

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-5881-2016 (O&M)
Date of decision: 08.02.2023

HARDEEP

...Appellant

VS

RAKESH KUMAR AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Uday Chauhan, Advocate for
Mr. Vivek Suri, Advocate
For the appellant.

Mr. Vishvanath Sharma, Advocate for
Mr. Sandeep Singal, Advocate,
For respondent No.1.

Mr. Vijiyesh Malhotra, Advocate for
Mr. Sandeep Suri, Advocate
For respondent No.2.

ARUN MONGA, J. (ORAL)

Instant appeal has been preferred by claimant against the impugned award dated 29.02.2016, vide which his claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation to the tune of Rs.14,00,000/-was dismissed by learned Motor Accidents Claims Tribunal, Rohtak (in short 'the Tribunal').

2. Briefly stated, the facts of the case are that claimant was going from Mata Darwaja, Rohtak to Delhi bypass, Rohtak as pillion rider on motorcycle bearing registration no. HR-12U-2738, whereas Raju was driving the said motorcycle. At around 9.30 a.m., when they reached near Jat College, Rohtak, driver of a Car parked on the road, bearing registration no. HR-12T-5230 (hereinafter referred to as the "offending vehicle"), opened the window of his side abruptly without giving any signal and giving

any indicator. At that very moment, motorcycle was in the process of crossing the car. Window of the car hit the motorcycle and the appellant and its driver. As a result thereof, the occupants of the motorcycle fell down on the road and sustained serious and grievous injuries. It is stated that accident was caused due to rash and negligence and by using the offending vehicle by its driver without following the traffic rules. First information report in this regard was also lodged.

3. Upon notice, respondent No.1-driver-cum-owner of the offending vehicle, filed reply by taking preliminary objections that the respondent No. 1 has a valid driving license and the offending vehicle being was insured, liability to pay the compensation, if any, is of the insurance company.

3.1. On merits, it is denied that the accident in question occurred due to the rash and negligent driving of the offending vehicle. Rest of the allegations were denied.

4. In the reply filed by respondent No.2, Insurance Company denied the factum involvement of the offending vehicle in any such accident and pleaded that no accident actually took place.

5. From the pleadings of parties, following issues were framed by learned Tribunal:

- “1) Whether present accident had taken place due to rash and negligent driving of vehicle bearing registration no. HR-12T-5230 by respondent No.1, in which petitioner suffered injuries? OPP*
- 2. If issue No.1 is proved in affirmative, to what amount 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 license on the date of alleged accident and that respondent No.1 has violated the terms and conditions of insurance policy? OPR3*
- 4. Relief.”*

6. On the basis of evidence adduced by the parties, issues No.1 and 2 were decided against claimant and issue no.3 was held to be redundant and hence, no finding given on it. Consequently, claim petition was dismissed with costs.

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

8. Learned counsel for appellant submits that appellant suffered grievous injuries. Consequently, he lost sight of the right eye which is a permanent disability to the extent of 30% on account of visual handicap. Disability certificate was proved on record by PW2 Dr. Jitender Phogat, Assistant Professor, Department of Eye, PGIMS Rohtak. He submits that immediately after the accident, appellant was taken to PGIMS Rohtak and subsequently he was shifted to All India Institute of Medical Sciences (AIIMS), New Delhi. He submits that appellant appeared as PW1 and was cross-examined but his testimony could not be shattered. Rather, on the other hand, mere suggestions were given that no such accident took place. He submits that Tribunal has non-suited claimant only on the ground that there is an unexplained delay of 6 days in lodging the FIR.

9. Per contra, Learned counsel for the respondent-Insurance company submits that the accident took place on 22.06.2013 and the FIR was registered on 28.06.2013. There is thus clear delay in lodging of the FIR. He strenuously relies on para 14 of the award, which is reproduced for ready reference, as below:

“14. Thus, as per evidence, the informant had been discharged from the hospital on 23.06.2013. The OPD Card Exhibit P3 reveals that the uncle of the patient Hardeep had stated that of their own will they did not intend to get the patient admitted in the hospital. Exhibit P4 i.e., prescription slip reveals that patient was also taken to Sunflag Super

Specialty Hospital and Trauma Centre, at Rohtak with the alleged history of blunt trauma to right retina. Although, the MLR Exhibit P2 reveals that patient was taken to the hospital with the alleged history of road side accident, but there is no reasonable explanation as to why intimation to the police was given on 24.6.2013 and the FIR was lodged on 28.6.2013. Though, the accident might have taken place in which the eye of the claimant was damaged, but in the opinion of the Tribunal, the false implication of the offending vehicle cannot be ruled out to claim the money from the insurance company. More particularly, none of the person accompanying the claimant or the said Raju was also got injured has been examined by the claimant. It has not been explained how all the medicines have been lost.”

10. Learned counsel for appellant, assailing the award, strongly opposes the argument of learned counsel for respondent No.2-Insurance Company that there is unexplained delay in registration of the FIR. He relies on judgment in ***FAO No.8040-2014 decided on 06.05.2015*** titled “***Reliance General Insurance Company Ltd. Vs. Smt. Mem Wati and others***”, rendered by this court, relevant whereof is extracted herein below:

“8. After hearing learned counsel for the appellant and after going through the record, first of all, I find that delay of four days in registering the FIR is of no consequence. Only on this ground, it cannot be held that the claimants have not proved the rash and negligent driving of respondent-driver. Secondly, neither the driver nor the owner has come to the witness box to rebut the statement of eye witness Keshav Dev, who also got recorded the FIR. The mere fact that driver was munshi of respondent-owner of the car and the fact that respondent-owner is an Advocate, itself will not show that false vehicle has been planted in this case. The statement of RW-1 Mahesh Bist, Investigator of Insurance Company, is of no value. He has not seen the accident. He has simply given the observation that there are two speed breakers etc. and deceased might have fell due to these speed breakers. The report of this Investigator of the Insurance Company is of no value, especially, in view of the fact that after the investigation in the FIR, challan was presented against respondent-driver and the trial was going on at that time. The mere fact that the vehicle number and driver's name have not been mentioned in the FIR, will also not prove version of the appellant Insurance Company that false vehicle has been planted. There is nothing in the evidence to show as to why respondents-driver and owner would collude with the claimants.

9. *The findings given by learned Tribunal are correct and after appreciating the evidence in right perspective. There is no cogent evidence on record to show that vehicle has been falsely planted in this case. The statement of the eye witness remained unrebutted on the file.*

10. *In view of the above discussion, I find that findings in the Award dated 15.03.2014 given by the Tribunal are correct, as per evidence and law and do not require any interference from this Court.*

11. *Therefore, finding no merit in the present appeal, the same is dismissed.
Appeal dismissed.”*

11. I am in respectful agreement with the above view taken in FAO-8040-2014 decided on 06.05.2015 *ibid*.

12. In the case in hand, learned Tribunal noted that the accident took place and the complainant/claimant was injured on 22.06.2013. Raju on whose motor cycle he was riding pillion, had also been injured. Said Raju had informed the claimant's elder brother Anil Kumar. The latter got the claimant admitted to PGIMS, Rohtak. Later, the claimant was taken to AIIMS, New Delhi, where he underwent an operation. Intimation of the accident had been given to the police on 24.03.2013. The claimant himself had lodged the FIR on 28.06.2013. Naturally, after the accident, the immediate concern and priority of the complainant and his family was his care and treatment.

12.1. After operation of the eye, the complainant would have taken time to recover before being able to move out for going to the police station for registration of FIR. Considering this, coupled with the fact that the intimation of accident stood already given to the police on 24.03.2013, in my opinion, there was no unreasonable delay in lodging the FIR. The learned Tribunal seems to have taken an erroneous view by holding that there was unexplained delay in the lodging of FIR. Standard of proof in such cases is

based on preponderance of probabilities, as against standard of proof beyond reasonable doubt required in criminal trials. Direct evidence of the injured claimant had come on record showing that the offending vehicle had been parked on the road and when the motor cycle was passing by its side, suddenly the car driver opened the door of his vehicle resulting into the accident. The impugned award does not show if there was anything inherently unbelievable in his testimony. Respondent No. 1(owner-driver of the offending car) took the stand that accident took place due to the negligence of the driver of motor cycle. It is not shown if the Insurance Company had even taken any stand that the offending vehicle had been falsely implicated. In view of this, the sworn testimony of the claimant-injured ought to have been believed in the absence of any evidence to the contrary. On conjectures and surmises alone, the same could not be discarded.

12.3. To my mind, the learned Tribunal erred by discarding the said evidence while opining that the false implication of the offending vehicle could not be ruled out to claim the money from the insurance company, while deciding issue No. 1 against the claimant.

12.4. In the premise, the findings of learned Tribunal on issue No.1 are reversed. It is thus held that the accident in question indeed took place involving the car bearing registration No.HR-12T-5230.

13. Furthermore, Tribunal below simply observed that in view of its finding on issue No. 1,the claimant was not entitled to any compensation. Since, finding of the learned Tribunal on issue No. 1 is already reversed in

the preceding para, as a necessary sequel thereof, the finding of the learned Tribunal on issue No. 2 is also set aside.

14. Learned Tribunal since did not return any findings on issues No.2 and *qua* the quantum of compensation for the injuries suffered by the claimant. Consequently, the impugned order dated 29.02.2016 is set aside and the matter is remanded back to learned Tribunal for reconsideration and decision on issues No.2 and 3 and render its award afresh. Parties to remain present before learned Tribunal on 23.03.2023.

15. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

February 08, 2023
Vandana

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