

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

FAO No.9066 of 2014 (O&M)
Date of decision: 17.12.2018

Parmod

... Appellant

Versus

Krishan and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Balkar Singh, Advocate
for respondents No.1 and 2.

Ms. Bhupinder Kaur, Advocate for
Mr. Sanjeev Kodan, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 06.08.2014 passed by the Motor Accidents Claims Tribunal, Sonapat whereby application for grant of compensation in respect of injuries sustained by Parmod in a motor vehicular accident that took place on 30.09.2012 was dismissed on the basis of findings qua issue No.1, reads as follows:-

Whether the accident took place due to rash and negligent driving of the tractor bearing registration No.HR-10R-1178 by its driver-respondent No.1 on 30.09.2012 within the jurisdiction of Police Station Mohana, Sonapat resulting into injuries to petitioner Parmod, as alleged?OPP

The plea of appellant-claimant is that on 30.09.2012, he was returning to his village Guhna on motorcycle bearing registration No.HR-10T-1931. He was driving the motorcycle at a moderate speed. When he reached in front of liquor vend of village Rattan Garh situated along Sonapat-Gohana Road, tractor trolley bearing registration No.HR-10R-1178 driven by Krishan respondent No.1 in a rash and negligent manner came from behind and struck against motor cycle of the claimant. Due to impact, claimant fell down on the road alongwith his motor cycle and sustained injuries. Taking advantage of the situation, driver of offending vehicle fled away from the spot. The claimant was taken to Patil Nursing Home, Sonapat where he remained admitted as an indoor patient from 30.09.2012 to 03.10.2012. On the basis of statement of the claimant, FIR No.117 dated 01.10.2012, under Sections 279, 337, 427 IPC was registered with Police Station Mohana, against respondent No.1.

On completion of pleadings of the parties, the Tribunal framed issues, reproduced in para 6 of the award including issue No.1, noticed hereinabove.

To discharge onus of issue No.1, claimant appeared in the witness box and examined Deepak PW5 and both of them reiterated that occurrence took place because of rash and negligent driving of offending vehicle by respondent No.1 before the Tribunal.

The Tribunal in para 13 of the award has held, reads thus:-

After thoroughly going through the pleadings, documents and other material aspect of the case, I find force

in the contentions of learned counsel for the respondents because Dr. Atul Patil (RW-2) has deposed that at the instance of injured/claimant, he was not medico legally examined as his bike had struck against the stationary trolley. Further, a perusal of indoor file Exhibit R-5 shows that the injured-claimant had an alleged history of bike striking against stationary trolley. Towards the end of the indoor file Exhibit R-5, Rakesh, nephew of the claimant/injured had given an undertaking on 30.09.2012 to the effect that he did not want to initiate any police proceedings as this case was not related to any quarrel, accident or any other kind of dispute. Admittedly, in the case in hand, the FIR was lodged against an unknown vehicle and unknown person. In citation Balbir alias Leela and another Vs. Vikas and others, 2014(1) PLR 459 our own Hon'ble High Court has laid down that if in the FIR neither the name of the driver of the motor cycle nor registration number of the said motorcycle is mentioned and no effort was made to examine the Investigating Officer of the case, who could tell as to how he came to know that the accident was caused by respondent/driver, so, the factum of accident could not be decided in favour of the claimants only for the reason that the driver has been sent to face trial. In the case in hand, the petitioner has not examined the Investigating Officer, who could tell as to how he had arrived at the conclusion that in the absence of the registration number of the vehicle and the name of the driver of the offending vehicle, how the tractor bearing registration No.HR-10R-1178 was involved in the said accident. The said FIR Exhibit P-5 was registered one day after the accident i.e. on 01.10.2012 against unnumbered vehicle and unknown driver. Further more, during cross-examination the injured/claimant Parmod (PW-4) has admitted that he did not mention the registration number of the tractor in his statement

to the police at the time of lodging the FIR. The testimony of PW-5 Deepak to the effect that the accident was caused by respondent No.1-driver of the tractor No.HR-10R-1178 is also untrustworthy and no legal credence can be attached to it because the injured/claimant Parmod (PW-4) during cross-examination has deposed that his cousin Deepak was called by the passersby from his mobile phone. Further, the presence of PW-5 Deepak at the place of alleged accident is also doubtful as during cross-examination, he has deposed that his statement was recorded by the police on 01.10.2012 in Police Station Mohana. If PW-5 Deepak was present at the spot then he was the best witness to tell the registration number and the name of the driver of the offending vehicle to the police on the same day. Thus, the aforesaid evidence adduced by the claimant regarding the factum of rash and negligent driving of the tractor bearing registration No.HR-10R-1178 by respondent No.1 on dated 30.09.2012 does not inspire enough confidence to be believed.

Counsel for the appellant is not in a position to assail correctness of factual findings recorded by the Tribunal on the basis of medical evidence in the form of testimony of Dr. Atul Patil RW2 and documents produced by him, testimony of claimant Parmod and that of Deepak PW5.

The FIR with regard to occurrence dated 30.09.2012 was lodged at the behest of claimant on the next day of occurrence i.e. 01.10.2012. Parmod, the appellant has admitted in his cross examination that he did not mention the registration number of the tractor in his statement to the police at the time of lodging the FIR. The facts elicited in cross examination of Parmod demolishes evidential value of testimony of

Deepak PW5 to be an eye witness to the occurrence as Parmod had deposed that his cousin Deepak was called by passersby from his mobile phone. Meaning thereby that Parmod was not present at the spot at the time of alleged occurrence. No explanation has been tendered by the injured that if he did not know the registration particulars of the offending vehicle at the time of lodging of FIR on 01.10.2012, how did he come to know about the same subsequent thereto, in order to connect the vehicle in question with the occurrence. As has been rightly noticed by the Tribunal, claimant did not examine the investigating officer of the case on the basis of FIR lodged by him in order to prove as to on basis of what material, tractor bearing No.HR-10R-1178 was indicted in the criminal proceedings. In this view of the mater, I do not find an error much less perversity in findings recorded by the Tribunal while answering issue No.1 against the claimant and in favour of the respondents before the Tribunal. As a natural corollary, findings on issue No.1 are liable to be affirmed and ordered accordingly.

As the claimant has failed to establish his plea of attributing rashness and negligence to the offending vehicle, he cannot maintain a claim for compensation against the respondents before the Tribunal.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed. No order as to costs.

17.12.2018

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No