

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

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FAO-2304-2013 (O&M)

Date of decision: 06.12.2018

DHYAN SINGH

... Appellant

Versus

KYUM AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sunil K. Bhardwaj, Advocate for the appellant.
Mr. Gopal Mittal, Advocate for
Mr. Lalit Garg, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 09.03.2012 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby application for grant of compensation filed by injured Dhyan Singh by invoking Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') was dismissed on the basis of findings of the Tribunal on issue No.1.

The plea of claimant is that on 05.06.2010, at about 8.40 am, he was going to his house on motorcycle bearing No.HR-16E-2825. When reached near Rohtak Chowk, Bhiwani, tractor bearing No.UP-12R-5899, driven by respondent No.1 before the Tribunal, in a rash and negligent manner struck from behind the motorcycle driven by him. He fell down on katcha side and sustained multiple grievous injuries on various parts of body and motorcycle was also badly damaged. After the accident, driver of the tractor ran away leaving the tractor in front of Dronacharya School. His brother Sudhir took him to General Hospital, Bhiwani for treatment. FIR No.337 dated 05.06.2010 under Sections 279 and 337 IPC was registered against respondent No.1, on the statement of appellant.

The Tribunal, on completion of pleading, framed issues reproduced in para 4 of the award. Issue No.1 reads as follows:-

Whether the accident in question took place due to rash and

negligent driving of respondent No.1-Kyum while driving. Tractor No.UP-12R-5899 due to which Dhyan Singh received injuries?OPP.

To prove his case, Dhyan Singh claimant appeared in the witness box but no oral evidence was led by the respondents before the Tribunal.

The Tribunal, on a detailed consideration of the materials on record, has recorded its conclusion in para 13 of the award that claimant has failed to prove that accident was caused by Kyum-respondent No.1 because of rash and negligent driving of tractor bearing No.UP-12R-5899 and eventually the application for compensation was dismissed.

A relevant extract from para 12 of the award reads as follows:-

“Perusal of the file shows that FIR Ex.P1 was registered on the statement of Dhyan Singh claimant at 5.50 pm on 05.06.2010. The accident had taken place on 05.06.2010 at 8.45 am. Copy of report under Section 173 Cr.P.C. has been placed on the record as Ex.P20. It has been stated by the claimant that on 05.06.2010, he was going to his house on motor cycle bearing registration No.HR-16E-2825. When he reached near Rohtak Chowk, Bhiwani, a tractor came from the back side in a rash and negligent manner and hit him. After the accident, the driver of the tractor ran away along with his vehicle. With regard to number of the offending tractor, it has been stated by him that he had tried to see number of the tractor and it was not found there. The offending tractor was of red colour and it was four wheeler. A trolley was attached with the same. Lateron he came to know that the driver of the tractor had parked the said tractor in front of Dronacharya School and he went away. Lateron, he came to know the name of the driver as Kyum Singh son of Umareen. When FIR was registered the number of offending tractor had not been mentioned. It was only stated by the claimant that it was of red colour and four wheeler and trolley was attached with the same. The claimant had stepped into the witness box as PW1. In his affidavit, he has stated that the driver of tractor No.UP-12R-5899 ran away from the spot after leaving the tractor. In cross examination, it has been stated by him that after the accident he became unconscious and did not notice the number of offending tractor. After 3-4 days he came to know about the registration number of the offending tractor. He has further stated that the registration number of the tractor and the name of the driver were told to him by the police. He has further stated that at the time of recording his statement before the police on 05.06.2010, he had also told the police the registration number of the vehicle in question. At three stages, the claimant has stated three different versions. In his initial statement, on the basis of which, FIR was registered, he has stated that the driver of the tractor ran away along with his offending vehicle and lateron, he came to know that the said vehicle was parked near Dronacharya School. In his examination in chief, he has stated that the driver of the truck had run

away after leaving the tractor on the spot. The third different version has been narrated by him in cross examination. He has stated that after accident, he became unconscious and did not notice the number of the tractor. After 3-4 days, he became to know that the registration number of the offending tractor, which was told to him by the police. Ex.P2 is the copy of MLR of the claimant Dhyan Singh. On the top of the said MLR, alleged history of road side accident, on 05.06.2010 around 8.50 am at Rohtak Road, Bhiwani, the date and hour of arrival has been shown as 10.50 am on 05.06.2010. It remains unexplained as to why he went to GH Bhiwani after two hours on receiving the injuries. The doctor had reported that he was calm, conscious, co-operative, well oriented to time and place and person. Three injuries have been shown on his person. Two lacerated wounds on left ankle region and on left knee joint. Bruises on left shoulder have been shown. It does not match with the story put forward by the claimant. As per copy of MLR, he was unconscious when he was brought to hospital. Since the doctor, who had medico legally examined the petitioner, has not been examined, it is not apparent on the record as to what time ruqa was sent by the doctor. Ex.P20 copy of report under Section 173 Cr.P.C also does not show that when opinion of the doctor was sought with regard to fitness of the injured to make the statement. The doctor had not opined him unfit to make statement. Despite that FIR has been recorded at 5.50 pm. It remains unexplained on the record as to why the FIR was recorded after delay of nine hours from the occurrence of the accident and seven hours after going to Civil Hospital, Bhiwani. The delay assumes importance particularly when the number of offending vehicle has not been mentioned in FIR. Though tractor No.UP-12R-5899 was taken into police possession on the same day i.e. 05.06.2010, yet it is pertinent to mention here that it appears that time has been utilized in implicating the vehicle. The matter would had been entirely different if FIR had been recorded promptly, the number of offending vehicle was mentioned. Neither FIR was recorded immediately nor the number of offending vehicle has been mentioned nor it has been proved on the record that the claimant was unconscious and unfit to make statement. In these circumstances, the delay in lodging the FIR and non-mentioning of the number of the offending vehicle assume importance giving suspicion to false implication of tractor bearing registration No.UP-12R-5899 driven by Kyum Singh respondent No.1.”

Counsel for the appellant has failed to make any convincing arguments that factual findings recorded by the Tribunal are the result of misreading of evidence or failure to take into consideration evidence which has material bearing on decision of issue No.1. No doubt, the proceedings before the Tribunal are summary in nature and strict principles of law of evidence are not attracted but at the same time, in a claim under Section 166 of the Act, the claimant is obligated to establish that accident is the result of rash and negligent driving of alleged offending vehicle. As in

the present case, claimant came up with different version on different occasions and failed to adduce cogent and convincing evidence to connect the vehicle in question with the occurrence, I do not find an error much less illegality in findings of the Tribunal on issue No.1, warranting intervention. As a result, findings of the Tribunal on issue No.1 are affirmed.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

06.12.2018

ashok

(REKHA MITTAL)
JUDGE

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