

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

FAO No.7156 of 2015 (O&M)

Date of decision : 05.05.2016

Gulshan

.....Appellant

Versus

Vishnu Bansal and another

...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. Sandeep Kotla, Advocate for appellant.
 Mr. Jainainder Saini, Advocate for respondent No.1.
 Ms. Vandana Malhotra, Advocate for respondent No.2.

DARSHAN SINGH, J.

CM-22611-CII-2015

There is delay of 769 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay in filing the present appeal is hereby condoned.

FAO No.7156 of 2015

The present appeal has been preferred by the appellant-claimant against the award dated 02.05.2013, passed by the learned Motor Accidents Claims Tribunal, Hisar (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 on account of the injuries suffered by him in the motor vehicular accident, which took place on 14.05.2011 has been dismissed.

2. As per the case of the appellant-claimant on 14.05.2011 he was returning to his house on his motorcycle bearing registration No.HR-16F-1895. When he reached near four-wheeler Chowk, Hisar, a car bearing registration No.HR-20Q-5631 came from the side of old bridge. The said car was being driven by respondent No.1 rashly and negligently and it struck the motorcycle of the claimant. Due to which, he suffered multiple injuries on his person. The appellant-claimant has sought the compensation to the tune of Rs.5,00,000/- for the injuries suffered by him in this accident. Hence, the petition.

3. The present petition has been contested by both the respondents by filing the written statement. Respondent No.1 has denied the allegations made by the petitioner. It was further pleaded that the present claim petition has only been filed to grab the amount of compensation. Respondent No.2 in addition to certain legal and

preliminary objections, also repelled the averments raised in the petition.

Both the respondents pleaded for the dismissal of the petition.

4. From the pleadings of the parties, following issues are framed:-

1. Whether the accident occurred on 14.5.2011 has been caused due to rash and negligent driving of respondent No.1 by driving Car No.HR-20Q-5631, if so to what effect? OPP
2. If issue No.1 is proved, to what amount of compensation the petitioner is entitled to, if so from whom? OPP
3. Whether the petition is not maintainable in the present form? OPR2
4. Whether the petitioner has colluded with respondent No.1, if so to what effect? OPR2
5. Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR2
6. Whether the driver of the vehicle was not holding a valid driving licence and the insured has violated the terms and conditions of the insurance policy, if so to what effect? OPR2
7. Relief.

5. In support of their case, both the parties led their evidence.

6. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned Tribunal held that the petitioner has failed to establish that the accident has taken place due to rash and negligent driving of the car in question by respondent No.1 and he was not entitled to recover any amount of compensation from the respondent. Thus, the claim petition was dismissed.

7. Aggrieved with the aforesaid judgment/award dated

02.05.2013, the present appeal has been preferred.

8. I have heard learned counsel for the parties and gone through the paper-book carefully.

9. Mr. Sandeep Kotla, learned counsel for the appellant contended that the appellant was not required to establish the strict liability. The Tribunal was required to return the findings on the basis of evidence adduced before it. The appellant-claimant has stepped into the witness box and has deposed in detail about the manner of the occurrence. He has also got the criminal case registered. The cancellation of the FIR will not adversely affect the case of the claimant as it is not even required to get the criminal case registered in order to claim compensation under the provisions of the Act. He contended that the statement of the claimant was fully corroborated from the medical evidence. So, there was no reason to disbelieve his statement. Thus, he contended that the learned Tribunal has wrongly dismissed the claim petition.

10. On the other hand, learned counsel for the respondents contended that the claimant has got registered a false criminal case only to extort the compensation from the respondents. After through investigation of the case, the FIR got registered by him was cancelled, which is evident from the statement of RW-1 HC Satish Kumar. They contended that in these circumstances the sole serving statement of the claimant, without any corroboration, cannot be relied upon. The material

witness who has allegedly disclosed the vehicle number and was an eye witness of the occurrence has been withheld. Thus, they contended that the involvement of the car in question, rashness and negligence on the part of respondent No.1 is not established and the claim petition has been rightly dismissed.

11. I have duly considered the aforesaid contentions.

12. As per the case of the appellant-claimant, his motorcycle was hit by the car bearing registration No.HR-20Q-5631 being driven by respondent No.1 allegedly in a rash and negligent manner. In a claim petition filed under Section 166 of the Act, it is incumbent upon the claimant to establish the involvement of the vehicle and negligence on the part of its driver for causing the accident.

13. In the instant case on the mode of accident there is sole statement of claimant Gulshan when he stepped into the witness box as PW3. It is an admitted fact that on his statement FIR Ex.P5 was registered for this occurrence. From the statement of RW-1 HC Satish Kumar, it comes out that the said FIR got registered by the petitioner, on investigation, was found to be false. Thus, the version of the claimant with respect to the involvement of the vehicle and mode of accident has been found to be false during the investigation of the criminal case.

14. In the FIR the claimant has alleged that one Hoshiar Singh has noted down the registration number of the vehicle and has also got admitted him in the hospital immediately after the accident. Said

Hoshiar Singh was the material witness but he has not been examined by the claimant. The withholding of this material witness raises an adverse inference against the appellant-claimant.

15. There is no dispute with the proposition of law that in order to lodge the claim under the provisions of the Act, the registration of the criminal case is not a condition precedent. If the claimant is able to establish the involvement of the vehicle and negligence on the part of its driver by adducing cogent, convincing and reliable substantive evidence before the Tribunal, he can succeed. But in the instance case the circumstances are peculiar. It is not the case where no criminal case was got registered with respect to the alleged accident, rather the claimant has got registered FIR Ex.P5 with respect to this occurrence. As per the statement of RW-1 HC Satish Kumar on reinvestigation of the case, the said FIR got registered by the appellant was found to be false and offending vehicle was not found to be involved in this accident. There is no material on record to show that the appellant-claimant has agitated the said result of investigation. In these circumstances, when the criminal case got registered by him has been found to be false with respect to this occurrence on investigation, the solitary statement of the claimant-appellant without any independent corroboration cannot be acted upon. As already mentioned Hoshiar Singh, the alleged witness of the occurrence has not been examined by the claimant. There is no other corroboration to the statement of the claimant on the mode of accident

and involvement of respondent No.1 and his vehicle.

16. Thus, I have no reason to differ with the findings recorded by the learned Tribunal that the appellant-claimant has not been able to establish that the present accident has been caused by respondent No.1 by driving the car in question in a rash and negligent manner.

17. Consequently, the present appeal has no merits and the same is hereby dismissed.

05.05.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**