

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.419 of 2021 (O&M)

DATE OF DECISION: January 06, 2022

LAKHBIR SINGH

..APPELLANT

VERSUS

HARWANT SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Ms. Balpreet K. Sidhu, Advocate, for the appellant.

Mr. Manoj R. Sharma, Advocate, for respondent No.1.

SUDHIR MITTAL, J.

This appeal has been directed against Award dated 04.03.2020 passed by the Motor Accidents Claims Tribunal at Gurdaspur awarding compensation of Rs.5,31,889/- to the claimant on account of injuries suffered by him in a road accident and imposing liability upon the driver and erstwhile owner of the vehicle giving right to the erstwhile owner to recover his share from the present owner.

According to the claimant, he was going towards Bus Stand, Naushera Majja Singh, Tehsil and District Gurdaspur from village Dhindsa on 19.04.2016 on his motorcycle. The motorcycle was being driven on the correct side of the road and at normal speed. He was being followed by his brother Prabhdial Singh on a separate motorcycle on which one Nishan Singh son of Sewa Singh was riding pillion. On reaching near Master

Nursery in the area of village Chhina Railwal, a Maruti Zen Car came from the opposite direction. The vehicle was being driven rashly and negligently and it came to the wrong side of the road and hit the motorcycle of the claimant resulting in injuries to him. The driver of the vehicle fled away from the spot after abandoning the vehicle. FIR dated 23.04.2016 Ex.CI was registered.

The driver of the vehicle filed a written statement avering that he had been falsely implicated. He never drove the offending vehicle on the day of the incident nor was he its driver. He was not even the employee of the owner. A false FIR had been registered only with a view to get a claim. The brother of the claimant namely Prabhdeep Singh was not an eye-witness and had been planted in connivance with the police.

The present appeal has been preferred by the driver as liability has been imposed upon him also. The Tribunal has returned a finding that registration of an FIR and presentation of a challan against the driver shows that he was in fact the driver of the offending vehicle on the date of the incident.

It is this finding which is under challenge in the appeal.

Learned counsel for the appellant has argued that the evidence on record has been misread and misconstrued by the Tribunal. Initially, nobody was named in the FIR and the appellant's name has been included at a later date without any valid reason. Mere registration of an FIR and presentation of challan cannot lead to a conclusion that the appellant was the driver, especially in view of the other evidence on record which has been disregarded. Regarding the amount awarded, it has been submitted that bills

submitted by the claimant had not been proved in accordance with law.

Learned counsel for the claimant has argued that challan has been presented against the appellant and this is sufficient proof of the appellant being the driver of the offending vehicle. In appeal, no objections can be raised against the bills as none were raised at the time they were produced before the Tribunal. The owner of the vehicle has accepted the award and has not filed any appeal. This also shows that the appeal filed by the driver has no merit.

In view of the circumstances of this case, the only question that arises for consideration is whether the Tribunal was correct in returning a finding that the appellant was the driver of the offending vehicle. If this question is found in favour of the appellant, the issue of quantum of compensation would pale into insignificance.

Learned counsel for the appellant has referred to Ex. RI/A which is the statement of the claimant before the criminal Court. Perusal of the cross-examination of the claimant shows that a Government hospital exists at a distance of 1.5 kilometers from the place of the accident. A permanent police post exists at Village Naushera Majja Singh. Police Station City Gurdaspur is also in the vicinity and there are two police posts before the said police station. On being asked, regarding presence of brother Prabhdial Singh, he stated that he did not know when his brother reached the place of the accident as he had become unconscious. At a later stage, he stated that his brother had come at Amritsar after the accident. This is in stark contrast to his statement in chief in which he stated that he had seen the driver of the vehicle running away from the spot. In his cross-examination while appearing a CW-I before the Tribunal he has again stated that he had lost consciousness immediately after the accident and that his brother had

informed him regarding the name of the driver. He also stated that he did not know the name of the person who was driving the offending vehicle at the time of the accident.

The cross-examination of CW-2-Prabhdial Singh (brother of the claimant) is also revealing. He has admitted that the name of the driver was not mentioned in the FIR nor did he go to the police station to register a complaint on the same day even though Nishan Singh was with him at the spot.

Cross-examination of ASI-Satnam Singh (IO of the criminal case) was placed on record as Ex.R3/A in which he has accepted that the name of the accused-driver was not known to the police when the site plan was prepared. Even Nishan Singh did not disclose the name of the accused in his statement under Section 161 Cr.P.C. He could not state when the name of the accused-driver came to light and how. He also accepted the fact that the place of occurrence was a thoroughfare but no independent witnesses were joined in the investigation.

In motor accident claims cases findings have to be returned on the basis of preponderance of probabilities. Does this principle lead to the conclusion that the appellant was the driver of the offending vehicle when the evidence aforementioned is considered along with the challan presented in the criminal Court?

From the evidence discussed hereinabove, it becomes evident that the alleged eye-witnesses Prabhdial Singh and Nishan Singh did not name the appellant as the driver of the offending vehicle in the first instance.

This is despite the fact that they were allegedly following the claimant. The

explanation that the appellant ran away from the spot cannot be accepted as

it is against normal human conduct. Assuming, that the brother namely Prabhdial Singh stayed back to attend to the claimant, Nishan Singh could have easily chased the driver. Being a thoroughfare, other people at site would have helped him in the chase. Instead, FIR was got registered after four days and that too against an unknown person. The evidence of the claimant himself shows that police posts and police stations were in the near vicinity of the place of accident, yet, the FIR was not got registered on the same day. The I.O. does not know how the name of the accused-driver surfaced in the police investigation. In the light of this evidence, it cannot be held that on the basis of preponderance of probabilities that the appellant was the driver of the offending vehicle. The evidentiary value of the challan pales into insignificance in view of the statement of the IO that he did not know how the name of the accused-driver surfaced in the investigation.

In view of the above, the appeal is allowed and the finding of the Tribunal that the appellant was the driver of the offending vehicle is set aside. No opinion is being expressed on the quantum of compensation as none is required to be expressed.

CM-4596-CII-2021

Since the main appeal stands allowed, the present application has been rendered infructuous and is disposed of as such.

January 06, 2022

'Ankur Goyal'

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

Yes