

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

FAO No.2273 of 2012

Date of Decision:29.04.2019

Gurmail Singh

.....Appellant

Vs.

Manjit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.A.K.Khunger, Advocate for the appellant.

DR. RAVI RANJAN, J.(Oral judgment)

Learned counsel for the appellant is present in Court. However, none has appeared on behalf of the respondent. Though on the earlier occasion, Mr.Ajit Singh Sodhi, Advocate had appeared on behalf of the respondent, it appears that only a Memo of Appearance was filed in this case on behalf of the respondent but no Vakalatnama has been filed. Memorandum of appearance, obviously, does not bear the signature of the answering respondent.

Be that as it may, it would not be of much relevance as notice was already issued upon the respondent and, for the reason best known to him, none has made appearance on his behalf as even the counsel who had filed memorandum of appearance in place of Vakalatnama executed by the respondent, has also chosen not to appear at the time of hearing even though, as per the earlier direction contained in the order dated 08.11.2017, an intimation regarding the date of hearing of this case was communicated to him through electronic mail.

This Court had already recorded in its earlier order dated

22.04.2019 that if the respondent does not choose to appear on the next occasion then this matter would be heard *ex-parte*.

In the aforesaid background of the matter, I have heard learned counsel for the appellant and perused the records also.

This appeal is directed against Judgment and Award dated 09.01.2012 passed in MACT Case No.10 of 2009 by which the claim petition filed by the respondent under Section 166 of the Motor Vehicles Act,1988 was allowed and Award of Rs.83,000/- was passed in his favour along with interest @ 7% per annum from the date of filing of the claim petition as also counsel fee assessed at Rs.1100/-

The challenge to the impugned judgment and Award is chiefly on the ground that, since no FIR could be registered in the matter and even the daily diary report was also prepared belatedly, i.e., after about a month, based on the belated information given by the claimant, it cannot be held that the accident was result of rash and negligent driving by the driver of the offending vehicle. The appellant is owner of the offending vehicle. Though he has admitted the same in the written statement but strangely, he has denied such fact in his testimony.

The case of the claimant is that on 29.05.2007, he was returning his house on his Hero Honda motorcycle. The Maruti Car, i.e., the offending vehicle, came from the opposite side at very high speed and its lost control and crashed into his motorcycle. The applicant further claims that he saw the respondent No.1, Gurmail Singh, who was driving the offending car, was not looking towards the road but he was looking towards the fellow passenger who was tying a white turban. As a result of this accident, claimant suffered

serious injuries on his Pelvic bone which was broken. Subsequently, artificial joints were put inside the body after performing surgery. It is further claimed that the accident was witnessed by one Naresh Narang of Narang Spair Parts and Manjit Singh of Manjit Tyre Repair Shop whose shops were close to the place of accident. A rapat No.10 dated 13.07.2007 was eventually lodged at Police Station Sadar Abohar but police did not registered FIR in view of the fact that respondent was an influential person. Respondent No.1 had agreed to pay all the expenses of operation and treatment but he did not pay even a single penny.

It is further case of the claimant that he was 42 years of age at the time of his accident and was earning Rs.12,000/- per month while doing shuttering in connection with construction works. He was initially admitted in Narang Nursing Home, Abohar, where Rs.1,60,000/- was spent on his treatment. Subsequently, he was shifted to EMC Hospital, Amritsar where his Pelvic bone joint was replaced by planting artificial one.

Appellant/respondent appeared and filed written statement denying the accident in question. A stand was taken that police did not lodge FIR against him, therefore, the case should be dismissed as no negligence was there on his part. The ownership of the offending vehicle was admitted by the respondent/appellant in paragraph 16 of the written statement. This was also a fact before the Tribunal that the offending vehicle was not insured.

On the basis of rival pleadings, the Tribunal framed the following issues:

1. Whether the claimant received injuries in the accident in question caused due to rash and negligent driving of the offending vehicle by respondent No.1?OPP.

2. Whether the claimant is entitled to the compensation, if so, to what amount? OPP
3. Whether the claimant is entitled to compensation, if so, to what amount? OPP
4. Whether the petition is not maintainable against respondent No.1? OPR

In order to prove his claim, applicant-claimant examined himself as PW-1, one Manjit Singh as PW-2 and Naresh Kumar as PW-3, who were allegedly eye-witnesses of the accident. On the other hand, respondent examined him as RW-1.

From the testimony of PW-1, describing the manner in which accident took place and supported by the PW-2 and PW-3 who were eye-witnesses, the Tribunal has come to the conclusion that the factum of accident due to rash and negligent driving by the offending vehicle stands proved. It has also been noticed that though the respondent has admitted in his pleading that he is owner of the offending vehicle but has taken contrary stand while being examined as RW-1. According to the Tribunal, this departure was purposive and for ulterior motive and thus, adverse inference was required to be drawn against him. An issue was raised on behalf of the respondent-appellant that, since no FIR was lodged against him by the police, it cannot be held that the accident had taken place and the claimant was victim of rash and negligent driving by the respondent/appellant as, in fact, no accident could be proved at all. Learned counsel, at the time of hearing of this appeal, has vehemently argued that, as no photograph of accident was available on record, it cannot be held that such accident had actually taken place involving the alleged offending vehicle.

However, though it is a fact that FIR was not registered and complaint was filed belatedly and only daily diary report was merely recorded by the police but the question would be as to whether it would mean that the respondent/appellant should be absolved from the liability on the basis of that? The Answer would have to be in negative as the case has to be decided upon the materials which are available on records of the Tribunal. On such issue being raised by the respondent, one can understand that no report was lodged before the police or the police did not register it, as claimed by applicant, since the respondent was a influential person. In both the cases, it cannot be held that absence of that would drift the entire matter in favour of the respondent/appellant as the injured himself is a witness and he has withstood the test of cross-examination also. His testimony stands supported, corroborated and substantiated by two eye-witnesses whose shops were near to the place of occurrence. That Apart, there are several documents such medical bills or the concerned medical claims as well as medical prescription etc. which shows that about Rs.72,765/- was spent on the treatment of the claimant as his pelvic bone and hip bone were broken and artificial joint had to be put inside his body by performing surgery on 30.07.2007 at Emergency Medical Care Hospital, Amritsar.

The Tribunal has merely allowed the amount raised under such medical bills and hospital bills only to the extent of Rs.72,765/-, since the claimant could not produce any disability certificate, nothing has been allowed towards other heads. Rs.10,000/- has further been granted only towards pain and suffering. The Tribunal awarded an amount of Rs.83,000/- after rounding up the figure.

In my view, this is not a fit case at all warranting any interference by this Court inasmuch as it is the respondent/appellant himself whose contradictory statements in pleading and oral testimony shakes the confidence of the Court.

In the result, this appeal, being devoid of any merit, is dismissed.

However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

29.04.2019
anil

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No