

In the High Court of Punjab and Haryana at Chandigarh

**F.A.O No. 5117 of 2008
Date of Decision: 25.9.2017**

Ramesh Kumar alias Ramesh Singh

.....Appellant

Versus

Parminder Singh alias Minderi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Diwan S. Adlakha, Advocate
for the appellant.

Mr. Namit Khurana, Advocate
for respondents No. 1 and 2.

Mr. Lalit Garg, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

This is the claimant's appeal aggrieved by the dismissal of his petition filed under the Motor Vehicles Act.

Arguments in part had been heard. Counsel for the claimant had sought time to produce the admission record of the hospital and it was adjourned for today. Counsel for the appellant today states that the record is not available and they are unable to produce the admission record.

The claimant was driving a three wheeler on 20.7.2005 and was going from Buria Chowk, Jagadhri to his village Bhogpur at about 8.30 P.M. His case is that all of a sudden a car came from the opposite side and hit the three wheeler and he sustained multiple injuries on the head. The impact of the accident was such that the claimant was thrown out of the three wheeler. It was claimed that the vehicle was being driven by

respondent No. 1 namely Parminder Singh and a lady was also on the driver seat. It was pleaded that the claimant had asked respondent No. 1 to take him to the hospital but he told him that he would take his wife to the hospital as she was also injured. A motor cyclist, who came later took him to the hospital. It was claimed that claimant remained admitted in the hospital upto 02.8.2005 and he had spent Rs. 50,000/- on his treatment.

The respondents as well as the insurance company refuted the claim. It was pleaded that the vehicle had been falsely implicated. It was denied that respondent No. 1 and his wife were sitting on the same seat. It was pleaded that it was no possible since both of them were overweight. It was claimed that the claimant had been driving the vehicle in a rash and negligent manner and struck against their stationary vehicle which was standing on the opposite side of the road.

The insurance company also pleaded that no such accident had taken place and the FIR was lodged on 25.7.2005 after a delay and the complaint was lodged against the lady who was stated to be driving the car. It was pleaded that the claimant in connivance with the police had later on managed to plant Parminder Singh as driver of the car as the lady did not have the licence.

On the pleadings of the parties, following issues were framed by the Tribunal:-

- 1. Whether the accident resulting into injuries to claimant Ramesh Kumar took place due to rash and negligent driving of car No. DL-4CF-5093 by respondent No. 1? OPP*
- 2. If issue No. 1 is proved, what amount of compensation the claimant is entitled to and from whom ? OPP*
- 3. Whether the respondent No. 2 has willfully violated the*

terms and conditions of the insurance policy? If so, to what effect ? OPR 2

4. Relief.

The Tribunal had decided issue No. 1 against the claimant and the claim petition was dismissed.

I have heard both the sides.

The submission on behalf of the appellant is that the involvement of the vehicle had been proved as the respondent-driver had admitted that the accident had occurred with a car and the award should have been given against the registered owner. It was urged that the case had been registered against the driver of the vehicle and if the FIR has been lodged in a haste the same cannot be a substitute for the evidence which has been given before the Tribunal and the statement of the claimant should not have been rejected nor his statement should have been scrutinized in the manner as is done in a civil case and the driver was facing trial and it was *prima facie* safe to hold that the accident had occurred on account of rash and negligent driving of the car driver. Reliance has been placed on ***Harbans Singh and another versus Makhan Lal and others 1986(2) PLR 440*** and ***Gurdeep Kaur versus Tarsem Singh 2008(2) RCR (Civil) 774***.

The submission on behalf of the insurance company is that there was a delay in lodging the FIR and there is no MLR and the Tribunal has rightly appreciated the evidence. It was urged that the first version given to the hospital has been held back and though, an opportunity was given but the documents were not produced. It was urged that in order to succeed the claimant has to first prove the negligence and the fact that the vehicle was being driven by respondent No. 1. It was urged that the accident

It was urged that there is no evidence that there was any fracture and medical record has not been produced and in the DDR, the claimant had stated that the accident had been caused by a lady. It was urged that had the claimant informed the doctor that it was a case of roadside accident, a ruqa would have sent to the police. It was also contended that the trial had ended in acquittal.

The only statement on the record is the statement made by the claimant. The accident occurred on 20.7.2005. The claimant was taken to the hospital by two passersby. Their names were disclosed but they were not examined. The first history given at the time of admission has been held back. The ruqa was sent on the 5th day. In the first statement given to the police, it had been stated that the accident was caused by a woman sitting on the driver seat. The Tribunal dealt with the contentions raised by the claimant in para 19 to 26 of the award and rejected the evidence and rightly so. The claimant did not name Parminder Singh in his examination-in-chief though in the cross-examination, he faintly admitted that the car was being driven by a lady who was Parminder's wife. No photographs were produced nor any eye witness was examined by the claimant. I find no infirmity in the findings recorded by the Tribunal.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

September 25, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No