

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

FAO No.5235 of 2014 (O&M)

Date of decision: 27.11.2018

CHANDER BHAN

... Appellant

Versus

MAHINDER SINGH & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani K. Bura, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr. V.K. Garg, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 18.01.2014 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby application for grant of compensation in respect of injuries allegedly sustained by Chander Bhan in a motor vehicular accident that took place on 08.07.2011 has been dismissed on the basis of findings on issue No.1.

The case set up by the appellant is that on 08.07.2011, Mohan Singh petitioner (in fact claimant is not Mohan Singh) along with Randhir Singh was coming from Dhand to their village Hathira on motorcycle bearing No.HR-07M/1506 driven by Randhir Singh and Mohan Singh was

pillion rider. Randhir Singh was driving motorcycle at a moderate speed and on correct left side of the road. When they reached near Fauji dhaba in the area of Police Station Dhand, Swift car bearing No.HR-05-6330 came from the opposite side driven by Mahinder Singh in a rash and negligent manner. Mohan Singh took the motorcycle on katcha portion of the road but offending vehicle struck motorcycle of Mohan Singh after coming on wrong side. The occupants of the motorcycle fell down and sustained injuries. The offending vehicle also struck motorcycle bearing registration No.HR-07P-2716 driven by Chander Bhan who was coming from Dhand side. After the accident, Mohan Singh, Randhir Singh and Chander Bhan were shifted to Anand Hospital, Kurukshetra. FIR No.50 was registered at Police Station Dhand on 09.07.2011.

Respondents No.1 and 2 filed a joint reply denying allegation raised in para 25 of the application.

The insurance company (respondent No.3 therein) also filed reply and denied its liability to pay compensation.

The controversy between the parties led to framing of issues including issue No.1 that reads as follows:-

“Whether the accident in question took place on 08.07.2011 at about 10.00 pm near Fauji Dhaba Pabnawa under Police Station Dhand, leading to injuries upon Chander Bhan due to rash and negligent driving of Maruti Swift car bearing registration No.HR-05V-6330 by respondent No.1?OPP”

To prove his case, the appellant/claimant appeared in the

witness box and examined Dr. Himanshu Anand PW2 and Dr. Bimla Gauri PW3.

To rebut evidence of the claimant, the respondents did not lead any oral evidence but produced documents noticed in para 7 of the award.

Having heard counsel for the parties, in the light of materials on record, the Tribunal determined issue No.1 against the claimant and resultantly, the application for compensation was dismissed.

Counsel for the appellant would argue that proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be attracted. It is further argued that even if there is discrepancy in case of claimant in the light of averments raised in the application for compensation vis-a-vis his testimony before the Court, the same cannot be taken seriously in order to deny genuine claim for grant of compensation.

Another submission made by counsel is that testimony of claimant before the Court is in complete consonance with the facts elicited in FIR lodged at the behest of Randhir Singh, driver of motorcycle bearing No.HR07-M/1506. It is further argued that Randhir Singh and Mohan Singh occupants of the aforesaid motorcycle filed claim application against driver, owner and insurer of offending vehicle i.e car No.HR-05V-6339 and they have been allowed compensation by the Tribunal.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 with the submission that there is a

serious discrepancy in the case of appellant in the application vis-a-vis statement before the Tribunal. In addition, it is argued that in the opening line of his cross examination, claimant would state that three persons were travelling on motorcycle HR-07M/1506 stated to be driven by Randhir Singh.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the plea of claimant in the application for compensation is that after the offending vehicle hit motorcycle HR-07M/1506 driven by Randhir Singh, it struck against motorcycle bearing No.HR-07P-2716 driven by him. However, in his testimony on oath, he would depose that after the accident between motorcycle driven by Randhir Singh and swift car bearing No.HR-05V-6339, motorcycle of Randhir Singh struck against motorcycle driven by the claimant. Meaning thereby that the claimant has changed his stance, may be, with a view to bring it in conformity with FIR No.50 dated 09.07.2011 lodged at the behest of Randhir Singh. Not only this, in the opening line of his cross examination, the claimant would depose to the following effect:-

“We were three passengers on the motorcycle being driven by Randhir Singh.”

Taking into consideration stand of the claimant in the application for compensation vis-a-vis his version in his affidavit Ex.PW1 tendered by way of examination in chief and the first line of his cross

examination, it can safely be held that claimant has failed to portray a clear picture as to how the accident in question took place which resulted in sustaining injuries by him. In this view of the matter, I find myself unable to differ with findings of the Tribunal that claimant failed to establish his plea that accident is the result of rash and negligent driving of offending vehicle by Mahinder Singh, its driver. As such, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly. In view of findings on issue No.1, the claimant cannot sustain his plea for grant of compensation in respect of injuries sustained by him.

For the foregoing reasons, the appeal fails and is accordingly disposed of, leaving the parties to bear their own costs.

27.11.2018

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(REKHA MITTAL)
JUDGE

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