

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

-.-

FAO 7314 of 2017 (O&M)
Date of decision: 15.01.2018

Prem Pal

.....*Appellant*

Versus

Rajesh Kumar Sharma and another

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Amrik Singh, Advocate
for the appellant

-.-

Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 14.07.2017 passed by the Motor Accidents Claims Tribunal, SAS Nagar, Mohali (in short, 'the Tribunal') whereby compensation has been awarded in regard to injuries sustained by respondent Rajesh Kumar Sharma in a motor vehicular accident that took place on 22.02.2014.

The sole submission made by counsel for the appellant is that in the FIR lodged at the behest of injured/respondent Rajesh Kumar Sharma, negligence in causing the accident has been attributed to Car bearing No. PB-10-2415 but application for compensation has been filed against the driver and owner of motorcycle bearing No. HR-03F-7131. It is further argued that version of the claimant brought forth before the Tribunal that accident is the result of composite negligence of aforesaid Car and Motorcycle is contrary to first version given by the injured victim, therefore, findings recorded by the Tribunal on issue No. 1 are liable to be set aside.

I have heard counsel for the appellant and perused the paper book particularly testimony of Rajesh Kumar Sharma. In his examination-in-chief, he has deposed that on the fateful day, he was travelling as a pillion rider on the motorcycle driven by appellant-Prem Pal at a high speed and in a rash, negligent and zig zag manner. He requested him to drive properly in slow speed but he did not listen to him. When they reached near PTL light points, Prem Pal turned the motorcycle towards Shahi Majra in red light signal without waiting for the light to turn green. Car bearing No. PB-10-2415 came from the side of old Amartex Chowk and struck against the motor cycle. As a result thereof, claimant and respondent No. 1 fell on the road and right leg of the claimant got fractured. He has further deposed that accident was caused due to composite negligence of Prem Pal and driver of Car and claimant being the pillion rider was not at fault. The witness was cross examined at length by counsel for the appellant/respondent No. 1. In his cross examination, he has deposed that he lodged the complaint against drivers of Car and motorcycle but the police obtained signatures on blank papers. It was suggested to him that accident took place due to push/putting his hand on the shoulder of the respondent. The claimant voluntarily stated that he was just requesting respondent No. 1 to drive slow by putting his hand on his shoulder.

The claimant has sufficiently explained as to the circumstances under which there is no reference to negligence attributed to driver of motorcycle in the FIR. No such fact has been elicited in his cross examination that accident was the result of exclusive negligence of driver of Car, as such the appellant cannot derive any advantage to his contention merely on the basis of the FIR. As per the settled position in law, FIR is

not a substantive piece of evidence and can be used for the purpose of corroboration or contradiction to the maker thereof. In view of the above, I do not find an error much less illegality in findings on issue No.1, recorded by the Tribunal. As accident is held to be the result of composite negligence of two vehicles involved in the occurrence, claimant has been left at liberty in law to pursue his remedy for compensation against either of the joint tort feasons.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*.

(Rekha Mittal)
Judge

15.01.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No