

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3705-2016 (O&M)

Date of decision: 01.06.2023

Poonam

....Appellant

versus

Ram Kishan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sandeep Singh, Advocate for appellant.

Mr. Naresh Kumar Ganga, Advocate for
Mr. Dinesh Kumar Jangra, Advocate,
For respondents No.1 and 2

Mr. Punit Jain, Advocate
for respondent No.3-Insurance Company.

ARUN MONGA, J. (ORAL)

Appellant before this Court is the claimant assailing impugned award dated 29.01.2016 rendered by learned Motor Accidents Claims Tribunal, Rohtak (for brevity, "Tribunal"), whereby claim petition filed by claimant was dismissed.

2. Succinct facts, as noted by learned Tribunal, are as below:

"2. *It is the case of the claimant that on 30.5.2015, the claimant was going from Pehrawar to village Madina on motor-cycle bearing registration No.HR-12Q-3824, which was being driven by her husband and when they reached in front of Takshila School, village Maina suddenly a Ritz Car bearing registration No.DL-9-CAC-6111 came being driven by its driver i.e. respondent No.1 in a rash and negligent manner with high speed and hit the motor-cycle. As a result of which, the claimant fell down and sustained multiple injuries. The claimant was brought to Sunflag hospital, Rohtak by her husband. It is stated that the accident took place due to the sole rash and negligent driving of the respondent No.1 and the first information report in this regard was lodged. The respondent No.1 being the driver, respondent No.2 being owner and respondent No.3 being insurer of the offending vehicle, respectively, are jointly and severally liable to pay the compensation to the tune of Rs. 15,00,000/- along with interest. Hence, the present petition has been filed.*"

3. Upon notice, respondents No.1 and 2 (driver and owner) filed joint written statement and by taking preliminary objections *qua* concealment of facts; cause of action, estoppel, maintainability saying that respondent No.1 was holding valid and effective driving license and vehicle was insured with respondent No.3.

3.1. On merits, all the averments of petition were denied and dismissal of petition with cost was prayed. Respondents No.1 and 2 later on absented from the proceedings in the petition and were ordered to be proceeded against *ex parte* vide order dated 16.12.2015.

3.2. Respondent No.3-Insurance Company in its written statement also denied the factum of accident and involvement of offending vehicle in the alleged accident. It was pleaded that respondent No.1 was not holding valid and effective driving licence at the time of accident. It was stated that false FIR had been registered. Further it was pleaded that respondent No.3 is not liable to pay any amount to the claimant. Rest of the averments of the claim petition were also denied.

4. Learned Tribunal framed the following issues:

- “(1) *Whether present accident had taken place due to rash and negligent driving of vehicle bearing registration No. DL-9CAC-6111 by respondent No.1 in which petitioner suffered injuries? OPP.*
- (2) *If issue No.1 is proved in affirmative, to what amount laid and from whom the petitioner is entitled to recover, as alleged? OPP.*
- (3) *Whether the respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident and that respondents No.1 and 2 have violated the terms and conditions of the Insurance Policy? OPR.*
- (4) *Relief.”*

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 and 2 against claimants. In view of findings on issues No.1 and 2, issues No.3 became redundant and no finding was given on this issue. Consequently, claim petition filed by claimant was dismissed.

6. Learned counsel for appellant-claimant contends that accident in question had taken place due to rash and negligent driving of respondent No.1 due to which claimant sustained multiple grievous injuries and has become permanently disabled. He would contend that learned Tribunal erred in dismissing the claim petition on the basis of certain technicalities that matter was reported to police after a long period, inasmuch as the accident had though taken place on 30.05.2015 whereas the FIR under Sections 279 and 337 of IPC was registered on 08.06.2015 i.e. after delay of 7 days.

7. On the other hand, learned counsel for respondent No.3-Insurance Company opposes the appeal while supporting the award of learned Tribunal. He contends that there is a delay of seven days in lodging the FIR and in fact the offending vehicle has been falsely implicated in this case to claim the compensation.

8. I have heard learned counsel for the parties and perused case file.

9. Occurrence and age of the claimant-injured of the accident is not in dispute herein. The only dispute is with regard to involvement of the vehicle. The registration of FIR is not in dispute and in the course of investigation of the FIR, it was found that vehicle in question was indeed involved in the accident. Be that as it may, criminal proceedings initiated under Sections 279, 337 IPC against driver/respondent No.1 indicate that he was driving rashly or negligently. Therefore, delay in reporting the matter to police has no bearing on claim of claimant. What is to be seen herein is whether the offending vehicle was involved or not? It is matter of common knowledge that generally citizens refrain to get unnecessarily embroiled in Court proceedings except when it is unavoidable. In my opinion, learned Tribunal ought not to have given undue importance to the alleged eyewitness having himself not got registered the FIR promptly on the date of accident and further taking a period of 07 days to get the same registered.

9.1 Inquiries in compensation claims under Motor Vehicles Act are civil proceedings. In such inquiries, proof of disputed facts by preponderance of probabilities is sufficient. As against this, in criminal trials a higher degree of proof is required and the prosecution has to prove its case beyond any reasonable doubt. In present case, the evidence led by the appellants shows that the offending vehicle was indeed involved in the accident, which was caused by its rash and negligent driving by respondent No. 1 and resulted into injuries suffered by the claimant. Neither the owner nor the driver of the offending vehicle stepped into the witness box to say that at the relevant time, the offending vehicle and its driver were elsewhere than at the place of accident or that the accident was not caused by its rash and negligent driving by respondent No. 1. No evidence has been led by the respondent- Insurance Company to refute the claimants' version as aforesaid. I am of the opinion that evidence led by the claimants was sufficient to prove by preponderance of probabilities that the offending vehicle was indeed involved in the accident, which was caused by its rash and negligent driving by respondent No. 1 and resulted into injuries suffered by the claimant. It appears that while evaluating the evidence, the learned Tribunal misdirected itself in applying the standard of proof beyond any reasonable doubt like in a criminal trial, indulged into unnecessary hair splitting and knit-picking and wrongly decided issue No. 1 against the claimant- appellants.

10. In the premise, I am unable to convince myself with the findings returned by the learned Tribunal. The same are set aside. It is held that offending vehicle was indeed involved in the accident in question which was caused by its rash and negligent driving by respondent No.1 and resulted into injuries suffered by the claimant.

11. In view of the aforesaid findings returned by me, impugned award is set aside and claim petition is remanded to learned Tribunal to proceed further in

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accordance with law to render decision on merits *qua* issues No.2, 3 and 4. Parties to appear before learned Tribunal, on 27.07.2023. All other contentions are also left open to be adjudicated by learned Tribunal below.

12. As an upshot, appeal filed by claimant stands disposed of in above terms.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

01.06.2023
vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No