

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

FAO No. 528 of 2012 (O&M)

Date of decision: 19.02.2018

Gaje Singh

.... Appellant

Versus

Sanjay Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sailender Singh, Advocate
for the appellant.

Mr. Vinod Mehendru, Advocate
for respondent No.3-Insurance Company.

Avneesh Jhingan, J.

The present appeal has arisen from award dated 26.07.2011 passed by Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal').

A claim petition under Section 166 of Motor Vehicles Act, 1988 (for short, 'the Act') was filed by Gaje Singh alleging that he had suffered injuries in a motor vehicular accident that involved a tractor trolley bearing registration No.HR-36K-9956. The accident took place on 16.02.2009 at about 7.00 p.m. The appellant was going on his motorcycle bearing registration No.HR-36J-8538. When he reached near water tank situated on the Bawal Nehchana Road, a rashly and negligently driven tractor trolley came from behind and hit the motorcycle. As a result, Gaje

Singh suffered injuries and was taken to Arvind Yadav Hospital and Research Centre, Rewari. FIR No.21 dated 19.02.2009 was registered at Police Station Bawal.

The claim petition was dismissed by the Tribunal as the claimant failed to prove the involvement of the said tractor trolley.

Being aggrieved of 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 record.

Learned counsel for the appellant argued that from the hospital record, it was proved that the appellant had suffered injuries and there was an accident. He contended that FIR was registered in which the registration number of the tractor trolley was duly mentioned. In such circumstances, the Tribunal erred in dismissing the claim petition.

Learned counsel for the appellant relies upon the decision of Delhi High Court in case of **National Insurance Co. Ltd. vs. Pushpa Rana and others, 2009 ACJ, 287** and the decision of this Court in **Girdhari Lal vs. Radhey Sham and others, 1993(2) PLR, 109.**

Learned counsel for the insurer defended the award and argued that the appellant had miserably failed to prove the involvement of the tractor trolley and the fact that it was being driven rashly and negligently.

The legal position so far as claim petition under Section 166 of the Act is concerned is not in dispute. Under Section 166 of the Act, the onus is casted upon the claimant to discharge twin conditions i.e.

involvement of the offending vehicle and it was being driven rashly and negligently.

The Supreme Court in case of *Kusum Lata vs. Satbir, 2011(3) SCC, 646* and *Oriental Insurance Company Ltd. vs. Charan Kaur and others, 2016(2) Law Herald, 1236* has held that though the onus under the Act is not as heavy as in the criminal proceedings, the matter is to be decided on the principles of preponderance.

The appellant allegedly met with an accident on 16.02.2009. An FIR was registered on 19.02.2009 i.e. after three days. The delay in registering the FIR itself is not fatal. But the registration of FIR and even filing of charge-sheet will not be a conclusive proof of involvement of the offending vehicle and to the fact that it was being driven rashly and negligently. Reliance in this regard is placed on the decision of the Supreme Court in *Kamlesh and others vs. Attar Singh and others, 2015 (15) SCC 364*.

There is another angle to the present case. It was claimed by the appellant that there was an alleged eye witness to the said accident by the name of Vijay Singh son of Sohan Lal. For the reasons best known, the said person was never examined before the Tribunal. As expected the respondents denied the accident and the involvement of the vehicle.

In the statement made by the appellant, the facts as narrated in the claim petition were duly supported. But in the cross-examination, he faulted when he was put a question that what was the speed of motorcycle, he stated that the motorcycle was being driven by his brother Lalit Kumar.

There can be an explanation though not put on record that Vijay Singh being a stranger may not have cooperated with the appellant for deposing before the Tribunal. If the motorcycle was being driven by the brother of the appellant, there was no occasion for him not to appear before the Tribunal in support of the claim petition.

The decisions relied upon by learned counsel for the appellant will not be applicable in the facts of the present case. Appellant has miserably failed to discharge the onus of involvement of the tractor trolley. Apart from his own statement, which loses reliability in view of the fact that in cross-examination, it was stated that the motorcycle was being driven by brother of the appellant. This fact was never disclosed by the appellant either in the claim petition or in any evidence. Since the involvement of the offending vehicle itself has not been proved, the second limb regarding rash and negligent driving of the offending vehicle is yet another hurdle to be crossed.

In such circumstances, the appeal is dismissed being bereft of any merits.

(AVNEESH JHINGAN)
JUDGE

19.02.2018

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1. Whether the order is speaking/reasoned: Yes/No

2. Whether the order is reportable : Yes/No