

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

FAO-2416-2016 (O&M)

Date of decision: 28.4.2016

Shambu Khan

...Appellant

Versus

Balwinder Singh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Munfed Khan, Advocate for the appellant

None for respondent No.1-caveator

SNEH PRASHAR, J.

By filing the present appeal, appellant Shambu Khan challenged the award passed by learned Motor Accident Claims Tribunal, Patiala dated 14.3.2016 (for short 'the Tribunal') in MACT case No.47 of 27.5.2015, vide which a sum of Rs.20,53,292/- was awarded to respondent No.1-claimant on account of the injuries suffered by him in a road side accident and the appellant alongwith respondent No.2, insurer was held liable jointly and severally to pay the compensation.

The submissions made by Mr.Munfaid Khan, Advocate representing the appellant have been heard.

Learned counsel for the appellant contends that it has been wrongly held by learned Tribunal that the accident occurred due to negligence on part of the appellant, who was driving his motorcycle No.PB-65S-8676 on which claimant was travelling as a pillion rider. The

fact is that there was no fault on part of the appellant and the accident occurred solely due to rash and negligent driving of driver of an unknown truck. The First Information Report in respect of the accident was also lodged against the driver of that unknown truck. Identity of the truck could not be traced and the claimant did not implead the owner of the truck or its driver to the claim petition. Learned Tribunal gravely erred in fastening the liability of payment of compensation jointly and severally on the appellant and his insurer.

Perusal of the award shows that issue No.1 framed by the Tribunal was as under:-

“Whether on 11.05.2015 at about 2.30 PM in the area of village Rauni, the respondent No.1 drove the offending motor cycle bearing registration No.PB-65-S-8676 in rash and negligent manner and caused multiple grievous injuries on the person of the claimant by his aforesaid act?OPP”

Deliberating on the said issue, learned Tribunal observed as under:

“The FIR regarding the present accident was registered on the basis of statement of the claimant- injured at P.S.Payal. There is nothing in the cross examination of CW1 Balwinder Singh to favour the version of the respondents. It is significant to note here that in order to controvert the version of the claimant, the driver of the offending vehicle i.e. respondent No.1 Shambu Khan did not dare to step into the witness box except placing on file the copy of the his driving licence.

In view of the aforesaid discussion, the rashness and negligence on part of the respondent No.1, while driving the

offending vehicle at the time of accident, has been duly proved on the record by the testimony of CW1 Balwinder Singh, who is the injured as well as eye -witness of the accident and also from the documents placed on file.”

From the above findings of learned Tribunal, it is amply clear that the version of the claimant with regard to cause of accident remained unrebutted and unchallenged. What to say of leading evidence the appellant did not even opt to appear in the witness box to make at least a self serving statement controverting the allegations of the claimant that the accident occurred due to rash and negligent driving of the appellant, who was driving the motorcycle.

The medical record, as mentioned in the award proved that claimant -respondent No.1 suffered multiple and grievous injuries on various parts of body and his right leg was amputated above the knee. He suffered 80% permanent disability. The statement of the claimant stood corroborated by the medical evidence.

In the above premise, the present appeal being devoid of merit is dismissed.

28.4.2016
gsv

(SNEH PRASHAR)
JUDGE