

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

**FAO No. 2231 of 2008(O&M)**

**Date of decision: 2.8.2017**

Bakhshish Chand

....Appellant

VERSUS

Gian Chand and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Satnam Singh, Advocate for the appellant.

Mr. Kuldeep Singh, Sr. DAG, Punjab.

Mr. H.S. Bajwa, Advocate for respondent No.1.

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**REKHA MITTAL, J.**

The present appeal directs challenge against the award dated 19.09.2007 passed by the Motor Accidents Claims Tribunal, Hoshiarpur (in short 'the Tribunal') whereby application for compensation filed by the claimant (injured victim) for grant of compensation under Section 110-A of the Motor Vehicles Act, 1988 (in short 'the Act') was ordered to be dismissed.

As per the allegations raised by the claimant, on 03.05.1989 he was travelling on a scooter No.PCP-1028 driven by Som Nath, J.E. (respondent No.3). When they reached near village Beh Lakhana, truck No.PUG-454 came from opposite direction at a high speed which was driven by Gian Chand – respondent No.1 in a rash and negligent manner. The truck struck against the scooter of Som Nath and the claimant sustained injuries and became unconscious. He was rushed to the hospital.

He was not fully conscious when his signatures were obtained by the police on blank papers in connivance with Som Nath. Subsequently, it was learnt that a false report was lodged by the police at Police Station Talwara to deprive the claimant from getting compensation.

The claimant was employed in the Construction Sub Division PWD (B&R) Talwara and was getting Rs.500/- per month. It is further pleaded that the claimant remained under treatment of various doctors in different hospitals. Ultimately, his right leg was amputated on 03.07.1989 and thereafter he remained under treatment till May 1990. He has claimed compensation to the tune of Rs.2 lakh.

Respondents No.1 and 3 filed a joint written statement raising preliminary objection that the claim petition is barred by limitation. They have denied that scooter No.PCP-1028 and Truck No.PUG-454 were involved in the accident. All other material averments of the petition were denied with a prayer for dismissal thereof. Respondents No.2 and 5 filed their separate reply raising preliminary objection qua petition being time barred and bad for non-joinder of parties.

The Tribunal framed the following issues for adjudication:-

1. Whether the claimant sustained injuries in a motor vehicular accident which took place on 03.05.1989 at about 9.30 PM in the area of village Beh Lakhan, due to rash and negligent driving of truck No.PUG-454 by its driver respondent No.1.? OPA
2. If issue No.1 is proved, to what amount of compensation the claimant is entitled to and from whom? OPA.
3. Relief.

The claimant Bakshish Chand appeared in the witness box and examined Swaran Singh AW-2 and Dr. J.S. Dhami AW-3. Gian Chand- respondent No.1 and Somnath – respondent No.3 stepped into the witness box.

After having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No.1 against the claimant and resultantly petition for compensation was dismissed.

Counsel for the appellant has submitted that the findings recorded by the Tribunal are not based upon correct appreciation of materials on record, thus, liable to be set aside. For this purpose, he has carried me through testimony of Bakshish Chand – claimant wherein he has reiterated his version that the accident was caused due to rash and negligent driving of Truck No.PUG-454 by Gian Chand and the circumstances under which DDR No.19 dated 03.05.1989 was recorded by the police by taking advantage of her medical condition as he was not fully conscious when his signatures were obtained by the police in the hospital. It is further argued that testimony of Gian Chand that truck driven by him did not strike the scooter driven by Som Nath on which the claimant was travelling as a pillion rider gets falsified and belied from the testimony of Som Nath RW-2 who has admitted that truck struck against the scooter resulting in sustaining of injuries by Som Nath and Bakshish Chand.

Counsel representing respondent No.1 has supported findings of the Tribunal with the submission that since the date of occurrence in May 1989 till filing of the claim application in August 1991, Bakshish Chand – claimant did not raise any issue before any authority as to falsity of DDR No.19 dated 03.05.1989 recorded by the police. It is further argued that the story brought-forth by the claimant more than two years

after the accident by filing application for compensation in August 1991 is nothing but result of concoction and after-thought.

Another submission made by counsel is that Som Nath, J.E., respondent No.3 is also signatory of the DDR and he also sustained injuries in the occurrence. Had it been true that Gian Chand struck against the scooter driven by Som Nath, there was no reason for Som Nath to deny his (Gian Chand's) liability or to support his cause. The last submission made by counsel is that in view of the first version recorded by Bakshish Chand and Som Nath vide DDR No.19 dated 03.05.1989 coupled with the factum that Bakshish Chand did not initiate any criminal action against Gian Chand, there is no merit in contention of the claimant that the accident took place due to rashness or negligence attributable to driver of truck No.PUG-454.

Counsel representing State of Punjab has echoed the arguments advanced by counsel for respondent No.1 by contending that no interference in the well-founded findings recorded by the Tribunal is warranted.

I have heard counsel for the parties, perused the paper-book and the records.

Bakshish Chand appeared in the witness box and tendered into evidence his affidavit Ex.AW1/A. He has reiterated his version that the accident was caused due to rash and negligent driving of truck No.PUG-454 by respondent No.1 as the truck came from the opposite side at a high speed rashly and negligently and struck against scooter of respondent No.3 while coming on the wrong side of the road without blowing any horn and giving any indication. He has also reiterated that a wrong DDR No.19 dated 03.05.1989 was entered by officials of Police

Station Talwara as he was not fully conscious on 03.05.1989 and his signatures were obtained by the police on blank papers in connivance with respondent No.3. In his cross examination, a relevant extract from his testimony reads as follows:-

"My statement was recorded by the police again said the police obtained my signatures on blank paper when I was lying admitted in BBMB Hospital Talwara. I do not know if on the basis of statement recorded by the police DDR No.19 dated 3.5.89 was recorded at P. S. Talwara. I do not know if police recorded the statement of Som Nath who was accompanying me on the scooter at the time of accident. I am matriculate. I did not lodge any complaint to the effect that police of P.S. Talwara had obtained my signatures on blank papers or that it has wrongly recorded my statement. Similarly I also did not lodge any such complaint in any court. It is correct that I was shifted to BBMB Hospital Talwara from the place of accident by Gian Chand in his truck. Similarly Som Nath was also rushed to the aforesaid hospital by Gian Chand in his truck. I remained conscious till I reached in the hospital and became unconscious when I was admitted in the hospital. I became unconscious after 8 PM. My statement was recorded by the police at about 6.15 PM. I cannot say if mark- RA is the true copy of the DDR No.19 recorded on the basis of statement made by me to the police."

A careful and thoughtful reading of para 2 of the affidavit Ex.AW1/A and cross examination of Bakshish Chand would clearly indicate that Bakshish Chand voluntarily recorded his statement before the police but later with a view to claim compensation, he tried to wriggle out of his first version recorded vide DDR No.19 dated 03.05.1989. In the concluding line of para 2 of the affidavit Ex.AW2/A, he has deposed that his signatures were obtained by the police officials on blank papers in connivance with respondent No.3. There is nothing on record suggestive of the fact that Som Nath, J.E., who himself sustained injuries in the occurrence had any interest in getting prepared false record by the police.

Equally true is that there is no material on record to justify that Som Nath

wanted Gian Chand, driver of the truck, to be exonerated of his liability either departmentally or otherwise for causing the accident. The very fact that the claimant did not raise any issue against DDR No.19 dated 03.05.1989 either till filing of the application for compensation or even till the year 2007 when his statement was recorded in the Court, is sufficient to conclude that the claimant concocted a false story of rashness and negligence on the part of Gian Chand to satisfy his lust for compensation

Respondent No.3- Som Nath appeared in the witness box and denied the accident having been caused due to rash and negligent driving of truck in question. He tendered into evidence his affidavit Ex.RW2/A and deposed that the accident occurred incidentally and no one was at fault. Som Nath sustained injuries in the occurrence. As per his version, he was initially taken to BBMB Hospital, Talwara and was admitted there by Gian Chand. He got treatment from different hospitals. Meaning thereby that Som Nath himself was victim of the occurrence. The very fact that he did not lodge any claim for compensation either against Gian Chand or State of Punjab and denied liability of Gian Chand to have caused the accident goes a long way to substantiate the version recorded by Bakshish Chand and Som Nath at the first available opportunity when they were lying admitted in BBMB Hospital, Talwara. In the given scenario, testimony of Bakshish Chand alone is not sufficient to record a finding that the accident took place due to rash and negligent driving of truck No.PUG-454 by Sh. Gian Chand. I would hasten to add that while recording my concurrence with the findings recorded by the Tribunal holding against the claimant, I am well conscious that proceedings under Section 166 of the Motor Vehicles Act are summary in nature and strict principles of law of evidence are not attracted whereas the case is to be decided on the basis of

preponderance of probabilities. Nevertheless, in view of the above, I do not find any error much less illegality in findings of the Tribunal discrediting plea of the claimant that rashness or negligence can be attributed to Gian Chand – respondent No.1 for causing the accident while driving truck No.PUG-454. That being so, findings recorded by the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

**AUGUST 2, 2017**  
'D. Gulati'

**(REKHA MITTAL)**  
**JUDGE**

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | yes/no |
| Whether reportable        | : | yes/no |