

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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FAO No.4875 of 2017 (O&M)

Date of decision :17.07.2017

Tek Chand and another

... Appellant

Vs

Asha Rani and another

... Respondents.

CORAM HON'BLE MR.JUSTICE DEEPAK SIBAL

Present: Mr. Abhinav Kalia, Advocate
for the appellants.

Deepak Sibal, J (Oral)

The driver and owner of a tractor bearing registration No.HR-24N-3154 (hereinafter referred to as the offending vehicle) have preferred the present appeal to challenge therein the award dated 06.02.2017 passed by the *Motor Accident Claims Tribunal, Sirsa* (for short the 'Tribunal') whereby the claim petition of respondent No.1, Asha Rani, filed under Section 166 of the Motor Vehicles Act, 1988 (for short the Act) has been allowed resulting in the awarding to her a total compensation of Rs.2,27,220/- on account of injuries suffered by her due to the accident which took place between the bicycle which she was riding and the offending vehicle. Interest at the rate of 9% per annum from the date of filing of the petition till realization of the entire awarded amount has also been granted by the Tribunal. The liability has further been directed to be discharged by the appellants jointly and severally.

The factual matrix of the matter as placed in the claim

petition was that on 15.03.2015, respondent No.1 was going on a bicycle to the house of her sister-Suman. When she reached near Rajput Bhawan, Kanganpur Road, Sirsa, the offending vehicle which was being driven by appellant No.1 in a rash and negligent manner hit her from behind as a result of which, she fell down and the rear tyre of the trolley attached to the tractor passed over her left leg. Appellant No.1 fled away from the spot leaving the offending vehicle at the spot. On hearing her cries, her sister, Suman, who was coming from the opposite side, along with the help of members of the public got her admitted to Civil Hospital, Sirsa. The matter was reported to the police and FIR No.168 dated 17.03.2015 under Sections 279, 337 and 338 IPC was registered against appellant No.1 at Police Station City, Sirsa.

The appellants opposed the claim petition. It was denied by them that any accident, as alleged by the claimant ever took place due to the offending vehicle having been driven in a rash and negligent way. It was further submitted on behalf of the appellants that the alleged accident occurred due to the negligence of a motor-cyclist who took a sharp turn on account of which the claimant who was riding a bicycle, after losing her balance fell down and received injuries.

After sifting the evidence which had come on record, the Tribunal concluded that the claimant Asha Rani had sustained injuries due to the accident which took place between the bicycle which she was riding and the offending vehicle which was being driven by appellant No.1 in a rash and negligent manner. The story put up by the appellants

that the accident in question took place due to a sharp turn taken by a motor-cyclist which had caused the claimant to lose her balance due to which she sustained injuries, for lack of any evidence was rejected. Resultantly, the claimant was awarded compensation of Rs.2,27,220/- for the medical expenses incurred upon by her; permanent disability suffered; loss of earning; conveyance expenses; pain and suffering and special diet.

Learned counsel for the appellants has submitted that no accident as alleged by the claimant ever took place. As per the eye witness account, the claimant sustained injuries as a result of fall after she lost her balance when a motor-cyclist which was coming in front of her, took a sharp turn. The impugned award is further sought to be set aside on the ground that no independent witness was got examined by the claimant in spite of the fact that the alleged accident took place on a busy street.

After having considered the above submissions, I am of the opinion that the present appeal must fail.

The injured-claimant while appearing as PW-1 had stated before the Tribunal that she had sustained injuries in the accident which took place between the bicycle which she was riding and the offending vehicle which hit her from behind. It was further stated that the offending vehicle was being driven by appellant No.1 in a rash and negligent manner. There cannot be any better witness to an accident than the injured/claimant. In spite of her being put to lengthy cross-examination,

she stuck to her stand showing the genuineness of her claim. Her testimony was further supported by PW-2 who was an eye witness to the accident. Thus, non production of an independent witness would not belie the case of the claimant/respondent No.1.

Still further, the site plan Ex.P-3 clearly shows that the offending vehicle was taken by the police from the spot where the claimant states that the accident took place. The story put forth by the appellants that the claimant had sustained injuries due to her fall from her bicycle on losing her balance when a motor cyclist took a sharp turn in front of her cannot be accepted for lack of evidence. The record further reveals that the witnesses produced by the appellants never deposed as to why appellant No.1 would be falsely implicated at the instance of the claimant and that these witnesses had surfaced for the first time before the Tribunal as they were found to have never appeared during the investigation conducted by the police in connection with the afore referred FIR.

Mere pendency of a criminal case is not enough to hold appellant No.1 guilty of having been involved in the accident in question. However, the fact that after investigation, the police had also found that the accident took place due to the rash and negligent driving by appellant No.1-driver and to that effect a report had been filed by the police under Section 173, Cr.P.C. coupled with the other evidence, as discussed above, the story put forth by the appellants does not inspire confidence.

In view of the above, no fault can be found in the findings of

the Tribunal holding that the claimant suffered injuries due to the accident that took place between her bicycle and the offending vehicle which was being driven in a rash and negligent manner by appellant No.1 as a result of which she incurred total permanent disability of 11.25%

Dismissed.

(DEEPAK SIBAL)
JUDGE

17.07. 2017

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