

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6748 of 2011 (O&M)

Date of decision: 9.2.2018

Jai Singh

....Appellant

Versus

P.K.Gupta and another

....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr.Ajay Ghanghas, Advocate for the appellant.

Mr.D.P.Gupta, Advocate for respondent No.2.

AVNEESH JHINGAN, J. (Oral)

The appeal arises out of the award dated 1.8.2011 passed by the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal').

Jai Singh filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short 'the Act'). The Tribunal dismissed the claim petition. Tribunal held that the appellant was not able to prove the involvement of Qualis bearing registration No.DL6CG-06021 (for short 'the offending vehicle'). Aggrieved by the said award, the present appeal has been filed.

The facts as put forth by the appellant are that accident took place on 21.12.2009 at 7.00 a.m. at Sector 29 near village Nangal Kheri Panipat. He was standing on a kacha portion of road and was waiting to cross the GT road for going to his tea shop. The offending vehicle was allegedly being driven rashly and negligently by P.K.Gupta. The offending vehicle hit the appellant as a result of which he sustained multiple injuries.

FIR No.902 dated 22.12.2009 was registered with P.S.Chandni Bagh,

Panipat.

In order to support his claim, the appellant himself deposed as PW1, Bhagat Singh the alleged eye witness deposed as PW2. ASI Ratti Ram appeared as RW1.

On notice, P.K.Gupta filed written statement claiming that Jai Singh was lying injured on the road and he took him to the hospital on humanitarian grounds. He further claimed that his son was driving the vehicle.

The appellant deposed before the Tribunal that he was hit by the offending vehicle. He suffered injuries and within five minutes of the accident, he became unconscious. He regained consciousness only in Hyderabad Hospital, Panipat.

Bhagat Singh narrated the entire incident as per claim petition, in his deposition. In his cross examination, he stated that he could recognise the driver.

ASI Ratti Ram stated that police has neither arrested the accused nor impounded the vehicle. In his cross examination, he admitted that he had never met P.K.Gupta at Hyderabad Hospital, Panipat.

The Tribunal found that testimony of Bhagat Singh was not worth reliance. He was a co-villager known to the claimant since childhood.

Counsel for the appellant assailed the award by arguing that the injuries suffered by the appellant were proved. The statement made by Bhagat Singh, eye witness could not have been rejected merely on the ground that he hailed from the same village or was known to the appellant. He relies upon cross examination of appellant to state that the counsel for P.K.Gupta had put a suggestion to Jai Singh that accident occurred due to the negligence of the appellant.

Counsel for the Insurer defended the award. He argued that it has not been proved by the appellant that he suffered injuries in accident which involved the offending vehicle.

On one hand, there is self serving statement of the appellant, alleging that he suffered injuries in an accident involving the offending vehicle. The appellant in his cross examination admitted that he fell unconscious after five minutes of the accident. He gained consciousness only in Hyderabad Hospital, Panipat. He also said that he could not see the driver of the vehicle. The said statement is not corroborated by the treatment record produced as Ex.P1. There is no evidence that the claimant arrived in the Hospital in an unconscious state. In such circumstance, it would be very difficult to accept that he was in a fit state of mind to note the registration number of the vehicle.

On the other hand, the stand taken by the owner of the offending vehicle is that the appellant was lying injured on the road and he took him to hospital on humanitarian ground. What is to be seen is as to whether the alleged eye witness Bhagat Singh's statement is worth reliance or not.

The said statement cannot be doubted merely on the fact that he was a co-villager or known to the appellant since childhood. Generally strangers do not come forward for deposition in court cases. One cannot loose sight of the fact that inspite of co villager and the known person the alleged eye witness took no steps to help the appellant. Counsel for the appellant stated that Bhagat Singh never took the appellant to the hospital. It is evident from the record that even FIR was recorded on the statement of the appellant himself.

Bhagat Singh deposed that the driver of the offending vehicle stopped the car. At the same time, he stated that he cannot say whether P.K.Gupta or his son was driving the Car. If his statement is correct that the driver of the offending vehicle had stopped the car definitely every possible step would have been taken to catch hold the erring driver. Least what was expected was that he would have accompanied the appellant alongwith the driver to the hospital. It was not so done.

In such circumstances, the deposition of alleged eye witnesses loses its credence.

The investigation in the FIR is also of no help in the present case as it revealed no positive result and ultimately un-traced report was filed.

The claim petition was moved under Section 166 of the Act. In such proceedings, onus is casted on the appellant to prove the involvement of the vehicle and rash and negligent driving of the offending vehicle. There cannot be any dispute on the proposition that the onus in MACT proceedings is not as heavy as in the criminal proceedings, it is to be decided on the principle of preponderance of probabilities.

Keeping in view the above discussion and from the perusal of the record, it cannot be concluded that the appellant was able to discharge the onus casted on him under the Act.

The appeal being bereft of any merits, is dismissed.

(AVNEESH JHINGAN)
JUDGE

9.2.2018
Meenu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No