

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

FAO-4913 of 2015

Date of decision: 07.11.2017

Sunil Kumar

.... Appellant

Versus

Kulwant Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Siddharth Gulati, Advocate
for the appellant.

Mr.Bikram Chaudhary, Advocate
for respondent No.1.

Avneesh Jhingan, J.

The present appeal has been filed by Sunil Kumar challenging the award dated 12.02.2015 passed by the Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as the 'Tribunal').

The issue involved in the present appeal is whether the accident occurred due to rash and negligent driving of the appellant or respondent No.1?

The brief facts necessary for adjudication of the appeal are that on 06.10.2012, there was an accident between TVS Scooty bearing registration No. HR01J-0609 and a motorcycle bearing registration No. HR02P-9422. As per the claim of the appellant, he was on his scooty and was standing on the divider when he was hit by the motorcycle. He suffered injuries. FIR No.293 dated 07.10.2012 was registered at Police Station

City, Kaithal.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed. The same was dismissed by the Tribunal as it was held that the accident occurred as a result of negligence of the appellant himself.

Learned counsel for the appellant has argued that there was an eye witness to the accident who deposed as PW4 Dr. Pardeep Sharma. He contended that the accident was proved and injuries of the appellant were also proved. In such circumstances, the Tribunal erred in dismissing the claim petition.

On the other hand, learned counsel for the respondent argued that the accident was the result of negligence on behalf of the appellant and this has been proved not only in the present case but also in claim petition MACT case No.36 of 2015, decided on 22.07.2016. He further relied upon the decision of the criminal case where respondent No.1 was acquitted on the ground that his rash and negligent driving was not proved beyond reasonable doubt.

From the facts of the case, it is evident that the appellant was trying to go on the wrong side of the road. Even it is admitted that he was not in motion at the time of accident but he was crossing the divider on his scooty towards the wrong side of the road. The Tribunal has not relied upon the deposition of PW4 for the reason that in his cross-examination there were certain contradictions which created a doubt about his actual presence at the time of accident. He neither registered the FIR, nor even

informed the police. He himself was admittedly a doctor, he never gave the first aid to the injured. He was not the person who had shifted the injured to the hospital. The relative of the appellant took him to the hospital. Above all, he himself in his cross-examination stated that he is Municipal Councilor of the area and the appellant resides in his ward.

There is no need to go further in details of the evidence and the reasons given by the Tribunal as the sole contention of the counsel for the appellant to challenge the said finding is to rely upon the deposition of PW4.

On the other hand, learned counsel for respondent No.1 relied upon the decision of the Motor Accidents Claims Tribunal, Kaithal dated 22.07.2016 in MACT Case No.36 of 2015. This is a claim petition filed by respondent No.1 against Sunil Kumar (appellant in the present appeal) claiming compensation under Section 166 of the Act on the ground that the accident was result of rash and negligent driving of Sunil Kumar. The issue No.1 was specifically framed in that case. The Tribunal held that the accident occurred as a result of rash and negligent driving of Sunil Kumar.

Learned counsel for the appellant (Sunil Kumar) has fairly stated that the said award was not challenged and had attained finality. In such circumstances, no fault can be found with the award passed by the Tribunal. Further, though the result of the criminal proceedings should not effect the proceedings under the Act but it is worth while to note that the Judicial Magistrate Ist Class, Kaithal on 07.09.2015 acquitted respondent No.1 on the ground that the prosecution failed to prove the rash and

negligent driving of respondent No.1 beyond reasonable doubt. The defence in the said proceedings was also that the accident occurred as a result of the rash and negligent driving of the appellant (Sunil Kumar).

Keeping in view the above said reasons, the appeal is bereft of merits and the same is hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

07.11.2017
anju

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes