IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 2799 of 2007
Date of decision : September 02, 2019

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Mohinder

.....Appellant

Versus

Jogi and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: None for the parties.

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RITU BAHRI, J.

The appellant has come up in the present appeal against the award dated 3.5.2006 passed by the Motor Accident Claim Tribunal Ambala, whereby claim petition filed by him under Section 166 of the Motor Vehicle Act, 1988 has been dismissed.

As per the claimant, on 27.10.2003, he was going towards his village Bihta from Village Saha on his bicycle on the left hand side of the road. At around 6:30 p.m, when the claimant reached near crossing of Shahabad road and Bihta road, a motor cycle make Boxer bearing registration number HR01P-4061 being driven by respondent no.1 at a very high speed and in a rash and negligent manner came from the front side i.e. Village Bihta side without blowing any horn. The motorcycle struck

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2019.09.30 15:46
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against the bicycle of the claimant. Due to this accident, the claimant fell down on the road and suffered injuries. The bicycle of the claimant Mohinder was damaged badly and he suffered grievous injuries on his whole body including head. He also suffered injuries on his right eye and face. The claimant also suffered fracture on his chest. In this regard FIR No. 246 dated 28.10.2003 under Section 279/337 IPC was registered against respondent no.1.

Upon notice, joint written statement was filed on behalf of respondents no. 1 & 2. They denied taking place of any accident with their motor cycle. Respondent no.3- New India Assurance Company Ltd with which the motor cycle in question was insured at the time of the accident filed separate written statement and took preliminary objections about maintainability, collusion of the claimant with respondents no. 1 & 2 and not holding of valid and effective driving licence by respondent no.1 at the time of the alleged accident. On merits, the stand taken was that no accident had taken place with motor cycle bearing registration number HR – 01P-4061. It was alleged that the story of accident was concocted version and that the motor cycle had been implicated just to extract the compensation. The claim with respect to the income and hospital expenses of the claimant were also denied.

Following issues were framed by the trial Court:

1. *Whether the accident took place due to the rash and negligent driving of the respondent no.1 while driving motor cycle bearing registration no. HR-01P-4061? OPP*
2. *If issue no.1 is proved to what amount of*

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compensation and from whom, the claimant is entitled to? OPP

3. *Whether present claim petition is not maintainable? OPR (3)*
4. *Whether respondent no.1 was not holding a valid and effective driving licence at the time of the alleged accident? OPR (3)*
5. *Whether respondent no.3 is entitled to various defences available under the MV Act? OPR (3)*

After hearing counsel for the parties and going through the records of the case, it was observed by the tribunal that FIR No. 246 under Sections 279 /337 IPC in respect of this accident was lodged on the statement of Lakshmi Chand. Lakshmi Chand alleged that on 27/10/2003 he was going to village Bihta after doing his work at village Saha. At around 6:30 PM, when he reached Shahabad road, his son Mohinder was going on his motorcycle in front of him. In the meantime, one motorcycle with a pillion rider being driven rashly and negligently came from backside and hit the motorcycle of his son Mohinder due to which he received grievous injuries on his body. Lakshmi Chand appeared as PW-3 and stated the same version. He stated that he had taken the injured i.e his son Mohinder to primary health centre Mullana, from where he was referred to PGI, Chandigah. The tribunal summoned the criminal case file relating to this accident titled as `State versus Jogi' bearing No. 464/1/4.12.2003. In this file respondent No. 1 was shown to be facing trial under Sections 279/337 IPC in respect of this accident and charges were framed against him on 27/05/2005. As per this criminal file there were three persons on the motorcycle that is respondent No. 1 Jogi, Lalu and Paramjeet. There are medicolegal report of Jogi, Lalu and Mohinder. As per this file, the injured

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Mohinder was brought by Constable Balram Singh No. 755. This criminal file belies the testimony version of Lakshmi Chand that he had taken his son Mohinder from the place of occurrence to the hospital. Mention of name of the Constable Balram Singh as the person who brought the injured Mohinder to the hospital made it clear that Lakshmi Chand was not at the spot and that he was introduced later on the next day. The tribunal has further observed that as per the statement of Lakshmi Chand, offending motorcycle was being driven by respondent No. 1 and there was one pillion rider. As per the criminal file this pillion rider was Lalu who also suffered injuries as is clear from his medico legal report and there is no evidence to show that there were three persons on the motorcycle. There is statement of Paramjit Singh under Section 161 Cr.P.C, in which he has mentioned that he was also on the motorcycle along with Jogi and Lalu. As per the statement of Paramjit Singh recorded on 06/05/2004 he mentioned that on 27/10/2003 Jogi and Lalu had taken him from his house to the house of Kanwar Pal, and on the way, they consumed liquor. Thereafter, he was beaten by Jogi and Lalu with iron rods. They had thrown him in a ditch. He remained unconscious for several days. Paramjit Singh did not turn up into the witness box to depose in his favour and if he had come, respondent No. 1 would have got an opportunity to confront this statement to him. Medicolegal reports of Mohinder, Jogi and Lalu show that all of them were smelling of alcohol.

The tribunal observed that the name of constable Balram Singh No. 755 has been recorded as the name of the person who had brought the injured to the hospital. If Lakshmi Chand was at the spot at the time of accident he would have himself taken his son to the hospital. Thus, it is

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clear that Lakshmi Chand had never witnessed the accident. The Tribunal held that it cannot be said that the accident took place due to the involvement of motorcycle bearing registration No. HR 01 P 4061 or due to the rash and negligent driving of respondent No. 1 while driving the said motor cycle. The claim petition was dismissed by the the Tribunal.

After going through the award of the Tribunal, no infirmity or illegality is found in the same. No case is made out that require intervention of this Court. In view of all that has been discussed above, present appeal is hereby dismissed

September 02, 2019 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned Yes

Whether reportable No

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