

206 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CM-26651-CII-2014 IN/AND  
FAO-9634-2014 (O&M)  
Date of Decision: 03.02.2023

Joginder

..... Appellant

Versus

Sandeep Kumar and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Shilak Ram Hooda, Advocate,  
for the appellant.

Mr. Amrinder Singh Sidhu, Advocate,  
for respondent No.3-Insurance Company.

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**RAJBIR SEHRAWAT, J. (ORAL)**

**CM-26651-CII-2014**

This is an application for condonation of delay of 85 days in filing the appeal.

Notice in this application was issued on 20.04.2015, however, no reply to the application has been filed so far.

In view of the above, the present application is allowed and the delay of 85 days in filing the appeal is condoned.

**Main Case**

The present appeal has been filed by the appellant against the award dated 07.05.2014 passed by the Motor Accident Claims Tribunal, Sonapat (in short, 'the Tribunal'), whereby claim petition under Section 166 of the Motor Vehicles Act, 1988, filed by the applicant/petitioner has been dismissed.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts of this case are that a claim petition was filed by the claimant-Joginder asserting therein that on 11.05.2012 at about 5:30 PM, he, along with his cousin Surrender, was going to his village Murthal after finishing his work, on his motorcycle bearing registration No.HR-10G-7406. When they reached near Revli minor bridge, one Indigo car bearing registration No.HR-05AD-3812; being driven by respondent No.1 in rashly and negligently at a high speed, came and hit against the motorcycle of the claimant. As a result, the motorcycle fell down and the claimant suffered multiple injuries on various parts of the body; including head injury and fracture on right shoulder and right ribs. Even the pillion rider Surrender sustained simple injuries. The injured remained admitted in hospital near Rai, Murthal. After giving initial treatment, the injured was referred to Fortis Hospital, Shalimar Bagh, Delhi, where he remained admitted from 11.05.2012 to 20.06.2012. He remained in ICU on ventilator during this period. He was operated upon twice on his brain and an amount of Rs.13,00,000/- had already been spent by the injured towards the operations, medicines and special diet, as well as, doctors fees, attendant and travelling charges. It was further asserted that the treatment was still going on. The claimant had suffered permanent disability; as well; because he was rendered of unsound mind and bed ridden; as such. An FIR No.183, dated 19.05.2012, under Sections 279, 337 and 338 of the Indian Penal Code, was

also registered in this regard at Police Station Sadar, Sonapat. With these assertions, the claim petition was filed further asserting therein that injured claimant Joginder was earlier earning Rs.20,000/- per month by plying his taxi bearing registration No.UK-08TA-1330. He was paying the installment of Rs.12,000/- per month in addition to Rs.3,000/- towards permit and tax. He was aged 47 years at the time of accident. Accordingly, an amount of Rs.30,00,000/- was claimed as compensation.

On being put to notice, respondents No.1 and 2 filed their joint written statement controverting the claim of the petitioner and denied the rash and negligent driving on the part of the driver of the offending vehicle. It was further asserted that, in fact, the claimant had suddenly come in the middle of the road which resulted in the accident. It was also asserted that a false and fabricated case was registered against them in collusion with the police. The claim of compensation was also stated to be exaggerated.

Respondent No.3-Insurance Company filed separate written statement taking routine objections qua maintainability. It was asserted by the Insurance Company that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident and the insured violated the terms and conditions of the insurance policy. On merits, the accident, as well as, the manner in which accident is stated to have occurred was denied by the Insurance Company. It was asserted that as per the knowledge of the answering respondent, the injured was driving his motorcycle on wrong side of the road in a rash and negligent manner and, therefore, he was responsible for the accident. Collusion between the

claimant and the driver was also asserted by the Insurance Company, besides stating the claim of the injured to be exaggerated.

In the evidence, the claimant examined the treating Dr. Amit Gupta as PW1, the pillion rider Surender as PW2, Smt. Sudesh as PW3, Naveen Sharma as PW4, Dr. R.N.Tehlan as PW5 and Pardeep Kumar, Billing Clerk of the hospital as PW6. Besides this, the medical bills, material regarding the petitioner owning taxi, the driving licence and the copy of the FIR, were placed on record. In total, the injured claimant has placed on record as many as 33 documents, along with the disability certificate as Exhibit P5/A.

On the other hand, respondent No.3-Insurance Company only tendered Exhibit R1 in evidence. Beyond that, neither any witness was examined nor any document was tendered in evidence. The Tribunal has dismissed the claim petition altogether. Hence, the present appeal has been filed.

Arguing the case, learned counsel for the appellant has submitted that the Court below has gone wrong in law in dismissing the claim petition altogether; without even appreciating the material on record. The Tribunal has fallen in legal error in dismissing the petition by relying upon the fact that there was a delay in lodging the FIR; and on account of the fact that the author of the FIR had not disclosed the fact from where he came to know about the registration number of the offending vehicle in question. Learned counsel has further submitted that registration of the FIR is not a *sine qua non* for maintenance of the claim petition; as such. Hence,

the Tribunal has dismissed the claim petition on totally irrelevant facts. The Learned counsel has relied upon judgment rendered by this Court on 06.01.2023 in **FAO No.5296 of 2022** titled as '**United India Insurance Company Limited Vs. Mamta and others**'.

On the other hand, learned counsel for the respondent-Insurance Company has submitted that the claim petition has rightly been dismissed by the Tribunal. No interference is called for. The learned counsel has submitted the very fact that FIR was lodged after 07 days of the accident; shows the manipulation and concoction in the version of the claimant. Hence, no fault can be found in the rationale given by the Tribunal for dismissing the claim petition.

Having heard learned counsel for the parties and perused the record, this Court finds substance in the arguments raised by the learned counsel for the appellant. The only ground given by the Tribunal for dismissing the claim petition is that there is a delay in lodging the FIR and there are inconsistencies in the version given in the FIR by the author of the FIR and who happens to be the pillion rider on the motorcycle which was being driven by the injured-claimant. However, registration of the FIR itself is not a *sine qua non* for maintainability of the claim petition under the Motor Vehicle Act. This Court has already so held in **Mamta's** case (supra). Therefore, merely on account of some alleged inconsistencies in the FIR or delay in lodging the FIR, the claim petition could not have been decided either way. This Court has already held in the above mentioned case that the FIR being a collateral aspect can, at the best, be relied upon to show the

factum of the accident only; and any other aspect of the FIR or the criminal case is totally irrelevant for the decision of the claim petition. The claim petition is required to be decided as per the evidence led by the claimant in the claim petition before the Tribunal.

A perusal of the award passed by the Tribunal shows that the Tribunal has not conducted even the proceedings in an appropriate manner. The Tribunal has even referred the pillion rider as the claimant and petitioner in the award, whereas it was only Joginder who was the claimant; and the pillion rider Surrender is only the witness in the case. Even the statement of the pillion rider recorded by the Tribunal shows that it is recorded in a casual manner or by some other person without direct supervision of the Presiding Officer himself. Moreover, even the materials which have been placed on record by the claimant in the form of various bills, by production of the officials who had issued the said bills, as well as, the record of treatment which was duly proved by producing the concerned doctors as the witnesses; have not been considered by the Tribunal. No findings have been recorded qua the same. Not only that, the Tribunal has even not made any attempt to assess the income and the loss as such, if any.

In view of the above, this Court is of the view that the matter deserves to be remanded to the Tribunal for fresh decision by setting aside the award passed by the Tribunal. Accordingly, the award passed by the Tribunal is set aside. The Tribunal is directed to decide the case afresh. In the process, the evidence which has already been led on record in the form of the bills and the testimony of the doctors and other witnesses; except

PW2 Surrender; would be read in evidence for the purpose of fresh decision. However, the statement of the stated pillion rider Surrender is directed to be recorded afresh, by the Presiding Officer himself in his own handwriting.

The Tribunal is also directed to take a final decision on the claim petition within a period of six months from the date of receipt of the certified copy of this order. The parties are directed to appear before the Tribunal on 23.02.2023.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)  
JUDGE

03.02.2023  
adhikari

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |