

257 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 8568 of 2015 (O&M)
DECIDED ON: FEBRUARY 27, 2017

NAHAR SINGH

.....APPELLANT

VERSUS

BALWANT SINGH

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sanjeev Goyal, Advocate
for the appellant.

JASPAL SINGH, J

CM Nos. 27017 and 27018-CII of 2015

In view of averments made in the applications both are allowed and delay of 12 days in filing as well 23 days in refiling the instant appeal is condoned.

FAO No. 8568 of 2015

Appellant/claimant has preferred the instant appeal feeling dissatisfied with the award dated May 20, 2015 passed by Motor Accidents Claims Tribunal, Sangrur (for short 'Tribunal') whereby, claim petition preferred by him under Section 166 of Motor Vehicle Act, 1988 (for brevity 'Act') seeking compensation on account of injuries received by him in a motor vehicular accident on November 27, 2010; has been dismissed.

2. Briefly, stated the facts of the case are that on November 27, 2010, at about 8.00 PM claimant-Nahar Singh alongwith his cousin Karnail Singh was coming from his fields situated on Bhutal Kalan Road, Village Dhindsa when

they reached near Village Dhindsa, then one motorcycle bearing registration No. PB-64-A-1134 being driven by respondent at a very high speed and rashly and negligently from opposite side by bringing the motorcycle on wrong side he struck into the claimant/appellant. As a result of which, the right leg of claimant was fractured. He also received multiple grievous injuries on his person. Thereafter, he was got admitted at Goyal Hospital, Sunam by one Karnail Singh and from where, he was shifted to DMC, Hospital, Ludhiana, where he remained under treatment till June 07, 2011. Thereafter, on the statement of Karnail Singh, FIR No. 158 dated 30.11.2010 under Section 279, 337 and 338 IPC was got registered in Police Station Moonak against the respondent. At the time of accident, injured/claimant was 50 years old and was quite hale and healthy. He is an agriculturist as well as selling milk and has been earning ₹15,000/- per month.

3. Upon notice, claim petition was resisted by respondent and filed written statement raising preliminary objections *inter-alia* on the ground that the same is not maintainable; that the claimant has not come to the court with clean hands; that the claimant has no locus-standi to file the claim petition. On merits, respondent denied the accident as well as involvement of alleged motorcycle. He alleged that he has been falsely implicated by the police in connivance with the claimant after three days of the alleged accident i.e. on November 30, 2010 just to extract the compensation from him. Rather the alleged accident had taken place on November 27, 2010. All other allegations were denied alleging the same to be false and frivolous.

4. On going through the pleadings of the parties, following issues were framed on February 07, 2003 by learned Tribunal:

1. *Whether on 27.11.2010, claimant has sustained injuries in a motor vehicle accident due to rash and negligent driving of TVS motorcycle bearing registration No. PB-64-A-1134 being driven by respondent No.1 Balwant Singh? OPP.*
2. *Whether the claimant is entitled to compensation of ₹20,00,000/- on account of injuries as alleged?OPP.*
3. *Whether the claimant has no locus-standi to file the present claim petition? OPR.*
4. *Whether the claim petition is not maintainable in the present form?OPR.*
5. *Relief.*

5. In support of his case, the claimant himself appeared in the witness box as CW-1 and examined CW-2 Karnail Singh, CW-3 Dr. Kuldeep Singh, CW-4 Kulwinder Singh, Cashier, DMC, Hospital Ludhiana and thereafter, claimant tendered into evidence certain documents and closed his evidence. On the other hand respondent himself appeared in the witness box as RW-1 and thereafter, as the respondent failed to conclude his entire evidence despite availing sufficient opportunities, his remaining evidence was closed by order by this Court vide order 14.05.2015.

6. After hearing learned counsel for the parties and appraisal of evidence available on record, issues No.1 and 3 were decided against the claimant and in favour of respondent whereas, issues No.2 was decided in view of findings recorded on issues No.1 and 3 holding that the claimant is not entitled to any compensation from the respondent. Resultantly, claim petition was dismissed vide impugned award dated May 20, 2015.

7. Feeling dissatisfied with the impugned award, claimant preferred the instant appeal.

8. While assailing the findings recorded by learned Tribunal, it has

been argued with vehemence by learned counsel for the appellant that the same is absolutely against the evidence available on file and settled canons of law. Findings recorded by learned Tribunal are illegal, erroneous and are without any basis. Learned Tribunal has wrongly and illegally observed that the claimant has failed to establish the rashness and negligence on the part of respondent while driving his motorcycle in which claimant sustained multiple injuries. In fact the claimant/appellant has categorically pleaded and proved on record while appearing in the witness box as CW-1 that the accident had caused by respondent while driving motorcycle bearing registration No. PB-64-A-1134. Apart from the statement of appellant there is also testimony of Karnail Singh, who has fully supported and corroborated the statement of claimant. After registration of FIR in respect of the accident the matter was investigated and the challan was presented in the Court of learned Sub Divisional Judicial Magistrate, Moonak from which it is evident that respondent is facing the trial for causing the accident.

9. Learned counsel for the appellant further contended that it is settled law that the claim petition has to be decided on the basis of preponderance of probabilities and the strict rule of evidence are not applicable it being a summary trial. The learned Tribunal has lost its sight over this aspect and has ignored the sworn testimony of injured/claimant as well as eye witness of the accident. In addition to the testimony claimant and eye witness Karnail Singh there is also statement of Dr. Kuldeep Singh who treated the appellant and has categorically stated that injuries sustained by the appellant are of a road side accident. In view of the testimony of claimant coupled with deposition of eye witness Karnail Singh as well as medical evidence, rashness and negligence on

the part of respondent stands amply proved. As such, the findings recorded by learned Tribunal on issues No.1 and 3 are liable to be set aside and deserves to be delivered in favour of appellant/claimant. It has further been submitted by learned counsel for the appellant that in view of reversal of findings recorded by learned trial Court, claimant/injured is entitled to compensation on account of injuries sustained by him.

10. This Court has given a deep thought to the afore-said submissions made by learned counsel for the appellant but find the same to be of no legal and factual weight.

11. Concededly, claimant has appeared in the witness box as CW-1 and has reproduced his version contained in the claim petition. He has also examined Karnail Singh as CW-2. If their statements are scrutinized with proper care and caution it transpires that the same are unreliable and wholly unworthy of credence. Rather the version put forwarded by the claimant stands falsified. As per the version of the appellant/claimant, an accident had taken place at 8.00 PM on November 27, 2010 but when he was subjected to cross-examination, he has stated that he got recorded the statement in a criminal case titled as State vs. Balwant Singh on October 04, 2013, carbon copy of which is Ex.R1. In that statement, he got recorded that accident had taken place at 8.00 A.M. and there is no explanation in this regard.

12. Here it would be pertinent to mention that as per the version unfolded by the claimant, accident had taken place on November 27, 2010 but the FIR was got registered by him on November 30, 2010. There is no explanation what to talk of any plausible explanation as to why the matter was not reported to the police immediately after the accident. In his further cross-

examination, Nahar Singh has also stated that at the time of accident, Binder Singh was driving the motorcycle but in subsequent breath it has been stated by him that it was Balwant Singh who was driving the motorcycle. It is also suggestive of the fact that the claimant is not sure whether it was Binder Singh or Balwant Singh who was driving the motorcycle at the time of accident. Moreover, he has also categorically stated that Balwant Singh has been seen by him for the first time in the Court at Moonak when his statement Ex.R-1 was recorded. Meaning thereby, that the appellant had not seen the driver of the offending vehicle at the time of alleged accident.

13. Not only this, even Karnail Singh has also failed to throw some light with regard to the rashness and negligence on the part of Balwant Singh. His cross-examination is relevant which shatters his basic version. Though in the affidavit, he has submitted that they were returning from the land owned by the appellant but in cross-examination, he has admitted that appellant does not own any land towards village Bhatal Kalan Road. Rather, he had taken a stand that claimant had taken the land on Batai at Bhutal Kalan Road from Gurjant Singh Fauji. Whereas, claimant had stated that they were returning from their own land. He further admitted that he has not got recorded any DDR in respect of accident on November 27, 2010. He has also stated in his further cross-examination that at the time of accident, he was not with the appellant as he was suffering from heart problem and had gone to Tohana on that day for taking medicine. It has been clearly admitted by him in his cross-examination that police had introduced his name as a witness just to corroborate the version of the claimant and further that police told them that a near relative or brother is required for the evidence. It was due to said reason, he was made a witness. It

has also been categorically admitted by him that on October 04, 2013, they had seen Balwant Singh in the Court at Moonak for the first time and he was shown to them by police officials. Prior to that, they had not seen him. This fact falsifies the entire case set up by the claimant. It clearly reflects that a false case of rash and negligent driving has been planted upon respondent just to extract the compensation.

14. No doubt, lodging of FIR has been admitted by respondent but it has been categorically deposed by him while appearing in the witness box as RW-1 that he has been falsely implicated in the case of accident and he stood already acquitted of the charges in the said case. Since the claimant/injured has failed to establish the rashness and negligence on the part of driver of the alleged offending vehicle, he is not entitled to any sort of compensation. Rather, in such a situation claim petition under Section 166 of the Act is not maintainable. To fortify this observation, I can have the reference of various judgments rendered in the cases of Mohammad Arshad vs. M/s Naimuddin Nasimuddin and another; 1990 ACJ 696; Major Prem Nath Sehgal vs. Jagat Mohan; 1990 ACJ 962; Harbhajan Singh vs. Avtar Singh, 2014 AAC 3039 and Parkashwati vs. Sulakhan Singh @ Lakha; 1999 (1) ACJ 521.

15. In view of afore-said discussion, this Court is of the considered view that there is no infirmity, illegality or perversity in the impugned award, Rather, the same is absolutely in consonance with the evidence available on file. As such it stands dismissed.

FEBRUARY 27, 2017
sham

(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>