

FAO No.60 of 2016 (O&M)

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

FAO No.60 of 2016 (O&M)

Date of Decision:12.12.2017.

Raj Kumar

.....Appellant

Versus

Sat Narain and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. Surender Gandhi, Advocate
for the appellant.**

**Mr. V. Ramswaroop, Advocate
for respondent No.2.**

AVNEESH JHINGAN, J.

The present appeal is against the award dated 21.11.2015 passed by Motor Accidents Claims Tribunal, Rohtak (for short 'the Tribunal'). The appellant being aggrieved of dismissal of his claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') has filed the present appeal.

On 15.2.2014, the appellant allegedly boarded an auto rickshaw bearing registration No.HR-46-C-4070 for going to village Bhalaut. It was alleged that the said rickshaw was being driven rashly and negligently and while overtaking a tractor-trolley, it (auto rickshaw) dashed into the divider, as a result of which the appellant received multiple injuries and was taken to PGIMS, Rohtak. FIR dated 23.7.2014 was registered at Rohtak. The claim petition was filed and the same was dismissed by the Tribunal holding that the claimant has failed to prove the involvement of the offending vehicle i.e.

I have heard learned counsel for the parties and perused the paper book and record.

Learned counsel for the appellant has argued that the Tribunal has dismissed the claim petition only on the ground that there was a delay in registration of FIR. He stated that the appellant was admitted in the hospital from 15.2.2014 to 22.7.2014 and on 25.3.2014 vide Ex. P5 he filed a written complaint for registering the FIR. He stated that on his discharge from the hospital, he pursued the matter and the FIR was registered. He further contended that the driver of the three-wheeler deposed before the Tribunal as RW1 and tendered his affidavit as Ex.RW1/A. In the said affidavit, he has admitted that the appellant was travelling in his auto-rickshaw on the date of accident and hence, the involvement of the vehicle was duly proved. He contended that from the deposition of the appellant, it was evident that the said auto-rickshaw was being driven in rash and negligent manner. His further reliance is upon MLR to state that the injuries received were from road accident. Learned counsel also relied upon the fact that the driver of auto rickshaw has been charge-sheeted and hence this itself proved the involvement of the vehicle and its rash and negligent driving. He concluded his argument by stating that in the present case, the involvement of the three-wheeler and its rash and negligent driving was duly proved. He relied upon the decision of Hon'ble the Apex Court in case of **Ravi Versus Badrinarayan and others** reported as 2011 (4) SCC 693.

Learned counsel for the Insurance Company argued that the FIR was lodged after five months of the accident. He argued that no witness was produced to prove the accident and rash and negligent driving of the offending vehicle.

The legal position with regard to onus to be discharged by the claimant under Section 166 of the Act, has been dealt with by Hon'ble the Apex Court in case **Surender Kumar Arora and another Versus Dr. Manoj Bisla and others**, 2012 (4) SCC 552, wherein it has been held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

The facts of the present case are that there was an accident on 15.2.2014. The appellant alleged that he boarded the offending vehicle for going to his village. It has further come on record that the appellant was hospitalized from 15.2.2014 to 22.7.2014. FIR is dated 23.7.2014.

There is a delay in registering the FIR. There is no quarrel on the proposition that mere delay in registering the FIR in itself cannot be fatal to the claim made under Section 166 of the Act. The circumstance under which the present delay has occurred has to be considered. It has come on record in the cross-examination of the appellant that though he was hospitalized from the date of accident but he had engaged a counsel after 2-3 days of the accident. He further admitted in his cross-examination that police has recorded his statement after 1 ½ hour of the accident and the said statement was recorded at PGIMS Rohtak. Though it was not mentioned by the appellant anywhere but in his cross-examination he admitted that there were four more persons travelling in the same auto-rickshaw. He further admitted that no other occupant of the auto-rickshaw got injured. He has made his statement that as he was hospitalized and the police was not registering the case, he moved a complaint to the higher authorities on 22.3.2014. The statement recorded on the date of accident was neither

brought on record by the appellant nor the record of the criminal proceeding was summoned. This statement would have shown what was the initial version of the appellant before the police. The delay explained by the appellant is not worth acceptance because he has withheld various facts which had come out in the cross-examination. In his cross-examination it has been proved that though he was admitted in the hospital but he was conscious and was fit to pursue his legal remedies as he had engaged a counsel within two or three days of the accident, though he is stated to have made a complaint to the higher authorities of police on 22.3.2014, from the perusal of FIR, it is evident that the said FIR was registered on the basis of complaint received by post in the police station on 8.7.2014.

The claimant had to fulfill twin conditions, regarding involvement of the vehicle and its rash and negligent driving. With regard to the first condition, apart from the self serving statement of the claimant, no other witness was produced.

Though not disclosed by the claimant, it has come on record that there were other passengers also in the three wheeler but none of the co-passengers has been examined. Reliance of the learned counsel for the appellant is on the statement of the driver Sat Narain.

In the said affidavit, the reliance is being placed on the facts stated in para-4 to state that there was an admission of the fact that the appellant was travelling in the said three-wheeler. For convenience sake, Para-4 of the affidavit is reproduced below:

"4. That in the alleged accident, deponent has no fault on his part. Let it be submitted that on the day of alleged accident petitioner was traveling in the Auto Rickshaw and when the Auto Rickshaw reached near the Solider

Board and the Auto Rickshaw is in a very slow speed and then suddenly the petitioner had came down himself without any indication from the Auto Rickshaw, due to his own wrong act he fallen down on the road, due to this he himself sustained injuries on his own wrong act."

From the perusal of the said paragraph, it is evident that it has been stated that there was an alleged accident. Even if it is read to the extent that the claimant was travelling in the said auto rickshaw then the following lines are very important. As per the later part of the para, it has been stated that the claimant suffered injuries as he himself stepped down from a slowly moving auto rickshaw without giving any indication and hence he suffered injuries because of his own wrong. To accept the contention of counsel for the appellant only one line from para No.4 will have to be read and rest will have to be ignored.

Assuming for the sake of argument that from the affidavit of the driver it was proved that the claimant was travelling in the said auto rickshaw, the second limb of the onus is yet to be discharged i.e.the accident occurred due to rash and negligent driving of the three wheeler. The driver has stated that it was the negligence of the claimant himself who got down from a slow speed auto-rickshaw on his own without giving any indication. The claimant has stated in his cross-examination that there were four other co-passengers and none other suffered any injury. This is an indication towards the fact that the statement made by the driver regarding negligence of the appellant has some weight. Apart from that, none of the co-passengers was examined.

There is another angle to the entire controversy that as per the claim made, three wheeler was overtaking a tractor trolley neither any

detail of the tractor-trolley has been mentioned nor its driver has been examined.

Reliance of the counsel for the appellant on the MLR in which it was stated that the injuries suffered were because of the road accident will not enhance his claim. The dispute is not that he got injuries due to road accident or not. The issue is that the claimant suffered injuries in the accident in which the offending three wheeler was involved and it was result of rash and negligent driving of the said three wheeler. This is not proved from the MLR.

Reliance placed by learned counsel to decision of Hon'ble Apex Court in **Ravi's case (supra)** is of no help. As discussed above, there is no quarrel with the proposition that the delay in registering the FIR itself will not be fatal to the claim petition. Rather in the present case it is not merely delay in FIR, there were other facts because of which the onus casted upon the claimant was held to be not discharged. In the facts of the present case, the case law cited is not applicable.

For the reasons stated above, it cannot be held that the claimant has failed only because of delay in registration of FIR but apart from the involvement of the said vehicle its rash and negligent driving has also not been proved by the claimant.

In such circumstance, no fault can be found in dismissing of the claim petition by the Tribunal and the appeal is thus dismissed.

12.12.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No