

102.

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

FAO-1359-2007 (O&M)

Date of decision:21.02.2018.

NARAIN SINGH

... Appellant

Versus

ASHOK KUMAR AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Anil Kumar Gahlawat, Advocate,
for the appellant.

Mr.Mukesh Kaushik, Advocate,
for respondent No.3-Insurance Company.

HARI PAL VERMA, J.(Oral)

Appellant-claimant has filed the present appeal challenging the award dated 04.08.2006 passed by Motor Accident Claims Tribunal, Sonapat (for short, 'the Tribunal'), whereby his claim petition filed under Section 166 of the Motor Vehicles Act, 1988, was dismissed.

Briefly stated, as per claim petition, on 14.01.2005 when the appellant-claimant was going to Village Mahra from his village Thana Kalan on a motorcycle bearing registration No.HR-10G-1581 as a pillion rider, which was being driven by his own son Ashok Kumar, a bullock cart came in its way and the motorcycle struck against the bullock cart. Due to the impact, the claimant fell down and sustained multiple injuries. He was taken to PGIMS, Rohtak for treatment where he was admitted. As per DDR No.32 dated 14.02.2005, registered with Police Station Sadar, Sonapat, the accident had taken place as the motorcycle struck against the bullock cart.

At the time of accident, the claimant was about 50 years of age and was employed as a Dispenser in Government Ayurvedic Dispensary Nandora, District Sonapat and was getting approximately ₹12,000/- per month. However, the Tribunal has found that the accident was caused due to rash and negligent driving on the part of Ashok Kumar who is the son of the claimant himself. While getting the DDR lodged, the claimant revealed that there was no fault on the part of Ashok Kumar while plying the motorcycle. The accident had taken place by chance and no body was at fault.

Learned counsel for the appellant has argued that the bullock cart had suddenly appeared on the road which led to the accident and, therefore, even if the driver of the motorcycle was his own son, the claimant is entitled for compensation on account of injury suffered by him. In the said accident, the claimant suffered disability to the extent of 75% on account of traumatic amputation of right leg through knee. He has relied upon judgment dated 29.08.2012 passed by this Court in **FAO No.7213 of 2010** titled as **“Bansi and another Versus Vikas”** decided on 29.08.2012 to contend that in the similar facts and circumstances, the claimant was awarded compensation by the Tribunal and since the appellants have challenged that award of the Tribunal, this Court had dismissed the appeal of the owner upholding the award passed by the Tribunal.

On the other hand, learned counsel for respondent No.3- Insurance Company has argued that there is no illegality in the well reasoned award, as in order to claim compensation, the claimant has made divergent submissions.

Having heard learned counsel for the parties, this Court finds that there is no illegality in the award passed by the Tribunal. The driver-

Ashok Kumar, who while driving the motorcycle met with an accident with a bullock cart, is the son of the claimant himself. Incidentally, while getting the DDR lodged, the claimant has specifically stated that suddenly a bullock cart appeared on the road and his son, who was driving the motorcycle, could not control the motorcycle and, therefore, no one is at fault in the said accident. So once a specific statement has been made by the claimant, he cannot take a U-turn and change his statement so as to secure the claim.

In view of above, this Court does not find any merit in the appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

21.02.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No