

FAO No. 355 of 2006 (O&M)

-1-

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

FAO No. 355 of 2006 (O&M)

Date of Decision:28.11.2017

Krishan Lal

.....Appellant

Versus

Ramjeet Bhardwaj and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vipin Sharma, Advocate for
Mr. S.M. Sharma, Advocate
for the appellant.

Mr. V. Ramswaroop, Advocate
for respondent No.2.

AVNEESH JHINGAN, J.

The present appeal has been filed against the dismissal of the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by Motor Accidents Claims Tribunal, Ambala (for short 'the Tribunal') vide award dated 5.8.2005.

The factual matrix of the case are that the appellant suffered injuries including suffered fracture of bone of left leg and injury on left eye, in the alleged motor vehicular accident that occurred on 29.10.2003,.

A claim petition was filed under Section 166 of the Act and it was alleged that the appellant was hit by a rashly and negligent driven motor cycle bearing registration No. PB-70-4737. The Tribunal dismissed the claim petition on the ground that the claimant was not able to establish the involvement of the offending motor cycle.

Learned counsel for the appellant has argued that there was an

accident in which the appellant had suffered injuries and was taken to the hospital, therefore, the Tribunal erred in dismissing the claim petition. He further contended that the Tribunal has not appreciated the deposition of Mangat Ram-PW4, who was an eye witness to the accident.

Learned counsel for the respondent No.2 argued that the claimant miserably failed to prove the involvement of the offending motor cycle. He further argued that the alleged eye witness was not worth reliance.

From perusal of the facts, it is apparent that the appellant along with his wife were going on foot when they were allegedly hit by a motor cycle. The appellant suffered injuries and was taken to Civil Hospital, Ambala, where MLR was prepared. The accident occurred on 29.10.2003 whereas FIR was registered on 30.10.2003 on the statement of the appellant.

The legal position is that under Section 166 of the Act, the onus is on the claimant to prove the involvement of the offending vehicle and the rash and negligent driving of the offending vehicle.

Reliance in this regard is placed upon the decision of Hon'ble the Apex Court in **Surender Kumar Arora and another Versus Dr. Manoj Bisla and others**, 2012 (4) SCC 552, wherein it has been held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

In the present case, the entire issue of discharge of onus revolves around the statement made by one Mangat Ram, who is the alleged eye witness. Apart from this statement, there is no other evidence on record to prove the involvement of the offending vehicle. The statement made by

Mangat Ram including his cross-examination is reproduced as under:

"PW-4 Mangat Ram son of Arjun Ram son of Mansa Ram, aged 40 years, Carpenter, resident of Village Jarot, Distt. Patiala. On S.A.

On 29.10.2003 at about 5:00 P.M. I was present at my shop of furniture near the Sales Tax Barrier, of Sultanpur on Chandigarh Road. Krishan Lal is the 'sandhu' (co-brother) of my elder brother Raghbir Chand. Krishan Lal and his wife Bala Devi were going on foot to their house and they had crossed the pucca road and reached on the kacha portion of the road. In the meantime, motor cycle bearing No.PB-70-4737 came from the side of Baldev Nagar in a rash and negligent manner in a very high speed and the driver of the said motor cycle could not control the same and hit the same against Krishan Lal due to which Krishan Lal sustained injuries. I had removed him to Civil Hospital, Ambala City. My statement was recorded by the police in the evening in Civil Hospital, Ambala City. After the accident motor cyclist had fled away alongwith his motor cycle. The accident was caused due to rash and negligent driving on the part of motor cyclist. Krishan Lal is a mason. He used to get Rs.150/- as daily wages.

Xxxx n by Shri Varinder Singh proxy counsel for Shri B.S. Jaspal, counsel for No.1.....Nil.....opportunity given.

My shop is situated at a distance of 100 feet from the place of accident. I was sitting outside my shop. I had seen the accident after the impact was over. I did not lodge the FIR. The motor cyclist did not stop at the place of occurrence even for a while. I did not call the police. Volunteered, the doctor at the hospital informed the police. I was present when the statement of Krishan Lal claimant was recorded by the police. I had been listening the statement of Krishan Lal for some time. However, at

the same time I was also busy for bringing the medicines for the patient. It is correct that the road on which the accident took place is a National Highway. It is incorrect to suggest that there was no kacha portion of the road at the place of accident. Police had recorded my statement on 29.10.2003 at about 5:30 P.M. It is incorrect to suggest that injured is simply a casual labourer and not a mason. It is also incorrect to suggest that Krishan Lal suffered injuries due to his own negligence and rashness. It is also incorrect to suggest that I had not witnessed the accident. It is also incorrect to suggest that I am in collusion with the claimant and respondent No.1 have given false number of the offending vehicle. It is also incorrect to suggest that I am deposing falsely."

Reliance in this regard has been placed upon the decision of Hon'ble the Apex Court in *Kusum Lata and others Versus Satbir and others 2011 (3) SCC 646.*

There is no doubt that the onus under Section 166 of the Act is not to the extent that it has to be proved beyond doubt that the offending vehicle was involved in the accident. Testing statement on the said principle, it would be evident that it is itself doubtful that Mangat Ram was the eye witness and according to him the police recorded his statement on the same evening on which the accident took place i.e. on 29.10.2003 and his statement was recorded in the Civil Hospital. It is worth noting here that FIR was not registered on his statement rather the FIR was registered on 30.10.2003 on the statement of the appellant.

PW4-Mangat Ram specifically stated that the motor cyclist fled away along with his motor cycle. In his cross-examination, he admits that the motor cyclist did not stop at the place of occurrence even for a while.

that his shop was situated at 100 feet distance from the place of accident and he had seen the accident, after the impact was over, creates a cloud over his version. If all these contents are read together how could it be said that he was able to note the registration number of the offending vehicle. Firstly he was 100 feet away from the place of accident and he had seen the accident after the impact was over, thereafter, the motor cyclist fled away even without stopping for a while. It means by the time, the alleged eye witness would have reacted and the motor cyclist had fled away and there was no chance of noting the registration number.

The appellant had himself admitted that he had not noted the number of the offending motor cycle. He was accompanied by his wife, who could have been one of the star witness for the appellant but for the reasons best known, she never deposed in favour of the appellant.

In such circumstance, no fault can be found in the award passed by the Tribunal, dismissing the claim petition.

The appeal being bereft of merit is hereby dismissed.

28.11.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No