

222.

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

FAO-3693-2012

Date of decision:17.05.2017

DEV RAJ

... Appellant

VS

ABDUL GAFOOR AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sanjiv Gupta, Advocate,
for Mr. Kamal K. Chaudhary, Advocate,
for the appellant.

None for respondents No.1 and 2.

Mr. Rajan, Advocate,
for Mr. Vishal Aggarwal, Advocate,
for respondent No.3.

HARI PAL VERMA, J.

The appellant-claimant has filed the present appeal impugning the award dated 25.02.2011 passed by Motor Accident Claims Tribunal, Panchkula (for short, 'the Tribunal'), whereby the claim petition filed by the appellant-claimant under Section 166 of the Motor Vehicles Act, was dismissed.

Briefly stated, as per the claim petition, on 09.08.2007, the appellant-claimant-Dev Raj (herein referred as 'claimant') and one Purshotam were going to Village Kheranwali on a scooter bearing registration No.HR-49-A-3884 which was being driven by the claimant himself. When they reached near Paploha turn, a motorcycle bearing registration No.HR-49-9986 being driven by Abdul Gafoor (respondent

No.1) in a rash and negligent manner and at a very high speed, hit against the scooter of the claimant while coming on the wrong side. Due to this impact, the claimant as well as the pillion rider-Purshotam fell down on the road and suffered severe and multiple injuries. The claimant was taken to Civil Hospital, Kalka, from where, he was referred to PGI, Chandigarh, where he remained admitted from 09.08.2007 to 11.08.2007. Thereafter, the claimant was referred to GMCH, Sector 32, Chandigarh, where he remained admitted from 13.08.2007 to 29.08.2007. His index finger was amputated in the operation and some other parts of his body were also operated upon. Hence, a claim petition for compensation was filed.

On notice, the driver and owner (respondents No.1 and 2) filed a joint written statement taking preliminary objections regarding maintainability, the claimant has not come to the court with clean hands and has suppressed true and material facts etc. from the court. However, on merits, it was contended that the accident had taken place due to the rash and negligent driving of scooter, being driven by the claimant himself and an FIR had rightly been registered against him. The present claim petition has been filed just to extract money from the respondents.

The Insurance Company (respondent No.3) also filed a separate reply and had denied the factum of accident due to rash and negligent driving of motorcyclist bearing registration No.HR-49-9986.

Rather, it was pleaded that the accident had taken place because of the

negligence on the part of claimant himself. It was denied that the claimant had suffered any injuries in the accident in question or that he had spent huge amount on his treatment.

Before the Tribunal, the claimant was required to prove that he sustained injury in the motor vehicular accident which took place on 09.08.2007. During his cross-examination, the claimant admitted that an FIR No.62 dated 10.08.2007 was registered against him. He deposed that he never made any application before the higher police authorities regarding his false involvement in the criminal case. The claimant also examined PW3-an eye witness-Purshotam Lal, who reiterated the claim petition, but during cross-examination, he deposed that though he received injuries in the accident, but did not maintain any record regarding his treatment.

The Tribunal found that the FIR was registered against the claimant for causing the accident and he faced trial wherein he was finally acquitted, but a mere statement of the claimant that the accident took place due to rash and negligent driving of respondent No.1, is not sufficient. The fact that the claimant did not move any application before the higher police authorities regarding his false involvement in a criminal case, cannot be overlooked. Therefore, the Tribunal, vide award dated 25.02.2011, had dismissed the claim petition on the ground that the claimant has failed to establish that the accident in question took place due to rash and negligent driving of respondent No.1 i.e. driver.

Aggrieved against the aforesaid award dated 25.02.2011, the claimant (appellant herein) has filed the present appeal.

Learned counsel for the appellant has argued that the Tribunal has wrongly decided the issue of negligence by taking into consideration the fact that since FIR is registered against the appellant, he is liable. In fact, the evidence of the appellant was not controverted by the respondents. Since the appellant was not at fault and accordingly, vide judgment dated 12.10.2009, he was acquitted in the criminal case, thus, the liability could not have been fastened upon the appellant and the matter was required to be considered by taking into consideration the preponderance of probabilities by taking evidence on record, but the Tribunal has not considered this aspect of the matter. Due to the accident, multiple injuries were received by the claimant and even his index finger was amputated for which surgery was conducted upon him, but the Tribunal did not consider these aspects. Thus, claim of appellant was wrongly declined by the Tribunal.

Learned counsel for the appellant has relied upon the judgment of the Apex Court rendered in **Kusum Lata and others Versus Satbir and others-2011(3) SCC 646** to contend that in a case relating to motor accident claims, the claimants are not required to prove the case as is required to be proved in a criminal trial by the prosecution. The Court must keep this distinction in mind while deciding claim cases under M.V. Act. The claimants were merely to establish their case on the touchstone of preponderance of probability.

Reliance has also been placed on a Division Bench judgment of Madhya Pradesh High Court rendered in **Mahila Dhanwanti and others Versus Kulwant and others-1994(2) ACJ 708** to contend that in case of failure of driver of vehicle to prove that he was not negligent, the doctrine of *res ipsa loquitur* is applicable.

I have heard learned counsel for the parties.

In order to claim compensation under the Motor Vehicles Act, it is the utmost requirement of the claimant(s) to establish the occurrence of the accident and also the fact that the accident was caused due to the rash and negligent driving of the driver of the offending vehicle. It is only on the basis of his evidence, the Tribunal will determine the compensation. But in the case in hand, it has been found that the claimant himself has failed to adduce any evidence of accident to establish that it took place due to rash and negligent driving of the offending vehicle by respondent No.1-Abdul Gafoor. It is rather the other way. For causing the accident, an FIR was registered against the claimant himself. Though he was ultimately acquitted in the criminal case vide judgment dated 12.10.2009, but the fact remains that after the registration of FIR against the claimant, he has not made any effort to make any complaint against registration of FIR against him, with the higher police authority. Even PW3, who is stated to be an eyewitness of the accident in question, has though deposed that he too received injuries in the accident, but he failed to maintain any medical record in that regard. The Tribunal has recorded a finding that the

claimant has failed to prove the very accident in question, which took place due to rash and negligent driving of offending vehicle by respondent No.1. So far as the judgments cited by the counsel, they are not attracted to the facts and circumstance of the present case. The judgment in **Kusum Lata's case** (supra) is not attracted to the facts and circumstances of the present case as in the present case, FIR was registered against the claimant himself that he had caused the accident. Merely because the claimant was acquitted in the criminal case is not a ground to conclude that the accident had taken place due to rash and negligent driving of motorcycle i.e. HR-49-9986 by respondent No.1. So once the claimant failed to prove the very accident, the Tribunal has rightly dismissed the claim petition.

In view of above, this Court also does not find any reason to interfere in the award passed by the Tribunal. Accordingly, the appeal filed by the appellant-claimant stands dismissed.

(HARI PAL VERMA)
JUDGE

17.05.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No