



209

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

FAO-4109-2005**DECIDED ON: 19.09.2024****HARMEL SINGH****.....APPELLANT****VERSUS****BHAGWAN & ORS****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.**

Present: Mr. Karandeep, Advocate, for
Mr. Bijender Dhankar, Advocate,
for the appellant.

Mr. Sahej Mahajan, Advocate,
for respondent No.3 – OIC.

SANJAY VASHISTH, J (ORAL)

1. Injured – Harmel Singh has filed the present appeal, by challenging the award dated 06.05.2005, passed by learned Motor Accident Claims Tribunal, Sonapat, (hereinafter referred as ‘learned Tribunal’), whereby MACT case No.169 of 2003 has been dismissed.

2. Appellant (hereinafter referred to as ‘claimant’) filed the claim petition, under Section 166 of the Motor Vehicles Act, 1988, (hereinafter referred to as ‘Act, 1988’), seeking compensation in regard to the injuries suffered by him in a motor vehicular accident.

3. It has been pleaded in the claim petition that on 16.04.2003, claimant along with Munish s/o Ram Diya was going from village Baiyanpur towards Sonapat on his motor cycle bearing registration



No.HR-42-5682, while driving it at a moderate speed. At about 7.00 P.M., when they reached near Ahuja Hospital, Sonapat, in the area of old D.C. Road, a truck bearing registration No.HR-69-1909 (hereinafter referred to as 'offending vehicle') came from the side of Mamu Bhanja Chowk. Said truck was being driven by Bhagwan (respondent No.1) in a rash and negligent manner. The driver side of the truck struck against the motor cycle of the claimant, who fell down and sustained grievous injuries on the right arm and serious injuries on the other parts of the body. Pillion rider Munish did not suffer any injury. Satyawar son of Bhartu was coming on his motor cycle and he witnessed the accident and thereafter, he immediately took the claimant to Bharat Hospital, Sector 14, Sonapat, from where the claimant was referred to P.G.I.M.S., Rohtak, where he remained admitted for about three months.

4. Counsel for the appellant/claimant argues that the accident has been well admitted by respondent Nos.1 and 2 (driver and owner of the offending vehicle) in their joint written statement. However, they pleaded that it was the motor cyclist (claimant) himself, who was rash and negligent in driving his motor cycle, and there being no fault of respondent No.1 in driving his vehicle, claimant cannot be held entitled for the compensation from the respondents.

5. Counsel for respondent No.3 (Oriental Insurance Company Limited), argues that the vehicle No.1990 and its driver have been falsely implicated in this case.

Upon this, counsel for the appellant points out that while denying its involvement, respondent No.3 (insurance company) has taken



a dual plea by saying that *In alternative, if any accident has taken place, it was due to the rash and negligent driving of the claimant himself in driving his motor cycle*, and thus, attempt of Insurance company is just to avoid its liability to pay compensation.

6. After inviting pleadings from all the parties, learned Tribunal framed following four issues:-

1. *“Whether the petitioner sustained injuries as a result of rash and negligent driving of the vehicle in question by respondent No.1, as alleged? OPP*
2. *Whether petitioner is entitled to compensation, if so to what amount and from whom? OPP*
3. *Whether respondent No.1 was not duly licenced, if so to what effect? OPR*
4. *Relief.”*

In support of the issues, respective evidence was led by the parties.

7. While deciding issue No.1, learned Tribunal discussed in detail, and thereafter dismissed the claim petition, primarily on the ground that in the case in hand, no FIR has been got registered at the instance of the claimant, rather, one criminal complaint was filed after a period of three and a half months. Obviously, after procuring the vehicle and twisting the facts, a story has been concocted, and thereafter, the claim petition has been filed.

8. This Court has considered the plea addressed by counsel for the parties before this Court, and has also gone through the reasonings assigned in the award dated 06.05.2005 by the Tribunal and thereupon, is



of the view that if the facts and pleadings taken by the respective parties are summarised, it would reach to the conclusion that as per the medical record, where the claimant was medically examined, the reason of suffering of the injuries is mentioned as road side accident (RSA), however, details of the vehicle involved is not mentioned.

Relevant findings recorded in paragraph No.10 by learned Tribunal are reproduced as under:-

“10. As per own admission of Harmel Singh petitioner, one Manish of his village was a pillion rider on his motor cycle at the time of accident but that Manish was not examined as a witness to support the version of the accident which raises an inference against the correctness of the version of accident given by the petitioner. PW-2 Satyawar appears to have been introduced as an eye-witness. He is the uncle of the petitioner as admitted by him in the first line of his cross-examination. Satyawar admitted that the old D.C. Road is very busy road and at the time of accident, there was a heavy rush on that road. Then it does not appeal to mind as to how the truck driver fled away from the spot after causing the accident when there was a heavy rush of people on the road at the time and place of accident. Immediately after the accident, the petitioner was removed to Bharat Hospital and from there he was referred to P.G.I.M.S., Rohtak. It has been mentioned in the OPD Slip Ex.P-9 of Bharat Hospital as well as the MLK Ex. P-21 that the petitioner sustained injuries in a road accident but the number or kind of the offending vehicle has not been mentioned in any of these documents though Harmel Singh petitioner went. to the extent of



deposing that he had not only told that the accident took place with a truck but also told the number of the truck to the doctor.”

9. It is a matter of common prudence that the details of the vehicle with whom the accident had taken place, is not generally mentioned in the medical record/MLR etc. Therefore, there cannot be any denial to the fact that the claimant had suffered the injuries on 16.04.2003, wherefrom, he was taken to Bharat Hospital, Sonipat, and further referred to P.G.I.M.S. Rohtak, where as per the pleadings, injured was operated 3-4 times for the injuries suffered by him in his right hand.

Right of compensation should not be denied merely because it is alleged that the claimant has connived with the owner and driver of the offending vehicle. While considering such a defence raised by the Insurance Company, the Court or Tribunal would certainly examine whether, while taking this plea in the written statement, the insurance company, as the custodian of public money, has ever filed any complaint against the conniving people.

In the present case, this Court does not find any such complaint. Therefore, by merely observing that the complaint was filed after a period of three and a half months would not be a sufficient grounds to conclude that the claimant, driver and owner of the offending vehicle were conniving to receive the compensation amount.

10. Despite taking a specific plea of connivance of the claimant with driver and owner of the offending truck, never any action against the insured and the claimant has been taken on the charges of attempting to misuse the public funds.



There cannot be any dispute that the amount in the hands of the Insurance Companies is public money. Therefore, by concocting the false version, same cannot be left for its misuse by the private citizens. Custodian of the said public money are expected to protect the same, by taking remedial steps under the law.

11. Here, in the present case, no complaint was ever moved to any authority or police to investigate the issue of connivance of the claimant with the driver and owner of the offending vehicle. Once, the Insurance Company itself did not pursue the matter further, after taking the plea of collusion in its written statement, the occurrence of accident involving offending truck No.HR-69-1909 cannot be doubted. Moreover, for the reason that in the medical record, the reason of suffering of the injuries is already referred to as roadside accident (RSA).

12. Thus, findings recorded under issue No.1 is hereby reversed, and the same is answered in affirmative by holding that the claimant has suffered injuries on account of the rash and negligent driving in the accident, having taken place with the truck.

13. It is not disputed that the vehicle in question is insured with respondent No.3 and the driving licence (Ex.R-5) issued by the Driving Licencing Authority (Ex.R-3 and Ex.R-4) has already been placed on record. A finding has already been recorded by learned Tribunal that respondent No.3 could not avoid its liability for payment of compensation on the ground that respondent No.1 was not holding a valid driving licence, at the time of accident.



In this regard, findings recorded under issue No.3 by learned Tribunal is also reproduced here under:-

“18. In support of this issue, respondent No.3 has produced reports of Licensing Authority Ex.R-3 and R-1 and respondent No.1 has proved his driving Licence Authority Ex.R-3 and R-4 and respondent No1 has proved his driving licence Ex.R-5. According to report Ex.R-3, the driving license was issued in favour of respondent No.1 on the basis of his old driving licence issued from Solan. As per report Ex.R-4, driving licence No.B-6837 dated 13.5.1989 was not issued in favour of Shri Bhagwan by Licensing Authority itself. So, no reliance can be placed on this report. So, respondent No.3 could not avoid its liability for payment of compensation on the ground that respondent No.1 was not holding a valid driving licence at the time of accident though respondent No.3 is not liable for payment of compensation in view of the findings on the aforesaid issues.”

14. Since, nothing has been discussed in the award passed by learned Tribunal about the evidence led by the claimant in regard to the expenditure done by him for the purpose of treatment and other required purposes, which he had to face after the said accident, this Court has to look into the aspect that there is a plea of suffering of fracture in the right arm of the claimant and multiple injuries on his body.

15. Accordingly, this Court deems it appropriate to hold that the appellant/claimant is entitled for a lump sum amount of compensation of Rs.75,000/- (Rupees Seventy Five Thousand only).



Let the awarded amount of Rs.75,000/- be paid to the appellant-claimant, within a period of thirty days from today by respondent No.3 – Insurance Company.

16. In case, the said amount is not paid within the stipulated period, the same shall be payable by Insurance Company along with interest @ 7.5% p.a. from the date of today’s order till its realization.

17. With the reasons recorded here above, present appeal stands disposed of.

(SANJAY VASHISTH)
JUDGE

19.09.2024
Lavisha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>