries all over the body including fracture in his left leg and right arm.

The claimant sought indulgence of the Tribunal claiming compensation from the driver, owner and insurer (impleading as respondents No.1 to 3 in the petition) of the offending car.

The petition was contested by the respondents (respondent No.2 and 3 and the appellant in the instant appeal). The driver and owner-respondents No.2 and 3 alleged that the accident was result of negligence on part of the claimant himself. Respondent No.3-appellant insurance company raised preliminary objection that the driver of the offending car was not holding a valid and effective driving licence and the said car was being driven in violation of the terms and conditions of the insurance policy.

On the basis of the rival pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal awarded

compensation to the tune of Rs.1,12,737/- to the claimant with interest at the rate of 8% per annum from the date of filing the petition till realization.

Feeling aggrieved with the award dated 17.12.2012, the appellant preferred the instant appeal.

The submissions made by Mr. Vipul Sharma, learned counsel for the appellant, Mr. Suresh Mankotia, learned counsel for respondent No.1 and Ms. Deepali Puri, learned counsel for respondents No.2 and 3, have been heard and record perused.

At the very outset, learned counsel for the appellant argued that occurrence of accident between the motorcycle being driven by the claimant and the offending car is an admitted fact but the contentious issue is whether the accident had taken place due to rash and negligent driving of the offending car by Sanjay Gupta (respondent No.2). Referring to Daily Diary Report No.47 dated 09.04.2009 Ex. P-1, learned counsel asserted that the said Daily Diary Report was registered in respect of the accident on an application given by claimant-Umesh Kumar himself. He had specifically mentioned in his statement that the accident had taken place by chance and there was no fault on part of anyone and he does not want legal action against any person. It was also mentioned in the Daily Diary Report that a cyclist had come in front of the car and in the process of saving the cyclist the car had hit the motorcycle. When it was the admission of the claimant himself that there was no fault on part of driver of the offending car and the accident had taken place by chance, he could not later take a U-turn and change his version regarding of cause of accident and file a petition

claiming compensation on the ground that the accident had taken place due to rash and negligent driving of the offending car by its driver.

On the other hand, learned counsel for respondent No.1-claimant argued that from the contents of the Daily Diary Report, it is apparent that the version of the claimant regarding cause of accident therein was based on hearsay information. It is only the driver of the offending car who could have passed on the information that a cyclist had come in front of his car and saving the cyclist the car had collided with the motorcycle. The Daily Diary Report also shows that consequent to some compromise the said report was got registered by the claimant. However, the fact remained that the offending car had hit the motorcycle of the claimant from the back side and that by itself was sufficient to indicate that the accident had taken place due to rash and negligent driving of the offending car by its driver.

Perusal of the contents of the Daily Diary Report Exhibit P-1 shows that it was the version of the claimant that on the relevant date and time he was driving his motorcycle and when he was taking turn at the crossing of Sector 32-46, the offending car came from the side of Sector-47, 46, 32 and 31 and hit his motorcycle. He stated that he had later come to know that a cyclist came in front of the car and in the process of saving that cyclist the car had collided with his motorcycle. Due to the impact, he lost balance, fell down and suffered injury in his right arm. No doubt, the claimant stated that the accident had taken place by chance and there was no fault on part of anyone but apparently he stated so not on his own

observance but on the subsequent information received by him.

The only evidence available with regard to the cause of accident on the record is the affidavit Exhibit PW3/A of the claimant. He stated that his motorcycle was hit from behind by the offending car as it was being driven by Sanjay Gupta (respondent no.2) rashly, negligently and in a high speed. During cross-examination, he was questioned about the speed of his motorcycle which he stated was 30/40 kmph. On being asked about the speed of the car he stated that it was about 80/90 kmph. Neither respondent No.2-Sanjay Gupta on his own stepped into the witness box to controvert the deposition of the claimant nor the appellant-insurance company made any effort to examine him to elicit that there was no element of rash and negligent driving involved in the accident.

The accident occurred at a small round about crossing. The fact that speed of the offending car was 80/90 kmph and had hit the motorcycle of the claimant from backside is good enough to prove that the car was being driven by respondent no.2-Sanjay Gupta in a rash and negligent manner. The facts mentioned in the Daily Diary Report that while saving a cyclist the driver of the offending car had hit into the motorcycle was based on some subsequent information received by the claimant. Although the claimant himself proved the Daily Diary Report Exhibit P-1 in his evidence but he was not confronted to the statement recorded in the said Daily Diary Report and was also not cross-examined about the circumstances in which the Daily Diary Report was got recorded by him. In such circumstances, it cannot be said that the deposition of the claimant that the accident was

result of rash and negligent driving of the offending car by respondent-Sanjay Gupta was result of an afterthought. He had the right to file claim petition based on the facts which were evident on the face of it and he also succeeded in proving the same. Thus, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

15.03.2016.
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