

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

CM No. 176 CII of 2019 in/and
FAO 34 of 2019 (O&M)
Date of decision: 9.1.2019

Deepak Kumar

...Appellant

Versus

Miss Simran

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. RS Mamli, Advocate,
for the appellant.

JAISHREE THAKUR, J.

CM No. 176 CII of 2019

For the reasons stated in the application, which is supported by
an affidavit, the delay of 3 days in filing the appeal is condoned.

The application stands disposed of.

FAO 34 of 2019

The appellant seeks to assail the award dated 17.9.2018 passed
by the Motor Accident Claims Tribunal on a claim petition filed under
Section 166 of the Motor Vehicle Act, 1988, whereby he has been fastened
with the liability to pay compensation of ₹5,12,000/- on account of the
injuries suffered by the claimant along with interest @ 7.5% per annum
from the date of filing of the petition till the date of realization.

In brief, the facts are that on 1.11.2016 the claimant a minor girl
had come to attend a marriage along with her father at Kuldeep Resorts,

Ratia Road, Fatehabad, Tehsil and District Fatehabad and was standing in front of the gate of the resort, when a Maruti Alto car bearing registration No. HR-22H-7386 struck against the claimant due to which she received multiple injuries. She was rushed to Civil Hospital, Fatehabad, where she was medico legally examined and on account of the seriousness of the injuries suffered she was referred to MAMC, Agroha, from where she was again shifted to Savodhya Multispecialty Hospital, Hisar. The police came to the said hospital on 2.11.2016 after receiving intimation regarding the accident, but the claimant was not declared fit to make a statement. Even on the next date she was not fit enough to make a statement and it was then that the police recorded the statement of her father Krishan Lal, who was also present with the injured at the time of accident, regarding the manner and mode of the accident. FIR 682 dated 3.11.2016 under Section 279, 337, 338 IPC was registered against the appellant and during the course of investigation, the offending vehicle was taken into possession and the appellant was arrested.

The claim petition was filed seeking compensation on the ground that the complainant had been operated twice in the Sarvodhya Multispecialty Hospital, Hisar and further had been treated conservatively. She remained in the hospital from the date of the accident and was discharged on 19.11.2016 but on account of the complications, she was again admitted in the hospital on 25.11.2016. She remained admitted in the hospital and was treated as an indoor patient as well as advised weekly follow up treatment. It was claimed that on account of the injuries suffered by the claimant, she had become permanently disabled, unable to do any

type of work, which she used to do earlier prior to the accident, while further submitting that a sum of ₹10 lakhs has been spent on the treatment, hospitalization, operation and medicines etc.

The claim petition was contested by the appellant, while raising preliminary objection regarding maintainability of the petition based on registration of false FIR, while arguing that no accident as alleged had ever taken place with the vehicle in question. It was also argued that the appellant had been falsely implicated, while further submitting that he had moved an application to the Superintendent of Police, Fatehabad, after 2-3 days of the accident about his false implication, on which no action was taken.

The Tribunal after going through the evidence led held that the appellant was responsible for causing the accident by driving in rash and negligent manner and awarded the amount of ₹5,12,200/- (to the claimant) towards medical expenses, pain and suffering, transportation, special diet etc. Aggrieved against the said award, the instant appeal has been filed.

Mr. R.S. Mamli, learned counsel appearing on behalf of the appellant, strongly urged that there is inherent error in the award that has been passed, while contending that there was a delay of 3 days in lodging the FIR and no explanation has been given for the said delay. It is also urged that the claimant's father had entered into the witness box and in his cross-examination, he admitted that he had not even seen the appellant at the time of alleged accident and, therefore, this is a case of false implication, while also submitting that false bills have been raised just to claim compensation.

I have heard learned counsel for the appellant and find no merit in the contentions that have been raised.

Learned counsel for the appellant has argued that there is delay of three days in lodging the FIR with regard to the accident, which took place on 1.11.2016, however, the FIR was registered only on 3.11.2016 and, as such, this fact is enough to prove that no such accident took place. A perusal of the award would reflect that the minor girl suffered injuries on 1.11.2016 after having been hit by a vehicle bearing No. HR-22H-7386 and immediately thereafter her father, namely Krishan Kumar took her for treatment to the Civil Hospital, where she was examined and eventually was referred to MAMC, Agroha on account of serious nature of her injuries, from where she was again shifted to Sarvodhya Multispecialty Hospital, Hisar, where she was admitted as indoor patient. The police came to the hospital on the next date i.e. 2.11.2016 to have the statement recorded but the condition of the injured was such that she was unable to make a statement. Even on the next day, when the police visited the hospital, she was not fit to make statement and it was thereafter that the police recorded the statement of the father of the injured regarding the accident, which led to registration of the FIR. When the claimant/injured was seriously injured as having been referred to a larger hospital, it cannot be said that there is a delay in lodging of the FIR. The primary duty of any parent would be to ensure well being of his/her child other than first getting the FIR registered. It is also noticed that the claimant herself had been unfit to make statement on account of the injuries suffered by her and it is only thereafter that the statement of the father was recorded, who was an eye witness. Therefore,

the argument as raised that there was delay in registration of the FIR would have no bearing.

The second argument that has been raised that this is a case of false implication as the claimant's father had stated that he had not seen the appellant or the driver and therefore, no case is made out and the appellant has been roped in only to claim compensation. This argument too is not tenable. After the injured had been rushed to the hospital and she was unfit to make statement, statement of her father was recorded on 3.11.2016 who gave specific details of the car along with its registration number, which eventually led to the matter being investigated and the driver, namely the appellant herein being arrested. The appellant herein has not been able to adduce any evidence that he was not the driver of the car in question or the car was not involved in the accident.

The Tribunal after considering the evidence adduced, which pertains to OPD record, as well as the surgeries undergone by the claimant, took note that a sum of ₹4,20,000/- was spent on medicine and awarded ₹50,000/- towards pain and suffering, ₹10,000/- towards transportation, ₹10,000/- towards attendant charges, ₹10,000/- special diet and ₹12,000/- on account of suffering of disability and thus awarded a total amount of compensation of ₹5,12,000/-. On a composite reading of the award, this Court finds no ground any interference. Dismissed.

9.1.2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No