

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

FAO No. 5395 of 2011

Date of Decision:-09.03.2018

Jitender

...Appellant

Versus

Vikas and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr. M.S. Kathuria, Advocate
for the appellant.

Mr. R.C. Kapoor, Advocate
for respondent No.2-Insurance Company.

AVNEESH JHINGAN J.(Oral)

This appeal arises from the award dated 14.5.2011 passed by the Motor Accident Claims Tribunal, Rohtak (for short 'the Tribunal').

The claim petition filed by Jitender son of Shri Karan Singh under Section 166 of the Motor Vehicle Act, 1988 (for short 'the Act') was dismissed by the Tribunal on the ground that the claimant failed to prove involvement, rash and negligent driving of the alleged motor-cycle involved in the accident.

The facts pleaded by the appellant in the claim petition are that on 06.10.2009 at about 6.00 AM, he was going to his fields on bicycle for bringing fodder. He was crossing Kharawar bypass road, near Gandhra

turn, a motor-cycle bearing Registration No. HR-99-EC-2881 (temporary number), HR-12-M-6315 (permanent number) driven rashly and negligently dashed into bicycle. It was stated that Bijender, brother of the appellant witnessed the accident and shifted him to Mudgil Hospital, Rohtak. FIR No.381 dated 17.11.2009 was registered. The appellant remained hospitalized from 6.10.2009 to 10.10.2009 in S.K.M. Hospital.

Present appeal has been filed being aggrieved of dismissal of claim petition by the Tribunal.

The legal position as regards the claim petition made under Section 166 of the Act is settled that onus is upon the claimants to prove the involvement of the offending vehicle and the rash and negligent driving of the offending vehicle.

Learned counsel for the appellant has argued that it is not disputed that the appellant remained hospitalized from 6.10.2009 to 10.10.2009 due to injuries including fracture on the leg. He contended that the treatment underwent was duly proved by the deposition of the doctors. FIR was registered against the driver of the offending vehicle and the discharge summary prepared by the hospital stated that the appellant had “alleged history of roadside accident”.

The contentions raised by the counsel are to be analyzed as to whether the onus casted upon the appellant under Section 166 of the Act has been discharged or not.

The detailed reasoning given in the award shows that the claimant failed to prove the involvement of the motor-cycle in the accident.

There is no reason for this Court to upset the factual findings given by the Tribunal for the following reasons.

In the pleadings itself it was claimed that the brother of the appellant witnessed the accident. He was the best person available to support the claim petition but for the reasons best known to him he never stepped into the witness box. There is no dispute raised by the counsel for the insurer of the motor-cycle that the appellant was hospitalized for four days and he underwent the treatment. This fact itself will not help the appellant to prove his case. The requirement is not that an injury is suffered, what is to be proved, is that injury has been suffered in a road accident involving the offending vehicle. It has come on record that at the time of admission in the hospital, it was stated that the appellant did not want to have any medico legal case. This shows that it was not claimed before the doctors at the time of admission that it was a case of road accident. At the same time the claimant relied upon certain photographs exhibited before the Tribunal allegedly clicked on the date of accident. The statement before the doctor and the reliance on the photographs do not go hand to hand. On one hand, it was being stated that no medico legal proceedings are warranted, on the other hand, the private photographer was hired and taken to the spot to click the photographs. It would be worthwhile to mention here that no evidence was adduced to prove authenticity of these photographs. The claimant failed to prove that the said photographs were clicked on the date of alleged accident.

The accident took place on 06.10.2009. One can understand

that in order to get treatment at the first instance the fact regarding injury having been suffered in road accident may have been kept back. But inspite of discharge of the appellant on 10.10.2009 no FIR was registered till 17.11.2009 meaning thereby that there is delay of 40 days which itself may not be fatal but when considered in the entirety of the case, a reasonable explanation ought to have been there. The contention of learned counsel that FIR could not be registered as there was fracture in the leg, cannot be accepted as it is not the requirement that the appellant himself has to go to the police station for registering an FIR. FIR could have been registered even by sending an information to the police station or in the present case on the statement of the brother of the appellant who allegedly witnessed the accident.

There is another angle to the present case that in the photographs the registration number of the motor-cycle visible as HR-99-EC-2881 whereas the claim has been moved against a motor-cycle bearing registration No. HR-12-M-6315. Both these numbers were mentioned in the claim petition, one being temporary number and other being permanent number. In spite of the opportunity provided by the Tribunal no evidence was produced on record that the said temporary number and the permanent number were allotted to the same motor-cycle. This itself casts a shadow on the fact that the said motor-cycle was involved in the accident.

The reliance by the learned counsel for the appellant on the summary discharge slip wherein it was mentioned as an alleged case of road accident, will be of no avail as the doctor preparing the discharge summary

was neither witness to the accident nor he had any material to state so. The doctor has used a graded language by stating “an alleged” case of roadside accident. Even if it is taken into consideration, it will not prove that the accident occurred with the alleged motor-cycle.

Apart from the reasons mentioned above, there is an other hurdle to be crossed by the claimant i.e. to prove the rash and negligent driving of the vehicle involved.

The appeal is dismissed.

March 09, 2018
Vijay Asija

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No