

CM-27458-CII of 2018 in/and
F.A.O. No. 693 of 2016(O&M) 1

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

CM-27458-CII of 2018 in/and
FAO No. 693 of 2016 (O&M)
Date of Decision: 15.01.2019

Biraj

.....Appellant.

Versus

Rajesh Kumar and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.R.S.Mamli, Advocate
for the applicant-appellant.

LISA GILL, J (Oral).

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Heard.

For the reasons mentioned in the application as well as arguments addressed, order dated 10.12.2018, whereby the appeal was dismissed in default is recalled. Appeal is restored at its original number and is taken up for hearing today itself.

Application is disposed of.

FAO No. 693 of 2018 (O&M)

This appeal has been filed by the appellant-claimant challenging award dated 17.09.2015, passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'Tribunal'), whereby claim petition under Section 163-A of the Motor Vehicles Act (for short 'Act') filed by the appellant seeking compensation on account of injury sustained by him in a road side accident on 01.05.2014, has been dismissed.

As per averments in the claim petition under Section 163-A of the Act, on 01.05.2014, Master Biraj (appellant) aged about two and a half/three years, along with his father-Rajesh Kumar, were going to the village from the fields on a motorcycle bearing registration no. HR-02-Y-3899, which was being driven by Rajesh Kumar. The claimant/appellant was riding pillion. At about 12.00 noon, when they reached near Indira Awas Colony on Nagla Road, their motorcycle skidded on the road. As a result thereof, claimant fell down and sustained a fracture of his left arm and other injuries on his body. He was taken to Goel Hospital, Jagadhri, where he was operated upon for the fracture. D.D.R No. 7 dated 13.05.2014, was recorded at Police Station Radaur, in this respect.

Petition under Section 163-A of the Act was filed by the appellant-claimant before the learned tribunal.

Respondent no.1, who is none other but father of the appellant, filed a separate written statement denying any rashness or negligence on his part, though admitting the accident in question.

Respondent no.2-Insurance Company, filed a written statement raising various preliminary objections and denying the averments on merits. Respondent no.2 prayed for dismissal of the petition.

Following issues were framed by the learned tribunal:-

1. Whether the accident in question resulting into injuries of Bairaj took place on 01.05.2014 due to rash and negligent driving of motorcycle bearing registration no. HR-02-Y-3899 by respondent no.1?OPP
2. Whether the petitioner is entitled to claim the compensation for the injury sustained by im in road side accident?OPP
3. Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy? If so, to what effect?OPR-2.

Issue no.1 was re-framed by the learned tribunal on
21.07.2015:-

1. Whether the claimant Biraj received injuries in a motor vehicular accident dated 01.05.2014 arisen out of the use of motorcycle bearing registration no. HR-02-Y-3899 ?
OPP.

Both the parties led evidence in support of their respective claims/stands.

Learned Tribunal on considering the facts and circumstances of the case as well as evidence on record concluded that the appellant failed to prove that he suffered the injuries on 01.05.2014 due to the use of the motorcycle in question.

Aggrieved therefrom, present appeal has been filed by the appellant-claimant.

Learned counsel for the appellant vehemently argues that merely because DDR in this case was registered on 13.05.2014 and not on 01.05.2014 itself, is not sufficient to reject the appellant's claim. Medical evidence on record as well as oral testimony of the mother of the appellant and that of PW-5-Jeet Ram, an eye witness of the accident, clearly substantiates and proves the case set up by the appellant. The appellant, it is submitted was two and half years old at the time of the accident. He suffered 5% permanent disability, therefore the learned tribunal has grossly erred in dismissing the claim petition. It is thus prayed that the impugned award be set aside thereby allowing the claim petition preferred by the appellant-claimant.

I have heard learned counsel for the appellant and have also

gone through the photocopy of the evidence furnished by him in Court today.

It is not in dispute that the accident in question was not immediately reported on 01.05.2014 and DDR in this respect was registered on 13.05.2014 on the statement of Rajesh Kumar son of Surja Ram i.e. father of the appellant. As per the said DDR dated 13.05.2014, Rajesh Kumar along with his son were going to their village on a motorcycle bearing registration no. HR-02-Y-3899 on 01.05.2014. It is stated that while going off the metalled road, his motorcycle slipped and both of them along with the motorcycle fell. Rajesh Kumar claimed to have received minor abrasions etc., whereas fracture was suffered on the left arm of his son-Biraj on which he has taken to Goel Hospital, Jagadhri for treatment. It is further stated that none was at fault and no further action was required to be taken.

It is relevant to note at this stage that Rajesh Kumar, father of the appellant has not deposed before the learned tribunal. PW-4-Mamta Rani, mother of the claimant-appellant admitted that the accident did not taken place in her presence and she could not reveal any details about the mode and manner of the accident. PW-5-Jeet Ram, the alleged eye witness stated that he was standing near his house for pegging his cattle and he saw the accident. In his cross-examination, he stated that he never accompanied the injured to the hospital and neither did he accompany Rajesh Kumar to the Police Station. PW-5 further states that he has no proof to justify his presence at the place of accident as the same is the job of the persons who met with the accident. He further stated that Rajesh Kumar had gone to his house from the place of accident from where he might further have taken his

son to the hospital. PW-5 further volunteered that he did not accompany Rajesh Kumar (father of the appellant) even to his house as he was to look after his cattle.

I have also perused the statement of PW-1-Dr. Mahavir Goel, Goel Hospital, Jagadhri. PW-1 stated that the appellant aged 2 ½ years was admitted at his hospital with a history of falling down from a moving motorcycle being driven by the patient's father on 01.05.2014 at about 1.45.p.m. It is further stated that the child was diagnosed as a case of supracondylar fracture of left humerus bone. He was operated on the same day and fixation of fracture with K-wire was done. There was no post operative complication and the patient was discharged on 07.05.2014. In response to a specific question by the Court, PW-1 replied that he did not observe any abrasion, contusion or swelling except the injury on the elbow.

PW-6-Dr. Rahul Chauhan, Medical Officer, Yamuna Nagar (M.L.G.H.), could not comment as to whether fracture was fully united or not. Cross-examination of PW-6 is indeed telling. Relevant extract thereof reads as under:-

“The name of the patient is not mentioned in x-ray film even the date of x-ray is not mentioned on the x-ray film. No clinical notes were prepared as per record which is brought today it might be on the OPD slip which is with the patient. I cannot tell the number of patients who appeared before board for assessment of disability on 13.05.2015. **It is correct that since I am the orthopaedic surgeon I had examined the patient but at the time I was alone and other members of board had signed the certificate later on. I cannot comment on seeing the plain x-ray attached in file as to whether fracture was fully united or not. Volunteered for**

giving opinion on that point digital x-ray left elbow was required (Emphasis added). It is wrong to suggest that the patient was not suffering from any permanent physical disability and that a false certificate was issued by the board. It is correct that the fact that the disability is qua whole body is not mentioned in Ex.P-26.”

Narration of the facts as above clearly reveals that learned tribunal has rightly dismissed the claim petition preferred by the appellant. Needless to say, mere delay in entering the DDR by itself cannot be sufficient to reject the appellant's claim. However, the factual matrix of the case coupled with the statements of PW-1-Dr. Mahavir Goel and PW-6-Dr. Rahul Chauhan clearly shows that the appellant miserably failed to substantiate his claim. The appellant failed to prove that he suffered the injury in question in the motor vehicle accident which took place on 01.05.2014 arising out of the use of the offending motorcycle.

Doubtlessly, it is on the touchstone of the preponderance of probabilities that a claimant is to prove his case in proceedings under the Motor Vehicles Act. In the present case, evidence on record is woefully insufficient to prove the case as set up by the appellant. Learned tribunal has decided the issues correctly vide the well reasoned award dated 20.08.2014 after proper appreciation of evidence on record.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 17.09.2015 passed by the learned tribunal, Yamuna Nagar at Jagadhri, which calls for interference by this Court.

There is a delay of 6 days in filing of this appeal. Keeping in

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view the fact that the matter has been adjudicated on merits, question of
delay in filing this appeal has been rendered academic. Application is
accordingly disposed of.

Appeal is accordingly dismissed with no order as to costs.

15.01.2019
s.khan

[LISA GILL]
Judge

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