

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 4079 of 2014
DECIDED ON: May 16, 2019

LAL CHAND

APPELLANT

VERSUS

AKSHYA KUMAR AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Ranjit Saini, Advocate
for respondents No.1 to 3.

Mr. Rajbir Singh, Advocate
for respondent No.4-Insurance Company.

AVNEESH JHINGAN, J (Oral):

Aggrieved of the dismissal of the claim proceedings vide award dated 16.01.2014 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for brevity 'the Tribunal') passed in MACT case No. 70 of 2012, the present appeal has been filed by the injured-claimant.

The facts as alleged by the claimant are that on 06.04.2012, he was going to Bilaspur on motorcycle bearing registration No. HR-02-R-8973. When he reached near turn of Kapal Mochan-Machhrauli on Ranjitpur road, a tractor trolley bearing registration No. HR-02-D-4566 (hereinafter referred to as 'offending vehicle') hit the motorcycle. Due to

the impact, he sustained serious injuries on various parts of body including head and became unconscious. He was taken to Civil Hospital, Jagadhri and then to Gaba Hospital, Yamuna Nagar from where he was referred to PGI Chandigarh. FIR No. 46, dated 06.04.2012 was registered at Police Station Bilaspur at the instance of Ramesh Kumar.

The claimant, to prove the involvement and rash and negligent driving of the offending vehicle the claimant placed reliance upon FIR and the charge sheet filed against the alleged driver of the offending vehicle i.e. respondent No.1. The Tribunal opined that onus cast upon the claimant under Section 166 of Motor Vehicles Act, 1988 to prove the involvement and rash and negligent driving of the offending vehicle was not discharged, consequently, the claim petition was dismissed.

Learned counsel for the appellant argues that Ramesh Kumar was an eye witness to the accident and he promptly lodged FIR, on the basis of which a charge sheet was filed against the driver of the offending vehicle. He further argues that, claimant was able to prove the involvement and rash and negligent driving of the offending vehicle. He further argues that the claimant himself deposed before the Tribunal to prove the involvement and rash and negligently driving of the offending vehicle.

Learned counsel for the respondents argues that the FIR was registered against the unknown vehicle. He relies upon the order passed in the criminal proceedings where Ramesh Kumar appeared as PW-4 and deposed that accused Akshya Kumar was not the person who caused the accident.

The contention raised by learned counsel for the appellant

lacks merit.

From the perusal of record, it is evident that the FIR was registered at the instance of Ramesh Kumar eye witness, the number of vehicle was not mentioned. He stated that the accident was caused by a tractor of Massey Ferguson make. It was claimant that he can recognize the driver if brought before him. On the basis of the said FIR a charge sheet was filed. It would be pertinent to note here that Ramesh Kumar never deposed before the Tribunal. It would not be out of place to mention that as per FIR Ramesh Kumar claimed that he would be able to recognize the driver of the offending vehicle whereas in the criminal proceedings, he stated that the alleged driver of the offending vehicle was not the same person who caused the accident. There was nothing in the FIR to state that he can recognize the offending vehicle.

The deposition of claimant was of no help as he himself admitted that he felt unconscious at the time of accident. He had never deposed before the Tribunal that he was able to note the registration number of the offending vehicle before getting unconscious. No official of police was examined by the claimant to prove that as to how registration number of the offending vehicle came into picture. Even the claimant in the criminal proceedings had stated that he was not in a position to recognize the driver of the offending vehicle.

Law is well settled that in cases under the Act, onus of proof is not as strict as in criminal cases. The claimants have to establish their case merely on the touchstone of preponderance of probabilities. The Supreme Court in **Parmeshwari Vs. Amir Chand and others, AIR 2011 SC 1504**

held as under:

*“The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in **Bimla Devi and others Vs. Himachal Road Transport Corporation and others [(2009) 13 SCC 530]** are very pertinent.*

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

Though the evidence of the criminal proceedings should not be relied upon in proceedings under Section 166 of the Act but in the present case as the claimant was not able to adduce any evidence before Tribunal and entire reliance was only on the FIR, the deposition of claimant and alleged eye witness in criminal proceedings gets relevance to see their conduct.

In the absence of any evidence much less worth credential, no shadow can be cast upon the findings of the Tribunal that the claimants failed to prove the involvement and rash and negligently driving of the offending vehicle.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

MAY 16, 2019
sham

Whether speaking/reasoned
Whether reportable

Yes
Yes