

FAO-170-2022(O&M)

Date of decision: 02.02.2022

Arun

.....Appellant

Versus

Rahul

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Govind Chauhan, Advocate, for the appellant

ANIL KSHETARPAL, J. (ORAL)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The appellant, who is owner and driver of the Sonalika 750 Tractor, assails the correctness of the award passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal'). Sh. Rahul (respondent herein) suffered injuries in an automobile accident which took place on 04.06.2016 at 6:30 A.M. Sh. Rahul was driving the motorcycle whereas the appellant was driving Sonalika 750 tractor with Rotavator attached thereto. As per the case of the respondent, the appellant hit the motorcycle with the side of the tractor and on account thereof, the respondent fell on the road and suffered grievous injuries. The respondent was first admitted in Haryana Nursing Home, then in Anand Nursing Home, Bhiwani and thereafter, admitted in Jindal Institute of Medical Care and Research, Hisar, and thereafter, he took treatment from Medanta Hospital, Gurugram. The FIR was registered on 06.06.2016 against the appellant. The respondent suffered disability on account of fracture supra condylar femur right side with chronic O.M with stiffness and pain in the right knee.

PW1 whereas Sh.Kanwar Pal, appeared as PW4 who is alleged to have seen the accident while returning to the village from his farm land. The Tribunal, on appreciation of the evidence, has held that the respondent is entitled to a total compensation of Rs.5,05,161/- including Rs.1,37,281/- towards the medical treatment expenses.

Heard learned counsel representing the appellant at length and with his able assistance perused the paper book. Learned counsel representing the appellant contends that as per the case of the claimant he was taken to the hospital by Sh. Gobinda who has not been examined. He further contends that in a criminal trial arising from the FIR in question with respect to the same incident, the appellant has been acquitted.

Learned counsel representing the appellant has read over the statement of Sh. Rahul (respondent herein). It is evident that the appellant had failed to cast doubt on the credibility of the evidence of the claimant. The evidence of the claimant is also corroborated by Sh. Kanwar Pal. The claim petition filed under Section 166 of the Motor Vehicles Act, 1988, is required to be decided on preponderance of the probabilities. The Tribunal, after appreciating the evidence, has drawn a conclusion that the evidence of the claimant is reliable. In the absence of patent error or perversity, it would not be appropriate for the Appellate Court to interfere with the findings of fact. Learned counsel representing the appellant, although, made sincere attempts, however, failed to draw the attention of the Court to any substantive error in appreciation of the evidence.

As regards, the argument of the learned counsel that Sh. Gobinda has not been examined by the claimant, it may be noted that injured himself

alongwith Sh. Kanwar Pal has proved the accident. Sh. Kanwar Pal is an independent witness who has supported the case of the claimant. Hence, non-examination of Sh. Gobinda is not fatal to the case of the claimant.

The next argument of the learned counsel representing the appellant is with regard to the judgment of acquittal in the criminal case. Learned counsel representing the appellant admits that the appellant came to be acquitted because the respondent injured did not appear in evidence. Furthermore, it is well settled that the Tribunal is entitled to decide the case independently without being influenced by the judgment passed by the criminal court. The judgment passed by the criminal court is not binding on the Tribunal. Before convicting a person for a criminal offence, the prosecution is required to prove its case beyond the shadow of reasonable doubt whereas the Tribunal constituted under the Motor Vehicles Act, 1988, is required to decide the case on the basis of preponderance of probabilities. The standard of proof required to prove the case in a criminal as well as accident claim is different from a civil case. Hence, the judgment acquitting the appellant will not come to his rescue.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

02.02.2022
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No