

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 16042 of 2018 (O&M)
Date of decision: 3.5.2019

Kuldeep Chand

.. Appellant

v.

Raj Kumar

.. Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tarunveer Vashist, Advocate for the appellant.

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AVNEESH JHINGAN, J. (Oral)

The award dated 9.5.2018 passed by the Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal') has been assailed by the driver-cum-owner of car bearing temporary registration No. PB11ZL(T) 4919 and permanent registration No. PB-11-CB-3502 (hereinafter described as 'the offending vehicle').

The facts necessary for adjudication of the present appeal are that on 25.11.2016, Raj Kumar was going on Activa bearing registration No. HR-01-AM-7855 for attending a marriage at Devi Nagar, Ambala City. His younger brother was following him on his motorcycle. When Raj Kumar reached near Petrol Pump, Devi Nagar, Ambala City, the offending vehicle hit him from the front, as a result of the impact, Raj Kumar fell down and sustained injuries. The driver of the offending vehicle fled from the spot but the number plate of the offending vehicle fell down on the spot.

Raj Kumar was got admitted in Civil Hospital, Ambala City from where he

was refered to Sector 32, Chandigarh. Thereafter he was taken to PGI, Chandigarh. He underwent surgery and a rod was inserted. He remained hospitalised till 16.12.2016.

In the claim petition filed, the Tribunal awarded a sum of ₹1,00,000/- along with interest @ 7.5% per annum. The detail of the compensation awarded by the Tribunal is tabulated below:

<i>Heads of Claim</i>	<i>Amount in ₹</i>
Pain and suffering, hospitalization, fracture, operation etc.	80,000/-
Attendant Charges	10,000/-
Transportation	5,000/-
Nutritious diet	5,000/-
Total	1,00,000/-

The grievance raised by learned counsel for the appellant is that the claimant was not able to discharge the onus with regard to involvement of the offending vehicle and that the accident was result of rash and negligent driving of the offending vehicle. He argues that the best witness of the accident i.e. brother of the claimant was not produced before the Tribunal.

The contentions raised by learned counsel for the appellant lack merit. The injured-Raj Kumar himself deposed before the Tribunal as PW-1. He narrated the entire accident and that the offending vehicle was being driven in a rash and negligent manner. The driver ran way along with the offending vehicle but the number plate fell down at the spot. FIR No.183 dated 27.11.2016 was registered. In the FIR also, the number of the offending vehicle was duly mentioned. The onus under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') is not as heavy as in the criminal proceedings. The issue is to be decided on the touchstone of

preponderance of probabilities. The Supreme Court in **Bimla Devi and others v. Himachal Road Transport Corporation and others**, 2009 (3) RCR (Civil) 805: 2009 (4) RAJ 408: 2009 (2) AICJ 167: (2009) 13 SCC 530 held as under:

“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.”

The claimant himself was the injured. The offending vehicle came from the front side and hit him. He was able to note the registration number of the offending vehicle and more over the number plate fell down at the spot.

The argument raised by learned counsel for the appellant that the best witness was not examined before the Tribunal does not enhance his case. The Supreme Court in **Sunita and others v. Rajasthan State Road Transport Corporation and another**, AIR 2019 SC 994 held as under:

“31. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non examination of some “best” eye witness in the case but to analyse the evidence already on record to ascertain whether that is

sufficient to answer the matters in issue on the touchstone of preponderance of probability. This court, in *Dulcina Fernandes* (supra), faced a similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident.”

The Supreme Court has held that non-examination of best witness is not fatal for the claimant to claim compensation. The onus cast upon the claimant under Section 166 of the Act was duly discharged. No shadow can be cast on the finding recorded by the Tribunal with regard to involvement and rash and negligent driving of the offending vehicle.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

3.5.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No