

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CM-9823-CII-2023 in/and
FAO-4834-2015
Date of Decision : May 30, 2023

Akib

.. Appellant

Versus

Ayb and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Gupta, Advocate, for the appellant.

Mr. A.S. Nirmaan, Advocate, for
Mr. G.S. Ahluwalia, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-9823-CII-2023

Present application has been filed for recalling the order dated 21.04.2023 by which, the present appeal was dismissed for non-prosecution.

Notice of the application to the counsel opposite.

Mr. A.S. Nirmaan, Advocate, accepts notice on behalf of respondent No.3. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The order dated 21.04.2023 is recalled and the appeal is restored to its original number and status.

FAO-4834-2015

1. Present appeal has been filed challenging the Award dated 13.05.2015 passed by the Motor Accident Claims Tribunal, Gurgaon by which, the claim petition filed by the appellant-claimant under Section 166 of the Motor Vehicle Act, 1988 has been dismissed.

2. Certain facts needs to be noticed for the correct appreciation of the issue in hand.

3. Appellant-claimant raised a claim that on 05.12.2013, he was going along with his brother-in-law Shamsheer to their shop situated at Ward No.8, Ferozepur Jhirka on a motorcycle belonging to his brother-in-law, which was being driven by his brother-in-law and at about 05:00 PM when they reached near the gate of the Court, another motorcycle having registration No. HR-28-D-3703 came from the Court side which was being driven by respondent No.2 in a rash and negligent manner and the said motorcycle struck with their motorcycle resulting in multiple injuries to the appellant-claimant as well as his brother-in-law. It was further alleged that he was admitted in the hospital and remained there for a period of three days.

4. Further, as per the claim petition filed by the appellant, after a period of more than one and half month of the accident in question, an FIR was got registered being FIR No.27 of 2014 wherein, the same allegations were made by the appellant-claimant and on the basis of the said registration of FIR, the claim petition was filed before the Motor Accident Claims Tribunal, Gurgaon seeking compensation under Section 166 of the Motor Vehicle Act, 1988. After the claim petition was filed, notice of motion was

issued to the respondents and the respondents appeared and contested the claim of the claimant.

5. Keeping in view the facts and evidence which came on record, the claim petition was dismissed by the Tribunal vide impugned Award dated 13.05.2015.

6. While passing the impugned Award, the Tribunal held that contradictory stands have been taken by the claimant and the facts and evidence which came on record, shows that the claim raised against the owner of vehicle No. HR-28-D-3703 is false. In order to reach the said conclusion, the Tribunal relied upon the fact that the FIR was registered after a period of more than one and half months of the incident and no explanation for delay has been tendered. Further, on the basis of the evidence and the statement of the claimant himself that “immediately upon the accident, he got unconscious and he does not know, who brought him to the hospital”, then how come the claimant knew about the identity of the driver of the offending vehicle.

7. Further, the Tribunal recorded a finding that concededly the motorcycle on which the claimant was a pillion rider, was being driven by his brother-in-law Shamsher and the said Shamsher never stepped into the witness box to confirm the allegations being alleged with regard to the identity of the offending vehicle or the motorcycle being driven by the person who was being alleged as a driver of the offending vehicle by the claimant. The said Award dated 13.05.2015 is under challenge in the present appeal.

8. Learned counsel for the appellant-claimant argues that in the

present case, though it is a conceded fact that the FIR was registered after a period of one and half month and there is no explanation which has come on record for the said delay but once an FIR has been registered on certain allegations, they have to be treated as correct.

9. The said assertion of the learned counsel for the appellant cannot be accepted.

10. Once, it is a conceded fact that after a period of three days from the accident, the claimant was discharged from the hospital and nothing has come on record as to why, the claimant took more than one and half month to get an FIR registered and that too with the clear allegation with regard to the offending vehicle and its driver. In case the same were already within the knowledge of the claimant, why the same were not brought to the notice of the police immediately.

11. Further, even when the claimant was admitted in the hospital, nothing has come on record that the injuries suffered were result of the accident in question as police was not summoned to enquire into this aspect as to how injury was suffered by the claimant.

12. Further, nothing has come on record as to why, the alleged driver of the motorcycle where the claimant was a pillion rider i.e. the brother-in-law of the claimant, never appeared before the Court to substantiate the claim raised by the claimant. Nothing has come on record as to what kind of injuries were suffered by driver of the motorcycle and whether he was able to identify the offending vehicle or not.

13. The major factor which has been taken by the Tribunal to disbelieve the allegations of claimant is that in the testimony, the claimant

himself conceded the fact that immediately upon the accident, he became unconscious and does not know who had taken him to hospital, then in those circumstances, how can the claimant knew about the offending vehicle, its number and its driver.

14. Learned counsel for the appellant has not been able to rebut any of the ground during the arguments which has been taken into account by the Tribunal so as to reject the claim as being raised in the claim petition.

15. Further, it is a matter of fact that the driver of the offending vehicle never appeared before the Tribunal to contest the claim petition. Once, allegations were being made against the driver of the offending motorcycle, he should have come to contest the claim but non contesting of the claim raises all the doubts that the same was already pre-planned in order to get the compensation. In normal circumstances, if allegation of rash and negligent driving is alleged against anyone, he will contest the same rather than not joining the proceedings at all. This fact clearly go to show that the claim which was raised after a period of more than one and half month of the accident, was raised after due planning with the motive of getting the compensation.

16. Keeping in view the facts and circumstances of the present case, it is clear that the claim which has been raised by the claimant is frivolous and no interference in the impugned Award is called for by this Court in the present appeal.

17. Keeping in view the fact that the present appeal has only been filed to extract compensation, this kind of attitude needs to be curb so that the genuine claims are not looked at with the suspicion by the competent

Court of law.

18. The present appeal is dismissed with the cost of Rs.25,000/- to be deposited by the appellant-claimant with the Institute for Blind, Sector 26, Near Homoeopathic Medical College and Hospital, Chandigarh.

19. Appellant is directed to deposit the said cost within a period of one month from today failing which, appropriate proceedings be initiated against him for recovery of the same by adopting due process of law as arrears of land revenue.

May 30, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes