

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

**FAO No. 5198 of 2011 (O&M)
Date of decision : 23.02.2018**

Matu Ram

...Appellant

Vs.

Raj Kumar @ Lila

...Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr.Mani Ram Verma, Advocate
for the appellant.

Mr. Mohit, Advocate for
Mr. R.A.Sheoran, Advocate
for respondent No.1.

...

AVNEESH JHINGAN, J. (Oral)

This appeal has arisen from award dated 23.05.2011 passed by Motor Accident Claims Tribunal, Bhiwani (for short 'the Tribunal').

On 11.11.2009 at about 4.00 p.m, Matu Ram alongwith Ishwar Namberdar, Om Parkash, Sarpanch and Babu Lal Khatik were playing cards at shop of Matu Ram. An accident took place as a result of which Matu Ram and Babu Lal Khatik received injuries. Matu Ram was taken to General Hospital, Bhiwani. His MLR was issued on 16.11.2009 and on receiving rukka from the hospital, FIR was lodged on 17.11.2009. Matu Ram suffered fracture on his right hand apart from other multiple injuries.

A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal dismissed the claim petition as the appellant failed to prove the involvement of Marshal Jeep

bearing registration No. HR-26-E-6482 (for short 'the offending vehicle').

Aggrieved by the dismissal of the claim petition, the present appeal has been filed.

I have heard learned counsel for the parties, perused the paper book and the record.

Learned counsel for the appellant contended that the colour and make of the vehicle and name of the owner of the vehicle were duly mentioned in the FIR, as such the involvement of the offending vehicle was duly proved. He further contended that once the appellant had given a statement that respondent No. 2 was the owner of the offending vehicle, this itself was sufficient to prove that the offending vehicle was involved in the accident. He further argued that in the FIR registered, challan was produced against respondent No. 1-driver of the offending vehicle which proved the involvement of the offending vehicle.

Legal position with regard onus in claim petition filed under Section 166 of the Act is settled. It is for the claimants to prove the involvement and the rash and negligent driving of the offending vehicle. There is no doubt that the onus casted in the proceedings under the Act is not as heavy as in criminal cases and the issue is to be decided on theory of preponderance.

On analyzing the facts and the evidence produced, it is important to note that accident took place on 11.11.2009 but the FIR was registered on 17.11.2009.

Learned counsel for the appellant contends that delay occurred as after the admission of the appellant in the hospital on 11.11.2009, there was no doctor till 16.11.2009. Hence, MLR was not made and rukka was

not sent to the police. Learned counsel for the appellant contended that doctor was not there but the patient was being looked after by para medical staff. This contention prima facie cannot be accepted. It is impossible to believe that a person who has met with an accident remain unattended in the hospital for six days without a doctor.

Even when the FIR was registered after six days, no registration number of the vehicle was mentioned. It was merely mentioned that accident occurred with a Marshal Jeep of white colour which is owned by respondent No. 2.

The delay in filing FIR itself shall not be fatal in such cases. But, there are certain aspects which need to be gone into before relying upon the FIR. As per the appellant, four people were playing the cards when accident occurred. One of them, Babu Lal Khatik suffered injuries but for the reasons best known, none of the persons came forward to support the claim petition. No explanation was given by the appellant either before the Tribunal or in this Court as to when and how appellant came to know about registration number of the vehicle. He had not seen the driver, how it came to his knowledge that the offending vehicle was owned by respondent No. 2. The driver of the alleged offending vehicle appeared before the Tribunal and denied the incident and the fact that on 11.11.2009, he was driving the offending vehicle.

The registration of FIR or presentation of challan itself is not conclusive proof of involvement of offending vehicle. Reliance in this regard is placed upon the decision of the Hon'ble Supreme Court in case titled as 'Kamlesh and others Vs. Attar Singh and others' decided on 27.10.2015.

The contention raised by the learned counsel for the appellant that merely the make and colour of vehicle was mentioned in the FIR was sufficient to discharge the onus of the involvement of the vehicle can not be accepted. There can be number of vehicles of same make and same colour. It will not prove that the offending vehicle was involved in the said accident. The appellant has another hurdle to cross i.e. proving rash and negligent driving of offending vehicle.

The onus casted upon the appellant under Section 166 of the Act has not been discharged. The appeal is dismissed.

23.02.2018

Harish Kumar

**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No