

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

FAO-3297-2013(O&M)

Date of decision:-15.1.2019

Roshan Lal

...Appellant

Versus

Angrej Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.M.S. Khillan, Advocate
for the appellant.

Mr.J.S. Khattar, Advocate for
Mr.Pankaj Bali, Advocate
for respondents No.1 and 2.

Mr.Vishal Aggarwal, Advocate
for respondent No.3 – Insurance Company.

H.S. MADAAN, J.

Petitioner – claimant – Roshan Lal representing that he has less IQ due to the accident, through his next friend and natural guardian Smt.Lachhmi, his mother, had filed a petition under Section 163-A of Motor Vehicles Act, 1988 against respondents i.e. Angrej Singh – driver, Pargat Singh – owner, M/s Bajaj Allianz General Insurance Company Ltd. – insurer of motorcycle No.HR40-2575 (hereinafter referred to as the

offending vehicle).

In the claim petition, he had initially impleaded Subhash, driver of motorcycle No.HR05K-3137 as well as owner and insurance company of that motorcycle mentioning that their particulars were not known to the claimant, subsequently such respondents No.4 to 6 were given up by the claimant.

As per the case of the claimant on 4.7.2008, he was pillion riding motorcycle having registration No.HR05K-3137, which was being driven by respondent No.4 – Subhash at a very high speed; that when the motorcycle in question was about 1/2 k.m. short of village Bilona, then another motorcycle bearing registration No.HR40-2575 driven by respondent No.1 – Angrej Singh at a very high speed and in a rash and negligent manner came from opposite direction and struck against motorcycle having registration No.HR05K-3137, resultantly he suffered multiple serious and grievous injuries including those on vital parts of his body; that after the accident, he was taken to Government Hospital, Assandh from where he was referred to General Hospital, Karnal and from that institution to PGI, Chandigarh. The claimant got treatment from those hospitals as well as some private medical institutions. However, due to the injuries suffered by him in the mishap, the claimant has become permanently disabled and has lost his mental equilibrium on account of head injuries received by him. According to the case of the claimant, before the accident, he was hale and hearty working as a skilled labourer earning a sum of Rs.3,300/- per month; that he was aged about 19-20 years at that time; that he had spent a sum of Rs.10 lacs on his treatment

including special diet, hospitalization; that the accident had taken place due to rash and negligent driving of both the motorcycles driven by respondents No.1 and 4, respectively; that formal FIR No.228 dated 5.7.2008 for the offences under Sections 279, 337 and 338 IPC was registered at Police Station Assandh against respondent No.1. The claimant prayed that a compensation of Rs.10 lacs be granted to him.

Notice of the claim petition was given to respondents. They were served but did not appear, as such were proceeded against ex-parte. After recording evidence of the complainant, an ex-parte award dated 13.8.2009 was passed by Motor Accidents Claims Tribunal, Karnal. However, subsequently, respondents No.1 to 3 appeared and moved applications for setting aside of ex-parte order and Award, which were accepted. The respondents filed separate written statements. In the written statement filed by respondent No.1, he raised legal objections challenging maintainability of the petition contending that the claimant had not approached the Court with clean hands; that he had no locus standi to file the petition and the petition filed was an abuse of process of law; that as a matter of fact, no accident had taken place as alleged by the claimant involving the motorcycle being driven by such respondent and a false criminal case had been got registered against respondent No.1 by the claimant in collusion with the police. The written statement filed by respondent No.1 was adopted by respondent No.2 and statement in that respect was made on his behalf on 22.2.2011.

In the written statement filed on behalf of respondent No.3, it had contended that the vehicle was being driven in contravention of the

terms and conditions of the insurance policy; that respondent No.1 was not having a valid and effective driving licence at the time of accident; that the claimant had not suffered any injury in the accident in question.

Refuting the remaining allegations, in the end, all the respondents prayed for dismissal of the claim petition.

Counsel for the claimant by making statement in the Court on 27.1.2011 gave up claim against respondents No.4 to 6.

On the pleadings of the parties, following issues were framed on 19.4.2011:-

1. Whether the injury received by Roshan Lal son of Beeru is on account of use of motorcycle bearing No.HR40-2575, if so, to what effect? OPP.
2. If issue No.1 is proved whether the claimant is entitled to any compensation and if so how much and from whom? OPP.
3. Whether the present petition is not maintainable? OPR.
4. Whether the claimants have got no cause of action to file the present petition? OPR.

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

In support of his case, the claimant had examined his mother PW1 Lachhmi, PW2 Krishan Kumar, Addl. Ahlmad, PW3 Dr.Lavnya Prabha, PW4 Dr.Rakesh Mittal and PW5 Subhash.

On the other hand, respondents No.1 and 2 tendered in evidence documents Ex.R1 and Ex.R2, whereas no evidence has been led on behalf of respondent No.3.

After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the respondents and against the claimant, issue No.3 against the respondents being not pressed, issue No.4 in favour of respondents and against the claimant, resultantly the claim petition was dismissed with costs.

This award left the claimant aggrieved and he has approached this Court by filing the present appeal.

Notice of the appeal was given to respondents. Respondents No.1 to 3 had put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

I do not find any illegality or infirmity with the impugned award. Rather it is based upon proper appraisal of evidence and correct interpretation of law. The Tribunal on appreciation of evidence adduced before it concluded that the disability certificate of Roshan Lal was not properly proved due to non-examination of doctors, who had checked up Roshan Lal while issuing the certificates and the witnesses examined PW3 Dr.Lavnya Prabha and PW4 Dr.Rakesh Mittal were not present at that time. The Tribunal referring to deposition of PW5 Subhash examined by the claimant as an eye-witness has observed that the involvement of motorcycle bearing No.HR40-2575 in the accident is not established and there is no evidence on the file except bald statement of PW5 that Roshan Lal sustained injuries in the accident and he remained under treatment for the same.

The Tribunal has taken note of the fact that Roshan Lal is

alleged to have sustained head injuries and was allegedly taken to Assandh Hospital, then to Civil Hospital, Karnal and thereafter to PGI, Chandigarh but for the reasons best known to the claimant, no doctor who treated him at any of the said hospitals/medical institutions had been examined as a witness in the Court and in absence of that evidence, it is not proved that the petitioner had ever sustained alleged injuries in the alleged accident. Referring to the disability certificate Ex.P5, the Tribunal has taken note of the fact that the said certificate was issued for the purpose of pension as the title of the certificate is "Pension of handicapped person" and there was no reference that Roshan Lal petitioner had sustained injuries in any road side accident, which led to disability and in absence of connecting link evidence, the certificate cannot be held to mean that disability of Roshan Lal was on account of accident in question. In view of such situation, the claim petition had been dismissed.

I do not see any reason to disagree with the Tribunal in that regard. Merely because of the fact that the FIR had been registered regarding the accident in which it was mentioned that Roshan Lal had suffered injuries does not mean that it stand established that he had in fact received injuries in the road side accident or had in fact suffered permanent disability, if so, to what extent. No medical evidence with regard to admission of Roshan Lal in the hospital soon after the accident or his treatment there has been brought on record. Therefore, the Tribunal was justified in dismissing the claim petition and there is no ground to upset the award by way of accepting the appeal.

Thus the appeal is found to be without merit and is dismissed accordingly.

15.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No