

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
227 Date of decision: 04.05.2023

FAO-5469-2018 (O&M)

Smt. Suresh Devi

...Appellant(s)

Vs.

Rahul & Others

...Respondent(s)

FAO – 6304-2018

Mainpal

...Appellant(s)

Vs.

Rahul & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. J.P. Sharma, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-22028-CII-2018 in FAO-6304-2018

This is an application under Section 151CPC seeking
condonation of delay of 10 days in re-filing the appeal.

After going through the contents of the application, the
same is allowed subject to all just exception.

MAIN CASE

Present appeals have been filed by the injured-
claimants against dismissal of their claim petitions bearing MACP Case
No.92 of 2016 filed by appellant Smt. Suresh Devi; and MACP Case No.93
of 2016 filed by appellant Mainpal, vide common Award dated
07.02.2018 passed by Motor Accident Claimants Tribunal, Narnaul

(hereinafter referred to as “the learned Tribunal”). Both the above said claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”).

2. It was the pleaded case of the claimants before the learned Tribunal that on 18.10.2015, claimant-Suresh Devi was pillion riding motorcycle bearing No.HR-34-7915 being driven by her husband claimant-Mainpal. When they reached near village Sehma then from the side of village Atali one motorcycle bearing registration No.HR-35K-1488 (alleged offending vehicle), being driven by respondent No.1 at a high speed and in a rash and negligent manner hit into the motorcycle of the claimants as a result of which they fell on the road and sustained multiple grievous injuries. It is the case of the claimants that the accident took place due to rash and negligent driving of motorcycle No.HR-35K-1488 by respondent No.1/driver.

3. Learned Tribunal on the basis of evidence, pleadings and facts placed before it concluded that claimants were not able to prove that accident took place on account of rash and negligent driving by respondent No.1/driver of motorcycle No.HR-35K-1488 and accordingly, dismissed the above said claim petitions filed by the claimants.

4. Learned counsel for the claimants submits that learned Tribunal was in error in dismissing the claim petitions filed by the appellants as the appellants had produced sufficient documentary and oral evidence to prove that injuries suffered by them were caused due to

rash and negligent driving by respondent No.1 of his motorcycle bearing No.HR-35K-1488. It is submitted that there was no ground with the learned Tribunal to reject the claim as PW1 to PW4, and documents Exhibit P1 to Exhibit P4/B proved that the injuries sustained by the claimants were caused in the accident in question. It is submitted that learned Tribunal has failed to correctly appreciate the evidence on record as, even an FIR was registered in pursuance to the accident in question, however, learned Tribunal has rejected the same as there was delay of 11 days in registration of FIR. It is stated that findings of the learned Tribunal regarding rejection of the evidence led by the appellants by the Tribunal are based on conjectures and surmises. It is submitted that after hitting into the motorcycle of the appellants, respondent No.1 had for once stopped his motorcycle and then fled away. It is submitted that in the brief time that the respondent-driver stopped the motorcycle, claimant-Mainpal had noted the registration number of the motorcycle, and therefore, there was no reason for the learned Tribunal, to doubt the involvement of the offending vehicle in the accident in question.

5. No other argument is raised on behalf of the appellants.

6. I have heard learned counsel for the appellants.

7. Perusal of record of the case shows that learned Tribunal has recorded following findings in respect of the accident in question:-

"11. I have considered the arguments advanced by the parties and have taken myself through the record. The accident took place on dated 18.10.2015. The claimants were initially taken to civil hospital Naraul but thereafter on the same day they were taken to Getwel hospital Narnaul. Claimant Suresh Devi was discharged on 24.10.2015 and claimant Mainpal was discharged on 28.10.2015. However the FIR was recorded on dated 29.10.2015. Thus there is delay of about 11 days in registration of the FIR. In the FIR claimant Mainpal got recorded that he and his wife (claimant Suresh Devi) were going on their motorcycle and when they reached near a Hotel near village Sehma a motorcyclist came in rash and negligent manner and banged in his motorcycle on account of which he and his wife fell down. It was further stated in the FIR that after the accident the motorcycle stopped for a while and Mainpal noted the number of motorcycle as no.HR35K-1488 and thereafter the motorcyclist fled away. There is nothing in the FIR to suggest that any other person apart from Mainpal and Suresh Devi (claimants) witnessed the accident. The claimant Mainpal in his evidence filed affidavit Ex.PW2/A wherein he gave similar account of the accident and claimant Suresh Devi also filed her affidavit Ex.PW3/A stating that her husband had noted the number of the motorcycle. In the medical documents of Getwel hospital (Ex.PW1/B) it is noted that claimant suffered injuries on account of fall from bike which apparently does not suggest that any other motorcycle was involved in the accident. The claimant Mainpal had suffered multiple injuries in the accident including fractures and ultimately he got his permanent disability (Ex.PW4/B) assessed as per which he suffered 33 % permanent disability. It seems highly improbable that after having sustaining such serious injuries

he was in a position to see and memorise the number of the alleged offending motorcycle. Moreover the accident took place at about 11:00 p.m and it seems highly improbable that the number of the alleged offending motorcycle was clearly visible. Had he claimant Mainpal actually seen and memorised the number of alleged motorcycle he could have definitely told it to his attendant(s) and FIR could registered earlier. It appears that after significant delay and after careful deliberations the insured motorcycle no.HR35K-1488 was involved in order to grab compensation from respondent-insurance company. The delay in the FIR coupled with the history as given in the medical documents of Getwel hospital strongly suggest that insured motorcycle no.HR35K-1488 was actually not involved in the accident. Having regard to the aforesaid, the claimants have not been able to prove that accident took place on account of rash and negligent driving by respondent/driver by motorcycle no.HR35K-1488."

8. First and foremost, even now, learned counsel for the appellants is unable to explain the inordinate delay of 11 days in registration of the FIR. It is not clear to this Court that if the claimant-Mainpal had indeed, noted down the number of the alleged offending motorcycle as HR-35K-1488, then what stopped him from reporting the same to the police immediately. Even if case of the claimants is to be believed, and even if benefit of doubt is to be given to claimant-Mainpal that he was unable to report the accident due to injuries suffered by him, even then, nothing has been disclosed as to what stopped him from revealing the number of the alleged offending vehicle to his wife/claimant-Suresh Devi. I am also in agreement with the observation

of the learned Tribunal that as the accident in question had occurred at about 11 pm, it would be highly unlikely that the claimant could have seen and memorised the number of the alleged motorcycle at that late hour in the dark. I concur with the observation of the learned Tribunal that there is likelihood of the claimants colluding with the insured motorcycle No.HR-35K-1488 in order to grab the compensation. Even otherwise, learned counsel for the appellants has been unable to controvert the above said findings of the learned Tribunal in any manner, or satisfactorily explain the above said lacuna/contradictions in the evidence led by the appellants.

9. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeals accordingly, stands **dismissed**.

10. Pending application(s) if any also stand(s) disposed of.

04.05.2023
Sunena

(Nidhi Gupta)
Judge

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