

101.

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

FAO-612-2005 (O&M)

Date of decision:07.03.2017

MOHAN LAL

.... Appellant

versus

AMAR SHANKAR AND ORS.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.Jagdish Manchanda, Advocate,
for the appellant.

Mr. Rohit Goswami, Advocate,
for Mr. D.P. Gupta, Advocate,
for respondent No.3.

HARI PAL VERMA, J.

The appellant-claimant, namely, Mohan Lal has filed the present appeal against the award dated 07.10.2004 passed by Motor Accident Claims Tribunal, Kurukshetra (for short, the Tribunal), whereby his claim petition was dismissed.

Briefly stated, the claimant had filed a claim petition with an averment that on 24.01.2003 at about 4 AM, he was standing in front of three-wheeler stand, Pipli on G.T. Road, on the left side of the road, when the offending Jeep bearing registration No.CH-03F-2011 being driven by Amar Shankar (respondent No.1 herein) in rash and negligent manner at high speed came and hit the petitioner after coming on its wrong side of the road. Due to this impact, the petitioner received

injuries on various parts of his body including fracture on legs and arms. After the accident, he was admitted in Apna Hospital, Kurukshetra by Raj Kumar and Inder Pal, who were present at the spot. The driver-respondent No.1-Amar Shankar assured Raj Kumar (son of the injured) that he will pay all the expenses incurred on the treatment, but he did not pay any amount. As per the claimant, the driver was responsible for the accident, and he was challaned by the police for the same. On account of injuries received by the claimant, he remained admitted in Apna Hospital, Kurukshetra from 24.01.2003 and had spent ₹70,000/- on his treatment, special diet, purchase of medicines etc. and more amount is required to be spent on future treatment. Hence, the claim petition was filed.

Respondents No.1 and 2 (driver and owner of the offending Jeep) filed their joint written statement broadly controverting the allegations of the claim petition and stated that the alleged accident had taken place due to sole negligence of the petitioner himself. There was no fault or negligence on the part of respondent No.1. The vehicle was insured with United India Insurance Company Limited-respondent No.3 herein. It was submitted that since respondent No.1 was having valid and effective driving licence, they are not liable to pay any compensation. It was averred that respondent No.1 was coming on correct side of the road and when he reached near Bus Stand Pipli on G.T. Road, there was a heavy fog, and for this reason the vehicle was very slow. In the meantime, the claimant tried to cross the road from

wrong side without caring about the on-coming traffic and dashed in the right side of bumper near window and fell of his own. In this case, the FIR was lodged after four days of the accident.

Similarly, respondent No.3-Insurance Company had filed its written statement pleading therein that the claim petition is false, bogus, frivolous and no accident took place with the alleged jeep resulting into the alleged injury to the petitioner. The insured never intimated the answering respondent about the alleged accident which is mandatory under the rules.

The Tribunal declined the claim and held that the involvement of the offending vehicle is doubtful and no convincing reason is coming forth regarding the delay in lodging the FIR. The claimant was brought to the hospital, but no doctor informed the police. PW1-Dr. Vikas Goel stated that it is mandatory to inform the police in case of injury sustained in an accident.

Learned counsel for the appellant has argued that broadly the claim of the claimant was declined on account of delay in lodging the FIR. He has further argued that delay in lodging the FIR is no ground to decline the claim and in support thereof, he has referred the judgments of this Court in **Ravi Versus Badrinarayan and others-2011 AIR (SC) 1226** and **United India Insurance Company Limited Versus Sham Lal and others-2010(4) R.C.R. (Civil) 975**. He has further argued that the respondents, while filing their written statement, had admitted the factum of accident and, therefore, the claim filed by

the appellant was required to be allowed, as the claimant suffered injuries on his person. In fact, the reason for not reporting the matter to the police immediately after the accident was that the respondent No.1-driver had assured Raj Kumar (son of the appellant-claimant) that he will pay all the expenses incurred in treatment, but he had not paid any amount, which led to delay in lodging the FIR.

I have heard learned counsel for the appellant.

So far as the proposition put forward by learned counsel for the appellant that delay in itself is not a ground to decline the claim petition, the same is not in dispute. But as held in **Ravi's case** (supra), in order to succeed in the claim petition, the claimant is required to establish that he had suffered injuries in the accident on account of rash and negligent driving on the part of the driver.

It is the case of the claimant that he was hit by the jeep while he was standing on road. There was no reason for him to stand carelessly on the road without looking for incoming vehicles. He was required to stand on the pavement and not on the road, and that too on G.T. Road, where there is heavy movement of vehicles. So once it is held that the claimant has failed to prove the involvement of the offending jeep in the accident, the Tribunal has rightly declined the claim petition.

The judgment cited in **Sham Lal's case** (supra) is also not applicable as in that claim petition, the driver did not appear as a witness. Thus, there is no dispute that delay in itself is not a ground to

decline a claim under the Motor Vehicles Act, but in order to get claim under the Act, the claimant/injured is required to prove that the accident, in question, was caused due to rash and negligent driving of the offending vehicle, whereas in the present case, no such material has been placed on record to adduce that the driver of the offending vehicle caused the accident.

Since the appellant-claimant has failed to adduce any evidence on record that the accident was caused due to rash and negligent driving of the offending vehicle i.e. Jeep bearing registration No.CH-03F-2011, this Court does not find any illegality in the award dated 07.10.2004 passed by the Tribunal and the appeal filed by the appellant-claimant stands dismissed.

(HARI PAL VERMA)
JUDGE

07.03.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No