

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

FAO No.4338 of 2014.

Date of Decision: 04.03.2016.

Nihal Chand

....Appellant.

VERSUS

Vajeer Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Mukesh Yadav, Advocate for the appellant.

SNEH PRASHAR, J.

Appellant Nihal Chand assailed the award dated 20.01.2014 passed by Motor Accident Claims Tribunal, Narnaul (for short, “the Tribunal”) by virtue of which MACT Petition No.433 of 2012 filed by him under Section 163-A of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation for the injuries suffered by him in a motor vehicular accident, was dismissed.

The submissions made by Mr. Mukesh Yadav, learned counsel for the appellant have been heard and record perused.

Narrating the accident the appellant pleaded that on 10.01.2012 he had borrowed the motorcycle bearing registration No.HR-12J-2769 (hereinafter referred to as the “motorcycle”) from Vajeer Singh (respondent

No.1) and was driving the same when at about 3:00 p.m. near Jainpur turning point the motorcycle hit a person named Hanuman, resident of village Lotana who was crossing the road. The appellant alleged that Hanuman suddenly came in front of the motorcycle and in his attempt to save him, he lost balance, fell on the road and suffered injuries.

A First Information Report No.19 dated 26.01.2012 under Section 279/304-A of the Indian Penal Code (for short, "I.P.C.") was registered in respect of the accident at Police Station Nangal Choudhary. The victim of the accident Hanuman died due to the injuries sustained by him. As observed by learned Tribunal in Para No.8 of the award, the criminal case for causing the accident was registered against the appellant. After investigation, a final report (challan) Ex.RW2/B was filed by the police against the appellant before the Magistrate who charge-sheeted him for commission of offence under Sections 279 and 304-A I.P.C.

Learned counsel for the appellant argued that there was no fault on part of the appellant which could have led to the occurrence of the accident. Deceased Hanuman had suddenly started crossing the road and had come in front of the motorcycle of the appellant, who tried his best to save him and in that process lost control over the motorcycle, fell on the road and sustained multiple grievous injuries. The deposition of the appellant was supported by an eyewitness of the accident namely Neeraj who appeared as PW3. In any case, the petition for compensation was filed by the appellant under Section 163-A of the Act of 1988. Under the said provision for claiming compensation the only requirement of law is to prove

occurrence of accident arising out of use of a motor vehicle and in the present case it is undisputed that the accident took place arising out of use of the motorcycle.

Admittedly, the appellant was driving the motorcycle which hit a person crossing the road and due to the injuries sustained by that person, he died. The First Information Report in respect of the accident was registered against the appellant. After investigation, the police challaned the appellant and on the basis of the material put forth before the Magistrate, a prima-facie case for commission of offence punishable under Section 279 and 304-A I.P.C. was held to be made out against the appellant and he was charge-sheeted.

As per findings of learned Tribunal, PW3 Neeraj before appearing as a witness in the petition of the appellant had never gone to the police to say that he was an eyewitness of the accident. He was found to be a procured witness and was unreliable. The criminal case registered in respect of the accident against the appellant was on the allegation that due to his rash and negligent driving a person named Hanuman lost his life. Even if the appellant suffered an injury during the accident, he cannot seek compensation for his own fault.

Otherwise also, admittedly the appellant had borrowed the motorcycle from its registered owner Vajeer Singh (respondent No.1). The accident occurred when he was driving the motorcycle. Needless to say that driving under the authority of the owner, he stepped into the shoes of the owner of the motorcycle.

Section 163-A of the Act of 1988 is a special provision for payment of compensation on structured formula basis. It postulates that the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim as the case may be.

The appellant was driving the motorcycle under authority from the owner which means he had stepped into the shoes of the owner, therefore, he cannot claim compensation from himself. Above that the facts indicate that he had committed the wrong act which had led to the accident. As such, the petition itself of the appellant was not maintainable.

Thus, the judgment passed by learned Tribunal is very much in accordance with law and calls for no intervention. Accordingly, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

04.03.2016.
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