

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

**FAO No.399 of 2015
Date of decision : 06.01.2016**

Vinod Kumar

.....Appellant

Versus

Balwan Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Jai Vir Yadav, Advocate for appellant.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 07.10.2014, passed by learned Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') vide which the claim petition filed by the appellant under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') for grant of compensation to the tune of ₹ 50,00,000/- with interest on account of the injuries suffered by him in the motor vehicular accident, which took place on 20.01.2012 at 09:00 a.m. has been dismissed.

2. As per the averments in the petition, on 20.01.2012 at about 09:00 a.m., the petitioner was going to Pitamha Kan Singh College,

Kanina in his car bearing registration No.HR-36J-8228. He was driving his car on the correct left side of the road. When he reached just ahead of village Dahina on Rewari – Kanina Road, a tanker bearing registration No.HR-39-3389 came from the opposite side being driven by its driver in a rash and negligent manner and at a very high speed, which hit the car of the appellant due to which he sustained severe abdominal injuries besides multiple fractures. Hence the petition.

3. Respondents contested the petition on the grounds inter alia that no accident took place on the given date, time and place. The petitioner has got lodged a false case against respondent No.1 in collusion with the police. Respondent No.3 the United India Insurance Company Limited also contested the petition by filing the separate written statement controverting the pleas raised in the petition and raising various legal and preliminary objections. From the pleadings of the parties, following issues were framed by the learned Tribunal vide order dated 12.03.2013 : -

1. Whether on 20.01.2012 at about 9:00 a.m. on Rewari-Kanina road in the area of village Dahina Tehsil and District Rewari, any accident was caused by respondent No.1 driver of offending vehicle bearing No.HR-39-3389 in a rash and negligent manner as alleged? OPP
2. If issue No.1 is proved whether Vinod Kumar received injuries in said accident as alleged? OPP
3. Whether petition is not maintainable? OPR
4. Whether petitioners have suppressed the true facts from the court? OPR
5. Whether driver of the vehicle bearing No.HR-39-3389 was not holding effective driving licence to drive the said vehicle at the time of accident? OPR

6. Relief.

4. On appreciating the evidence and material on record, the learned Tribunal decided issue No.1 against the appellant-petitioner. Consequently, issues No.2 to 4 were also decided against the appellant-petitioner and issue No.5 was held to have become redundant. Resultantly, the petition filed by the petitioner was dismissed with costs.

5. Aggrieved with the aforesaid award, the present appeal has been preferred.

6. I have heard Mr. Jai Vir Yadav, Advocate, learned counsel for the appellant and gone through the paper-book carefully.

7. Learned counsel for the appellant contended that the learned trial Court has wrongly relied upon the statement Ex.R4. He contended that at that time the appellant was not conscious and has underwent surgery. The said statement is also not proved in accordance with law. Hence, the statement Ex.R4 cannot be taken into consideration. He further contended that the appellant has lodged FIR Ex.PW6/B regarding this accident against respondent No.1. He further contended that learned Tribunal has wrongly disbelieved the presence of PW5 Raju alias Joginder, the witness of the occurrence. He contended that from the statement of the appellant, PW5 Raju alias Joginder, the copy of the FIR Ex.PW6/B and other material on record, it is established that present accident has been caused by respondent No.1 by driving tanker No.HR-39-3389 in a rash and negligent manner. Thus, he pleaded that learned Tribunal has wrongly dismissed the claim petition filed by the appellant.

8. I have duly considered the aforesaid contentions.

9. The statement of the appellant Ex.R4 was recorded by the police on 21.01.2012 i.e. on the next date of the accident. That was the first version of the accident narrated by the appellant to the police. The learned Tribunal has categorically mentioned that in the statement Ex.R4 the appellant has stated that on 20.01.2012 nothing was visible due to dense fog. He was going from Rewari to his college at Kanina and at about 09:00 a.m. when he reached near Dahina, a tanker bearing registration No.HR-39-3389 came from Kanina side and due to dense fog, the vehicle of the appellant and said tanker collided, whereby he sustained injuries. As per the statement Ex.R4, no one was at fault for the said accident and accident had taken place due to dense fog. So, in the first version of the accident narrated by the appellant, no negligence was attributed to respondent No.1, rather it was stated that the vehicles have collided due to dense fog.

10. The plea raised by learned counsel for the appellant that at the time of recording the statement Ex.R4 dated 21.01.2012, the appellant was unconscious, carries no substance. The learned Tribunal has mentioned that number of the offending vehicle as well as vehicle of appellant were specifically mentioned in the statement Ex.R4, which shows that he was fully conscious at the time of making statement Ex.R4.

11. I also do not find any fault with the findings of the learned Tribunal that PW5 Raju alias Joginder was introduced later on in the FIR, which was registered on 12.5.2012 i.e. after about 4 months of

the occurrence. As per the testimony of the petitioner PW5 Raju alias Joginder had taken him to the hospital by arranging private vehicle but the medical record does not support this version. The name of this witness also does not figure in the statement Ex.R4. So, I have no reason to differ with the findings of learned Tribunal that the presence of PW5 Raju alias Joginder is not established at the spot at the time of the accident.

12. It is well settled principle of law that mere registration of criminal case cannot establish the negligence. Moreover, in the instant case there is delay of about 4 months in lodging the FIR. The facts of the case clearly demonstrates that delay has been utilized by the appellant to project a totally different version of the accident in comparison to the first version of the occurrence narrated by him in his statement Ex.R4. In these circumstances, appellant cannot be allowed to wriggle out from his statement Ex.R4 dated 21.01.2012, being the first version of the occurrence wherein no fault was attributed to respondent No.1 and accident was stated to have taken place due to dense fog. To support this view, reference can be made to cases *Jagdish Kaur & Ors. Vs. Raghbir Singh & Ors. 2004(1) PLR 670*, *Surinderjit Singh Vs. Kuldeep Rai Thapar & Ors. 1982 PLR 711* and *Dharam Chand Vs. Shiv Pat & Ors. 1966 ACJ 319*.

13. Consequently, I do not find any illegality or impropriety in the findings of the learned Tribunal that the rash and negligent driving on the part of respondent No.1 is not established.

14. Thus, keeping in view my aforesaid discussion, there is no merits in the present appeal and the same is hereby dismissed.

06.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**