

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

FAO No.4539 of 2003(O&M)

Date of decision: 12.1.2018

Kala Singh

.....Appellant

VERSUS

Diwan Chand and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Madan Pal, Advocate for the appellant.

Mr. Rohan Sharma, Advocate for
Mr. Vikram Singh, Advocate for respondent No.1.

Mr. Naveen Mandhan, Advocate for
Mr. Pankaj Bali, Advocate for respondent No.3.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 28.07.2003 passed by the Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal') whereby application for grant of compensation filed by the claimant in respect of injuries sustained by him in the occurrence has been dismissed as issue No.1 has been answered against the claimant.

The facts relevant for disposal of the present appeal are that as per case of the claimant, on 29.06.2001 he along with Ram Kumar and Kura Ram was going to Karnal on his motorcycle No.HR-05-F-7901. When they reached near Newal Petrol Pump, car No.DIB-9120 driven by Diwan Chand - respondent No.1 in a rash and negligent manner came and straightway hit into motorcycle of the claimant. All the occupants of motor-cycle fell on the road and sustained serious multiple injuries. The

claimant was taken to Civil Hospital, Karnal by driver of the offending vehicle. He remained admitted in hospital at Karnal from 29.06.2001 to 01.07.2001 and at PGI, Chandigarh from 01.07.2001 to 13.07.2001 and spent an amount of Rs.1,00,000/- on his treatment, medicines, special diet, transportation, attendant charges etc. He claimed a sum of Rs.5,00,000/- along with interest.

The driver of offending vehicle filed reply and, in turn, raised a plea that accident took place due to sole negligence of the claimant himself who at the relevant time was driving motorcycle in a drunkard condition. He has controverted the allegation that accident was the result of rash and negligent driving of car with the plea that the car was at a moderate speed driven by observing all the norms of traffic. Respondent No.2 also filed reply contesting claim of the appellant.

The controversy between the parties led to framing of following issues:-

1. Whether the accident in question took place due to the rash and negligent driving of car No.DIB-9120 by its driver-respondent No.1 if so its effect? OPP
2. If issue No.1 is proved whether the claimant is entitled to receive any compensation, if so how much and from whom? OPP
3. Whether the petition is bad on account of joining of unnecessary parties? OPR
4. Whether the petition is liable to be rejected under Order 7 Rule 11 CPC? OPR
5. Relief.

The Tribunal permitted the parties to adduce evidence in support of their contentions.

The claimant examined himself as a witness. In rebuttal Diwan Chand, driver of the car appeared in the witness box.

The Tribunal on a detailed consideration of the facts elicited in the testimonies of drivers of both the vehicles recorded its findings in para 10 whereby plea of the claimant that driver of the car was author of the accident due to his rash and negligent driving was negated and resultantly the application was dismissed.

Counsel for the appellant has submitted that observations made by the Tribunal in paras 10 to 13 of the award are not based upon meticulous and correct appreciation of testimony of the claimant wherein he has reiterated his version that accident was caused due to rash and negligent driving of car by its driver. It is argued that findings of the Tribunal on issue No.1 are liable to be set aside and the claimant may be allowed just and reasonable compensation on the basis of materials available on record.

Counsel representing respondent No.1, on the contrary, has supported findings of the Tribunal and dismissal of the application for compensation. It is argued that the claimant cannot be allowed to take advantage of his own wrong. It is further argued that driver of the car brought the injured to the hospital as a gesture of humanity but still the claimant dragged him in litigation by filing an application for compensation based upon wrong and twisted facts.

I have heard counsel for the parties, perused the paper-book particularly testimonies of the claimant, Diwan Chand- RW-2 and findings

of the Tribunal in the light of evidence on record but find that contention of the claimant is not meritorious and liable to be rejected.

Counsel for the appellant has failed to point out any materials on record to assail factual findings on any count whatever. The Tribunal has noticed that the claimant was driving the motorcycle which was overloaded. He was carrying three passengers on a motorcycle which was fitted with 'Chhajja' made of iron angles for carrying articles. He was driving the motorcycle in the midst of the road. The claimant admitted that he took his motorcycle on the right side whereas he was required to keep his motorcycle on left side of road. That being so, I do not find any reason to differ with findings of the Tribunal negating plea of the claimant that accident was caused due to rash and negligent driving of car by Diwan Chand. As such, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

As findings of the Tribunal on issue No.1 have been affirmed, claimant cannot press his plea for grant of compensation, being a tortfeasor.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

JANUARY 12, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no