

FAO No.2969 of 2015 (O&M)

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

FAO No.2969 of 2015 (O&M)
Date of decision: 28.11.2019

Sunil Kumar

.....Appellant

versus

Balbir and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Amit Parashar, Advocate, for the appellant.
Mr. R.B. Gupta, Advocate, for respondents No.1 and 2.
Ms. Sheenu Sura, Advocate, for respondent No.3.

RAMENDRA JAIN, J. (ORAL)

CM-8968-CII of 2015

Through this application under Order 41 Rule 27 read with Section 151 CPC prayer has been made for leading additional evidence.

Learned counsel for the applicant-appellant *inter alia* contends that on account of telling wrong number of the offending motorcycle by some passerby to the father of applicant-appellant, as HR-29T-0656, instead of offending motorcycle bearing registration No.HR-29AA-7822, he described wrong registration number of the offending motorcycle, while recording FIR. Therefore, his application under Order 41 Rule 27 read with Section 151 CPC may be allowed permitting him to correct the registration number of the offending motorcycle.

Having given thoughtful consideration to the above

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submissions, this Court finds the instant application completely devoid of any merit for the simple reason that during trial also the applicant-appellant in his claim petition mentioned the correct registration number of the alleged offending motorcycle, on the basis of his supplementary statement. However, the same was dis-believed by the Tribunal on the ground that applicant-appellant failed to disclose the source of his information about correct registration number of the offending motorcycle.

Before this Court, now the appellant wants to show involvement of motorcycle bearing registration No.HR-29AA-7822 on the basis of mechanical report dated 22.02.2012 (Annexure A-2). Contrary to it, in his cross-examination, applicant-claimant testified that he already knew driver of the offending motorcycle, who stayed on the spot for two-three minutes. Meaning thereby applicant-appellant had identified the offending driver and motorcycle driven by him on the spot itself and correctly mentioned the same while lodging FIR (Ex.P-1). However, when the applicant-claimant lateron might have come to know that said motorcycle was not insured, he, by making a supplementary statement, tried to introduce motorcycle bearing registration No.HR-29AA-7822 before the police, duly insured to extract compensation in an illegal manner, taking false plea that at the time of accident he had become unconscious and in that very state he was shifted to hospital. Had it been so, applicant-claimant could not have identified the offending driver on the spot itself.

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In view of above, this Court finds no merit in the application.

Dismissed.

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Through this appeal, claimant has assailed award dated 10.12.2014 of the Motor Accident Claims Tribunal, Faridabad (in short 'the Tribunal'), whereby his claim petition under Section 166 of the Motor Vehicles Act (in short 'the Act') for grant of compensation was dismissed.

Briefly, according to the appellant, he, in the morning of 29.01.2012, while driving his motorcycle bearing registration No.HR-51AL-1297, taking along his father Ram Phal as pillion rider, met with an accident with motorcycle bearing Registration No.HR-29AA-7822, allegedly driven by respondent No.1 in a rash and negligent manner, owned by respondent No.2 and insured with respondent No.3, and received multiple grievous injuries on his person. FIR No.13 dated 30.01.2012 was registered qua accident in question.

With these broad submissions, appellant filed claim petition under Section 166 of the Act before the Tribunal, who after holding trial dismissed the claim petition on the ground that claimant failed to prove involvement of alleged offending motorcycle, which caused the accident.

Heard.

Relevant findings of the Tribunal are reproduced hereunder for ready reference: -

“45. It is case of petitioners that on that day petitioner Sunil alongwith his father had gone to Madhawali on motorcycle No.HR-51AL-1297 for

starting tubewell. At about 9/9.15 a.m. when they were coming back and reached Mandhawali turn Tigaon in front of Water Tank, offending motorcycle No.HR-29AA-7822 came there being driven by respondent No.1 in a rash and negligent manner and hit his motorcycle. Consequently, he fell and sustained injuries. He was taken to Sarvodaya Hospital where he was treated.

46. However, in FIR Ex.P1, registration number of offending motorcycle is recorded HR-29T-0656. According to petitioner, offending motorcycle was wrongly mentioned as HR-29T-0656 in FIR instead of HR-29AA-7822 and lateron another statement was made by his father mentioning correct number of offending motorcycle. But this explanation is not satisfactory. In his supplementary statement as available on file with copy of challan, Ram Pal stated that he had enquired on his own level and came to know that registration number of offending motorcycle is HR-29-AA-7822. But this statement is not sufficient to hold this motorcycle as offending vehicle as he has not mentioned what type of enquiry was made by him and from him.

47. It is also be mentioned here that Ram Pal PW2 in his cross-examination stated that registration number of motorcycle as HR-29AA-7822 was disclosed to him by some passerby at the spot itself. But neither he mentioned this registration number while lodging FIR nor examined that person who disclosed this number. Moreover, he stated that he identified Balbir at the spot itself as he was already known to him. He stated that Balbir also fell down

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and remained there for 3-4 minutes. In such situation, when respondent No.1 Balbir was already known to him and he remained there alongwith his motorcycle for 3-4 minutes, there was no reason not to mention his name and actual registration number of motorcycle while lodging FIR.

48. There is one more aspect of the matter. Accident is dated 29.1.2012. FIR Ex.P1 was lodged on 30.1.2012. However, there is a statement of petitioner Sunil dated 20.6.2012 attached with certified copy of challan tendered by learned counsel for petitioner. In his statement also, he has mentioned registration number of offending motorcycle as HR-29T-0658. No other trustworthy evidence has come on record to prove that registration number of offending motorcycle was HR-29AA-7822 and on what basis it was mentioned. Investigating Officer of the case has not been examined to prove how this motorcycle HR-29AA-7822 has come in picture.

49. In these circumstances, petitioner has failed to prove that alleged accident resulting into injuries on his person was caused by respondent no.1 while driving motorcycle No.HR-29AA-7822 rashly or negligently. This issue is, therefore, decided against petitioner and in favour of respondents.

Issue No.2:

50. Since petitioner has failed to prove involvement of motorcycle No.HR-29AA-7822 in this accident, so he is not entitled to any compensation from respondents. This issue is, therefore, decided against petitioner.”

Tribunal has dealt with the issue of registration number of

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offending motorcycle in detail and thereafter has held that appellant failed to prove the involvement of motorcycle bearing registration No.HR-29AA-7822.

That apart, on the previous date, appellant was directed to produce the fate of criminal case qua accident in question got registered by his father vide FIR No.13 dated 30.01.2012. Pursuant thereto, learned counsel for the appellant has produced copy of judgment dated 23.09.2016, whereby respondent No.1 has been acquitted, which fact also proves that appellant failed to prove involvement of respondent No.1 and alleged offending motorcycle in the alleged accident.

I have gone through impugned award and find no illegality or perversity in the same.

Dismissed.

November 28, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No