

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

674

FAO No.111 of 2011
Decided on : 07.11.2017*Bhup Singh**... Appellant**Versus**Vijay Singh and others**.. Respondents***CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN**

Present : Mr.J.P.Sharma, Advocate
for the appellant.
Mr.M.B.Jain, Advocate for the respondents.

Avneesh Jhingan, J. (Oral)

The present appeal is against the dismissal of the claim petition by Motor Accidents Claims Tribunal, Narnaul (for short 'the Tribunal') vide its award dated 31.7.2010.

2. Allegedly, on 28.6.2009, Bhup Singh met with a motor vehicular accident. It was alleged that the accident occurred with an offending vehicle i.e. motorcycle bearing No.HR-34 C/0162.

3. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed. It was averred that on 28.6.2009, the appellant was going on foot, near Mahavir Chok Narnaul, he was hit by the offending motorcycle. FIR No.257 dated 4.8.2009 under Sections 279 and 337 IPC was registered at Police Station, Narnaul.

4. The claim petition was dismissed by the Tribunal on the ground that the claimant has not been able to prove the accident and the involvement of the offending vehicle.

5. Learned counsel for the appellant argued that the appellant

had suffered injuries. There was an FIR and MLR supporting his case. Hence, the Tribunal erred in dismissing the claim petition.

6. Learned counsel for the Insurance Company defended the award and contended that the claimant had miserably failed to prove that the injury was as a result of the accident. He further contended that witnesses and evidence produced were not worth reliance as there was a delay between the alleged accident, MLR and the FIR.

7. The appeal is bereft of any merit. The onus to prove rash and negligent driving of the offending vehicle under Section 166 of the Act is on the claimant. In the present case, it has not even been proved that there was an accident on 28.06.2009 as a result of which, the appellant had suffered injuries. The rash and negligent driving of the offending vehicle would come much later. The accident allegedly took place on 28.6.2009. The injuries as alleged resulted into 15% disability on account of rant of motion of right knee joint reduced by 40% with deep complication. The nature of injury itself shows that it was a serious injury suffered but on record, there is no proof that on the date of accident, the appellant was hospitalized or received any treatment from any hospital or doctor. Rather MLR is dated 27.7.2009 that is almost one month after the alleged accident. The FIR is dated 4.8.2009 which is delayed by almost 35 days. It is important to note here that the FIR was registered only under Sections 279 and 337 of the IPC, Section 338 was not incorporated. The deposition of PW-2, Dr.Dinesh Singh Podar who was examined to support the MLR (PW-4/A) is of no help to the appellant. His examination-in-chief only talks about a simple injury and there is no

reference to any accident or that injuries were as a result of accident. Rather his medical examination makes an interesting reading. It said there was a healed stitch line 22 cm in length over right knee joint and lower part thigh and upper leg with pus formation in one stitch in one right leg. X-ray was advised.

8. As per the above-said reading, it is evident that these injuries and MLR have not been connected with the alleged accident that occurred on 28.6.2009. The disability certificate nowhere proved that 15% disability was result of the such accident.

9. There was no eye witness to the accident. A long gap between the accident, MLR and FIR raises a doubt that the injuries suffered can be result of some subsequent accident.

10 The claimants failed to discharge the onus casted upon him under Section 166 of the Act.

11 The appeal is without any merits and the same is dismissed.

[Avneesh Jhingan]
Judge

07.11.2017

sd

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No