

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

FAO No.219 of 2012 (O&M)

Date of decision: 14.03.2018

SAHUN

... Appellant

Versus

FAKRUDDIN AND OTHERS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Shahid Hussain, Advocate for
Mr. Ashok Kaushik, Advocate
for the appellant.

Mr. D.K. Bansal, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 01.10.2010 passed by the Motor Accidents Claims Tribunal, Palwal whereby application filed under Section 166 of the Motor Vehicles Act, 1988 has been dismissed on the basis of findings recorded on issue No.1.

Briefly stated, Sahun, injured/appellant claimed compensation by alleging that on 09.03.2008, he along with Islam son of Abdul was going from village Bamnikhera to village Nangla Ahsanpur on motor cycle bearing No.HR-50A-6907, driven by him at a moderate speed. At about 12.30 am, the claimant crossed toll tax barrier and reached within the area of village Tumasra. In the meanwhile, maruti van bearing no.HR-26S-0297

driven by respondent No.1 in a reckless and negligent manner at fast speed and without observing the traffic rules which was going ahead of motorcycle of the claimant suddenly applied brakes as a result whereof, motorcycle of the claimant struck against offending vehicle despite best efforts made by him to stop his motorcycle. The claimant fell down on the road and sustained multiple grievous injuries. Respondent No.1 fled away from the place of accident. FIR No.187 dated 03.05.2008 under Sections 279 and 337 IPC was registered against respondent No.1 at Police Station Sadar Palwal. He has claimed compensation to the tune of Rs.5 lakh on account of injuries suffered by him.

Respondents No.1 and 2 filed joint written statement and in turn, controverted averments raised in the application for compensation. They have denied that accident in question took place due to rash and negligent driving of respondent No.1. FIR No.187 dated 03.05.2008 registered with Police Station Sadar Palwal is absolutely false and concocted.

Respondent No.3 filed the written statement wherein denied its liability to pay compensation while controverting the averments raised in the petition.

On the pleadings of the parties, following issues were framed:-

“1. Whether petitioner sustained injuries in a motor vehicular accident that took place on 09.03.2008 at 12.30 am in the area of village Tumasra, Police Station Sadar Palwal, District Faridabad due to rash and negligent driving of Maruit Van

No.HR-26S-0297 being driven by respondent No.1 as alleged? OPD.

2. Whether petitioner is entitled to compensation, if so to what amount and from whom? OPP

3. Whether insured has violated the terms and conditions of insurance policy? OPR

3A. Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident? OPR

4. Relief.”

To prove his case, claimant appeared in the witness box and examined Islam PW2, Jai Raj PW4 and Gagandeep PW5.

Respondents No.1 and 2 tendered into evidence photocopies of registration certificate mark D, insurance policy mark E and driving licence mark F.

Respondents No.3 tendered into evidence copy of insurance policy Ex.R1

After having heard counsel for the parties, learned Tribunal determined issue No.1 against the claimant in view of observations made in paras 15 to 18 of the award.

Counsel for the appellant would urge that testimony of Sahun corroborated by PW2 Islam is more than sufficient to establish plea of the claimant that accident took place due to rash and negligent driving of maruti van no. HR-26S-0297 by Fakruddin, its driver. It is further argued that testimony of the injured victim has not been rebutted by driver of the offending vehicle who failed to appear in the witness box without any

tangible explanation. In addition, it is argued that if non-lodging of FIR cannot constitute a valid ground to reject claim for compensation, delay in lodging the FIR can not be taken seriously by the Tribunal to record findings against the claimant. It is further argued that the insurance company did not adduce any evidence to rebut the evidence adduced by the claimant, therefore, testimonies of the claimant and pillion rider on the motor cycle are to be accepted without entertaining any suspicion in regard to version brought forth by the claimant. The last submission made by counsel is that claimant was cross-examined at length but nothing tangible and material has been elicited to attribute negligence to the claimant much less to prove that involvement of the offending vehicle is the result of collusion between the claimant and driver/owner of the offending vehicle.

Counsel representing the insurance company has supported findings of the Tribunal by contending that the reasoning adopted by the Tribunal to negate plea of the claimant is well founded and based upon detailed consideration of evidence on record, therefore, no interference in the findings on issue No.1 is warranted. He has strenuously argued that the very fact that FIR was lodged after delay of 55 days, when otherwise the injured remained getting treatment only for few days after the occurrence is more than sufficient to establish that the vehicle in question has been falsely implicated with clear intent to get compensation from the insurance company.

I have heard counsel for the parties, perused the paper book

and the records.

Sahun, the injured victim appeared in the witness box and tendered into evidence affidavit Ex.PW1/A by way of examination-in-chief. In para 1 of the affidavit, he has reiterated the version given in the claim application. A relevant extract from his cross examination reads as follows:-

“The accident had occurred with offending maruti van just after overtaking us who suddenly applied the brakes in front of our motorcycle. I cannot tell the reason for applying sudden brake by the offending vehicle. It is incorrect that I was driving the motorcycle at a high speed. Volunteered that the speed of motorcycle was around 30-35 kmph. I had received fractures in the leg and right arm. It is incorrect that the accident had occurred due to my own negligence. It is also incorrect that maruti van was falsely involved in the accident in connivance with respondents No.1 and 2. It is also incorrect that false FIR was lodged in connivance with the police.”

Perusal of the findings recorded by the Tribunal would reveal that one of the circumstances that weighed with the Tribunal is that as the injured did not maintain sufficient distance from the vehicle going ahead of his motorcycle, negligence in causing accident is to be attributed to the claimant himself. The Tribunal failed to take into consideration the facts elicited in cross-examination of Sahun wherein he has explained as to how the accident in question took place because of application of sudden brakes by the driver of maruti van after he had overtaken motorcycle driven by the claimant/injured. In the circumstances, appellant cannot be blamed for the

occurrence nor can he be attributed negligence for his failure to maintain sufficient distance from the vehicle going ahead.

The driver of the offending vehicle did not appear in the witness box to counter testimonies of Sahun and Islam or to establish his plea that no such occurrence actually took place. As per the settled position in law, if a party fails to appear in the witness box without any tangible explanation, an adverse inference is liable to be drawn against him. The plea of the insurance company that the offending vehicle has been planted as a result of collusion between the claimant and driver/owner of the offending vehicle does not get substantiated from any materials on record. Counsel for the insurance company has failed to point out any materials that can prove that driver or owner of the offending vehicle was known to Sahun prior to lodging of FIR much less they were so placed that owner of the offending vehicle agreed to involve his vehicle in both civil and criminal proceedings. In this view of the matter, delay in lodging the FIR loses significance. This apart, lodging of FIR is not a *sine qua non* for initiating proceedings to claim compensation before the Tribunal. I would hasten to add that there is no prescribed procedure to be followed by the Tribunal while dealing with the application for compensation and the Tribunal can determine its own procedure. Equally settled is that proceedings before the Tribunal are summary in nature and require to be decided on the balance of probabilities. Taking into consideration the evidence on record coupled with that driver of the offending vehicle did not

appear in the witness box and the insurance company has failed to prove that the offending vehicle was involved as a result of collusion between the claimant and private respondents, findings recorded by the Tribunal on issue No.1 cannot be allowed to sustain and accordingly, set aside.

The Tribunal has not recorded any findings on the other issues in view of its findings on issue No.1. The matter is required to be remitted to the Tribunal for determining other issues framed by the Tribunal.

For the foregoing reasons, the appeal is partly allowed, findings recorded by the Tribunal on issue No.1 are set aside and the matter is remitted to the Tribunal for determination of remaining issues. The parties through their counsel are directed to appear before the Tribunal on 06.04.2018. The Tribunal shall decide the other issues after providing an opportunity of hearing to private respondents No.1 and 2.

No order as to costs.

As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

14.03.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No