

In the High Court of Punjab and Haryana at Chandigarh

**FAO No. 6630 of 2015(O&M)
Date of Decision: 9.8.2018**

Sushil Kumar

---Appellant

versus

Mahinder Arora and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Siddharth Gupta, Advocate
for the appellant
Mr. C.L.Sharma, Advocate,
for respondent No. 1
Mr, Nipun Gupta, Advocate
for Mr. Deepak Aggarwal, Advocate
for respondent No. 2
Mr. Iqbal S.Mann, Advocate
for respondent No. 3
Mr. Neeraj Khanna, Advocate
for respondent No. 4

Rekha Mittal, J.

CM No. 20632-CII of 2015

Prayer in this application is for condonation of delay of 85 days
in filing the appeal.

In view of averments made in the application and arguments
advanced by counsel for the applicant, application is allowed and delay of
85 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 6630 of 2015

The present appeal directs challenge against award dated
9.2.2015 passed by the Motor Accidents Claims Tribunal (Fast Track
Court), Bathinda whereby the application under Section 166 of the Motor

Vehicles Act, 1988 (in short “the Act”) filed by injured Sushil Kumar was ordered to be dismissed in view of findings on issue No. 1.

The facts relevant for disposal of present appeal are that as per case of the claimant-appellant, on 1.11.2011, he and Manish Kumar his cousin brother were going towards Civil Hospital, Bathinda on separate motor cycles bearing No. PB-03M-0992 and PB-03R-5198 respectively. Krishna Devi, mother of the claimant was sitting on the pillion seat of motor cycle driven by Manish Kumar. At about 10-00 A.M., when the claimant reached near Kothi No. 467, Phase-I Model Town, Bathinda, car bearing No. PB-11AT 9568 was lying parked in front of Kothi No. 467. Mahinder Arora was sitting on driver seat of the car and without looking towards front and back side, he negligently opened the driver side window which struck with his motor cycle. Claimant fell down on the road and his head struck the road. He became unconscious and was removed to Civil Hospital, Bathinda. After first aid, he was referred to Bharat Brain Hospital, Bathinda and he remained admitted there. FIR was registered against Mahinder Arora on the statement of Manish Kumar. On completion of investigation, report under Section 173 of the Code of Criminal Procedure (in short “Cr.P.C.”) was presented in the Court against Surjit Singh-respondent No. 2 therein. The claimant prayed for grant of compensation to the tune of Rs. 5 lakhs along with interest.

The respondents filed their separate replies raising a plea that no accident, as alleged ever took place. They raised preliminary objections inter alia that claimant has not approached the Tribunal with clean hands; claim petition is not maintainable; bad for mis-joinder and non-joinder of parties; without any cause of action and claim petition being false, frivolous

and vexatious.

The controversy between the parties led to framing of following issues:-

1. Whether Sushil Kumar received injuries in an accident, which took place on 1.11.2011, due to rash and negligent act of driver of Indica Car, bearing No. PB 11AT-9568? OPP
2. Whether the claimant is entitled to claim compensation, if so to what extent and from whom?OPP
3. Whether the claim petition is not maintainable?OPR
4. Whether the respondent No. 1 was not holding valid driving license?OPR
5. Relief.

To prove his case, injured-claimant appeared in the witness box and examined Manish Kumar CW1. To rebut evidence of the claimant, Hardeep Singh respondent No. 3 examined himself as RW1, Mohinder Arora respondent No. 1 RW2, Basant Singh RW3, Lalit Kumar RW4 and ASI Harbans Singh RW5.

The claimant tendered into evidence documents Ex. CX and CY.

Counsel for the appellant would argue that findings recorded by the Tribunal on issue No. 1 are the result of misreading and incorrect appreciation of testimonies of Sushil Kumar and Manish Kumar corroborated by medical evidence and the fact that though the police has not presented challan against Mahinder Arora respondent No. 1 by refusing to accept that he was driver of the alleged offending vehicle but later Mahinder Arora was summoned as additional accused by the trial court. It is further argued that the respondents have not denied the accident and Sushil Kumar having sustained injuries at the place of occurrence as he fell down from his motor cycle but the Tribunal has wrongly negated plea of the claimant that

accident took place on account of negligence on the part of Mahinder Arora as he opened the driver side door of the car in question without ensuring that no person or vehicle is there on the road at the relevant time. It is further argued that had it been true that Sushil Kumar fell down on the road and sustained injuries without any fault attributable to Sh. Mahinder Arora, there was no reason for Manish Kumar to initiate criminal proceedings against Mahinder Arora. There is nothing on record suggestive of the fact that Sushil Kumar or his family had any animosity or ill will against Mahinder Arora to get him falsely indicted in the criminal case as well in the claim proceedings. According to counsel, the Tribunal has taken an adverse view with regard to presence of Munish Kumar at the spot on the basis that in document Ex. RW4/A, initially the name of injured is stated as 'unknown' but later mentioned to be identified as Sushil Kumar, therefore, Manish Kumar was neither present at the spot nor did he accompany Sushil Kumar for treatment in Civil Hospital, Bathinda. It is further argued that document Ex RW4/A was not put to Manish Kumar to seek his explanation that if he had accompanied injured to the hospital, why in the OPD card, the injured was recorded to be 'unknown'.

Counsel representing the respondents have supported findings of the Tribunal negating plea of the claimant that negligence in the occurrence can be attributed to Sh. Mahinder Arora or the accident took place in the manner deposed by the claimant. It is argued that Mahinder Arora appeared in the witness box to counter testimony of Sushil Kumar and Manish Kumar. On due investigation of FIR registered at the behest of Manish Kumar, Mahinder Arora was held to be innocent and his name was kept in column No. 2 of the report submitted under Section 173 Cr.P.C. The

challan was presented against Surjit Singh respondent No. 2, driver of the car which was being used by Income Tax Department on hire, in view of agreement between the Income Tax Department and Hardeep Singh owner of Indica car. The Tribunal has rightly doubted presence of Manish Kumar at the spot as in the OPD card Ex. RW4/A, name of injured was initially shown as 'unknown' but later recorded as Sushil Kumar. It is vehemently argued that had it been true that Manish Kumar was present at the spot and shifted the injured to the hospital, there was no reason for the injured to be mentioned as 'unknown' in the OPD card. It is argued that as a matter of fact, Mahinder Arora, showed humanity and shifted the injured to the hospital but later his identity could be established when his family members came to the hospital.

I have heard counsel for the parties, perused the paper book particularly the award and documents supplied during the course of arguments, correctness whereof has been vouched by counsel for the parties.

Sushil Kumar is the injured in the occurrence. Counsel for the respondents would fairly concede that private respondents do not deny the factum of accident at the given place and Sushil Kumar having sustained injuries in the occurrence.

There is a serious issue between the parties, if the occurrence in question took place because of negligence attributable to Sh. Mahinder Arora as he allegedly opened the driver side door without looking towards front and back which eventually struck with motor cycle of Sushil Kumar resulting in the occurrence.

Sushil Kumar appeared in the witness box and tendered into evidence his duly sworn affidavit Ex. CW2/B wherein he has given a

detailed account as to how the occurrence in question took place. He was cross examined at length by different sets of respondents including counsel representing respondents No. 1 and 2. Counsel for the private respondents has failed to point out any tangible facts elicited in cross examination of Sushil Kumar to shatter evidential value of his testimony that occurrence in question took place because of opening of driver side door of the car in question by Sh. Mahinder Arora who was sitting at the driver's seat at the relevant time. He has denied the suggestion that motor cycle got skidded because of high speed and he fell down for the reason. The witness has stated that he had seen the car from a distance of 40-50 feet and the car was lying parked partly in the parking and partly out side the parking. He has established as to how he knew Sh. Mahinder Arora prior to the occurrence. As has rightly been argued by counsel for the claimant, no such fact has been brought on record in testimony of Sushil Kumar that he or his family had any animosity against Mahinder Arora to get him falsely involved in the proceedings. Even otherwise, had Sh. Mahinder Arora, who was working as an Income Tax officer, no role to play in the occurrence, there was less possibility of Sushil Kumar or his family having falsely involved him in the occurrence, at the cost of inviting trouble from Mahinder Arora or his colleagues in the Income Tax Department. As such, in my considered opinion, testimony of Sushil Kumar alone is sufficient to substantiate plea of the claimant that accident took place on account of negligence attributable to Sh. Mahinder Arora-respondent No. 1.

Manish Kumar, author of the FIR and an eye witness to the occurrence was examined. Counsel for the respondents have not pointed out any facts elicited in cross examination of Manish Kumar to impeach

his credibility or to prove that he was not present at the spot. The document Ex. RW4/A was not put to the witness to seek his explanation as to why the name of injured is mentioned as 'unknown' in the OPD card. Possibility cannot be ruled out that Manish Kumar was busy either in informing his family or making arrangement of funds etc. and in the meantime, OPD card was prepared in his absence and the injured was unconscious as he sustained head injury. In this view of the matter, the mere fact that OPD card records the injured as 'unknown' ipso facto does not lead to the conclusion that Manish Kumar was not present at the spot. Examined from another angle, as per version of the respondents, injured was shifted to the hospital by Mahinder Arora. There is no document produced by the respondents wherein it has been recorded that injured was brought to the hospital by Sh. Mahinder Arora.

Manish Kumar lodged FIR against Sh. Mahinder Arora. After investigation, challan was presented against Surjit Singh who was the driver of Indica Car, attached with the Income Tax Department on hire. Surjit Singh did not appear in the witness box either to corroborate version of the respondents that Surjit Singh was sitting on the driver's seat at the relevant time or Mahinder Arora was not there at the driver's seat at the time of occurrence. Non-examination of Surjit Singh raises an adverse inference against the respondents. Mahinder Arora has every reason to deny his liability to escape from criminal and civil consequences. The plea of Mahinder Arora that he shifted the injured to the hospital does not get corroborated from any source much less documentary evidence. Sh. Sushil Kumar or/and Manish Kumar had no motive to get Mahinder Arora falsely indicted in the proceedings. Testimony of Sushil Kumar injured is worthy

of credence and reliance. As per the settled position in law, civil disputes are to be decided on the basis of balance of probabilities. Proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence.

Taking a cumulative view of the facts and circumstances discussed hereinabove, it can safely be held that the Tribunal has misdirected itself by negating plea of the claimant on the basis of conjectures, surmises, assumptions and presumptions. The materials on record are sufficient to substantiate plea of the claimant that occurrence took place due to negligence attributable to Sh. Mahinder Arora who opened the driver side door without ensuring that no person or vehicle is there on the road at the relevant time. In this view of the matter, findings recorded by the Tribunal on issue No. 1 cannot be allowed to sustain and accordingly set aside. Resultantly, issue No. 1 is answered in favour of the claimant and against the respondents.

The Tribunal has not recorded findings on other issues. The matter is remitted to the Tribunal for determination of other issues, in accordance with law.

The parties through their counsel are directed to appear before the Tribunal on 13.9.2018. The Tribunal shall dispose of the matter within a period of three months of the parties putting in appearance.

Disposed of accordingly.

(Rekha Mittal)
Judge

9.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No