

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

**FAO No.3132 of 2012 (O&M)
Date of Decision: 06.10.2017**

Charanjeet

...Appellant(s)

Versus

Paramjeet and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Munish Mittal, Advocate
for the appellant(s).

Ms. Vandana Malhotra, Advocate
for respondent No.3-Insurance Company.

ANITA CHAUDHRY, J.

This is the claimants appeal aggrieved by the dismissal of this claim petition. There is a delay of 173 days in filing the appeal and 150 days in re-filing the appeal which are condoned.

Claimant-Charanjeet met with an accident on 14.08.2008. He along with Hardeep Singh were going from Pipli to Karnal on a motorcycle bearing registration No.HR-07J-4507, driven by the claimant at a normal speed. They were ahead of village Jhirbari on the G.T. Road, when they found a truck owned by Subodh Singh-respondent No.2, parked on the road without any indicator. When the claimants neared that spot, a stray animal suddenly came in front of the motorcycle. Trying to save himself, the claimant turned his motorcycle to the left side and struck against the backside of the truck. The case of the claimant is that as the truck was parked on the

road wrongly, therefore, the accident occurred.

Respondents No.1 and 2 were proceeded *ex parte*. The Insurance Company denied the accident and pleaded that the driver did not have a valid and effective driving licence. The Tribunal after assessing the evidence held that the claimant himself was at fault and he had dashed against a stationary truck during day time. It noted that there were four lanes and three vehicle could easily cross at a time. It was also noted that the author of the FIR had not been examined and the only statement on record was that of the claimant. The driving licence of respondent No.1 was found to be fake.

The submission on behalf of the appellant is that the truck was parked on the road without giving any indicator and the statement of the claimant should have been accepted and the claim should not have been dismissed because author of the FIR had not been examined. It was urged that the respondent did not step into the witness box to rebut the statement of the claimant and his claim should have been allowed.

The submission on behalf of the Insurance Company is that the place where the accident occurred, is the G.T. road and the claimant has admitted that it is four lane road and three vehicles at one time can easily cross and the accident had occurred during day time. It was urged that there was no evidence that truck was parked on the road and no site plan was produced nor the author of the FIR has been examined. It was also urged that even if the story of the

claimant is believed that a stray animal came his way and he turned and hit the truck from behind, only goes to show that the speed of his vehicle was very high, therefore, he could not control and dashed behind a parked vehicle.

The claim petition had been filed under Section 166 of the Motor Vehicles Act, 1988. The claimant had struck his motorcycle behind a stationary truck. The accident had took place at about 10.30 am when there was sufficient light. It is not a case that the claimant was blinded by lights. It was the claimant who struck the truck from behind. The road is wide enough to accommodate three vehicles. The claimant had held back the author of the FIR perhaps he could not face the test of cross-examination or he feared that the truth would come out and was kept away. It is clearly a case where the claimant himself was responsible for the accident.

There was infirmity in the finding and is affirmed. The appeal is dismissed as it lacks merit.

October 06, 2017
ps-l

(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No