

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

**F.A.O. No. 2895 of 1999
Date of Decision: 21.11.2018**

Partap Singh

.....Appellant.

Versus

Pawan Kumar and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rishab Lohan, Advocate
 for the appellant.

LISA GILL, J (Oral).

Appellant is aggrieved of dismissal of his claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short the 'Act') by the learned Motor Accident Claims Tribunal (for short 'MACT'), Jind, vide award dated 05.08.1999.

As per averments in the claim petition, Partap Singh along with Pawan Kumar (respondent no.1) on 29.09.1997 was coming from village Saffa Kheri to Uchana in a Jeep bearing registration no. HR-08/80-124, which was driven by respondent no.1-Pawan Kumar in a rash and negligent manner, without blowing any horn. Fourteen-fifteen (14-15) persons were claimed to be travelling in the jeep as passengers at the time of the accident. When, the jeep reached near village Kharak Bura, a tractor-trolley was seen coming from Uchana side. Driver of the jeep did not slow down the jeep but struck against the trolley of the tractor on its right side. Dalbir Singh and Shamsher Singh sitting in the jeep, witnessed the occurrence. As a result

thereof, claimant suffered injuries on various parts of his body and was medically examined in CMC, Uchana and Civil Hospital Jind. FIR No.371 under Sections 279, 337 IPC, Police Station Uchana, was registered against respondent no.1-Pawan Kumar on 07.10.1997.

Claim was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether the accident in question took place on 29.09.1997 due to rash and negligent driving of respondent no.1, driver of Jeep No. HR-08/80-124 in which the petitioner Partap Singh received injuries as alleged in the petition?OPP
2. If issue no.1 is proved in the affirmative, what amount of compensation the petitioner is entitled and from whom? OPR
3. Whether the respondent no.1 was holding a valid driving license at the time of accident?OPR
4. Relief.

Learned Tribunal on consideration of the evidence on record, held that the claimant failed to prove that the accident in question was caused due to rash and negligent driving of the offending vehicle by Pawan Kumar-respondent no.1 or that he received injuries in the said accident which took place on 29.09.1997. Accordingly, claim petition filed by the appellant was dismissed vide impugned award dated 05.08.1999.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that mere delay in lodging of the FIR is not sufficient to discard the claim set up by the appellant. It is submitted that the appellant-claimant was 45 years old at the time of the accident. He was permanently disabled due to the injuries received by him in the said accident, which took place on 29.09.1997. He received multiple fracture of the ribs and hip. He remained admitted in the

hospital for 15 days. Clear and cogent evidence, it is submitted has been led by the appellant to prove his case. The said evidence has been wrongly ignored by the learned tribunal while dismissing his claim petition. It is thus prayed that the present appeal be allowed and just and fair compensation be awarded to the appellant.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

As per the case set up by the appellant, he was proceeding from village Saffa Kheri to Uchana on 29.09.1997 in a jeep. Dalbir Singh and Shamsher Singh were travelling along with him in the said jeep being driven by respondent no.1-Pawan Kumar. It is averred that the jeep was driven rashly and negligently by Pawan Kumar at a speed of 80 km per hour and it struck against the tractor-trolley which was coming from Uchana Side. As a result thereof, the appellant received injuries on various parts of his body. The accident in question took place on 29.09.1997, but FIR (Ex.P-A) was admittedly lodged after one week on 07.10.1997 under Sections 279, 337 IPC, at Police Station Uchana. Though delay by itself is not fatal to the claim set up by the appellant, it assumes importance in the factual matrix of the present case. It is to be noted that as per MLR, Ex.PB, the claimant was medico-legally examined on 06.10.1997 at 3.p.m., though the accident took place on 29.09.1997.

Learned counsel for the appellant is further unable to deny that there is no evidence on record to prove the injuries suffered by the appellant. Evidence of the treatment, if any, afforded to the appellant is conspicuous by its absence. PW-4-Dalbir Singh, claimed to be travelling along with the

appellant is admittedly the appellant's cousin i.e. his paternal aunt's (Bua) son. It is rightly observed by the learned tribunal that apart from the evidence of the claimant himself and PW-4-Dalbir Singh, there is no evidence to indicate that Pawan Kumar was driving the jeep at the time of accident in a rash and negligent manner. PW-2-Partap Singh, claimant stated in his cross-examination that he did not even know the driver Pawan Kumar by face, but he heard his name from other persons. PW-1-Devki Nandan, is the owner of the jeep in question, who specifically deposed that his jeep was never involved in the accident and it was Mani Ram, who was the driver of the jeep.

Mani Ram deposed before the learned tribunal as RW-2 and stated that he was the driver of the jeep in question and was employed by Devki Nandan. RW-2, further stated that he was driving the jeep on 29.09.1997, but no such accident was caused by him. Pawan Kumar (RW-3), deposed that his father-Devki Nandan, was the owner of the jeep and Mani Ram, its driver. He denied that any accident was caused by him. Pawan Kumar, is not even claimed to be known to the claimant and the other witnesses.

Another relevant factor to be noted is that none of the 14-15 passengers claimed to be travelling in the jeep at the time of the alleged accident were examined. It is highly improbable that no one else travelling in the jeep received any injuries in the alleged accident.

The entire sequence of events leads to any inevitable conclusion that the appellant failed to prove his case on the touchstone of preponderance of probabilities.

Learned tribunal in this situation has rightly concluded after proper consideration of the evidence on record that the claimant has failed to prove that the accident in question was caused due to rash and negligent driving of the offending vehicle by Pawan Kumar-respondent no.1 or that the claimant received injuries in the said accident which took place on 29.09.1997. Therefore, in my considered opinion, there is no ground whatsoever to interfere in the impugned award.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 05.08.1999 passed by the learned MACT, Jind, which calls for interference by this Court at the instance of the appellant.

Appeal is accordingly dismissed with no order as to costs.

21.11.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.