



FAO-2543-2007 (O&M)

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

**FAO-2543-2007 (O&M)
Date of Decision: 10.02.2025**

Sumit @ Sunny

.....Appellant

Vs.

Ramphal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Tushar Gera, Advocate,
for the appellant.

Mr. Vinod Gupta, Advocate,
for respondent No.3-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred by the appellant for setting aside the award dated 18.04.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal'), whereby, claim petition filed by the appellant/claimant for grant of compensation on account of injuries sustained by him, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 22.11.2001 at about 6:00 P.M., appellant/claimant along with one Sanjiv Kumar was going from Nagori Gate, Hisar towards his house, on a scooter bearing registration No.HR-20E-1857, being driven by one Sanjiv Kumar, whereas, appellant/claimant was the pillion rider with him. When they reached near



four-wheeler chowk, a truck bearing registration No.HR-38-2688, being driven by respondent No.1, came from the back side in a rash and negligent manner and struck against the said scooter. As a result thereof, scooter fell down and the appellant/claimant received multiple grievous injuries. It is alleged that the tyre of the offending truck ran over the stomach of the appellant/claimant, due to which, his hips, bones were fractured and his urinal track also got ruptured. Thereafter, appellant/claimant was shifted to Chawla Nursing Home, Hisar, where he was treated and operated by the doctors.

3. Upon notice of the claim petition, respondents appeared and filed their respective replies denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

“1) Whether the accident in question resulting in injuries to Sumit took place due to rash and negligent driving of offending truck bearing registration No.HR-38-2688 driven by respondent No.1, as alleged? OPP

2) If issue No.1 is proved, to what amount of compensation and from whom, the petitioner is entitled to recover? OPP.

3) Whether the offending vehicle was being driven by an unauthorized person without holding a valid license? OPR3.

4) Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the



appellant/claimant filed the present appeal for setting aside the award passed by the learned Tribunal and for grant of compensation.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the appellant/claimant contends that the learned Tribunal has wrongly dismissed the claim petition on the ground that the appellant/claimant failed to prove that the accident in question took place due to rash and negligent driving of the offending truck bearing registration No. HR-38-2688. He prays that the award deserves to be set aside and compensation needs to be awarded to the appellant/claimant, as per the latest law.

7. *Per contra*, learned counsel for respondent No.3-Insurance Company, however, vehemently argues that the award does not suffer from any illegality and infirmity and has rightly been passed by the learned Tribunal. He prays for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant paragraphs of the award are reproduced as under:-

“10. Now coming the first plank of controversy, which is very crucial for the decision of the case, as to whether the accident in question resulting in injuries to Sumit took place due to rash and negligent driving of offending truck bearing registration No. HR-38-2688 driven by respondent No.1. In this context, the counsel for the Insurance Company vehemently contended that the present petition is nothing but a glaring example of collusion between the petitioner and respondents No. 1&2 for illegal gains by claiming false compensation. In



fact, the alleged truck and the driver have been subsequently introduced as a result of an after thought to make it a case for compensation. It was vehemently contended that according to the first version of FIR Ex. P14, proved by PW3 Vipin Kumar Criminal Ahlmad, the accident took place on 22-11-2001 by unknown driver while driving maruti car No.30, but later on after a period of about four months, the truck in question has been taken in possession by the police and shown to have caused the accident. The stand taken by the petitioner is self contradictory. On the other hand, the counsel for the petitioner contended that in fact the police at its own had recorded the maruti car and shown the driver to be an unknown one. The petitioner has made the stand clear while appearing in the witness box as PW12 and the examining PW11 Sanjiv Kumar, eye witness. Both of them were riding the ill fated scooter.

11. I have gone through the evidence led by the claimant. On the very outset I agree with the contention raised by the counsel for the Insurance Company. Admittedly, PW11 Sanjiv Kumar was driving the scooter at the relevant time. He has stated that he was driving the scooter at a moderate speed of 20/30 km per hour and when they reached near four-wheeler chowk, a truck came from behind which was being driven at a very fast speed and struck into their scooter, as a result of which they fell down on the road and sustained injuries. The front wheel of the truck ran over the petitioner Sumit, who received injuries on the hip and abdominal portion. The truck bearing registration No. HR-38-2688 was stopped and the driver of the truck got down. A large number of people gathered at the spot, who caught hold



the driver of the truck, who told his name as Ramphal. PW12 Sumit has also corroborated the version of PW11 Sanjiv. Thus according to the second version which is raised in the court it was the truck which had run over Sumit wherein he received injuries and the truck as well as its driver were over-powered on the spot. Thus, the version raised in the court is directly in contradiction with the first version of the petitioner in the FIR. It is not disputed that PW11 Sanjiv had lodged the FIR Ex. P14 soon after the accident, wherein he categorically disclosed that a maruti car No. 30 which was driven by unknown person had struck into their scooter. The site plan Ex. R3 dated 23-11-2001 proved by PW3 Vipin Kumar. Ahlmad also shows the presence of the car wherein the number of the car scooter as well as the location has also been mentioned. Ex. R4 is the statement of the Sanjiv Kumar made before the police under Section 161 Cr.P.C, wherein he has corroborated the version as stated in the FIR Ex. P14 that accident has been caused by maruti car No.30 driven by unknown driver. Ex.R2 is the mechanical report of the truck No. HR-38-2688 which goes to show that the truck was taken into possession on 14-3-2002 and even the driver was arrested on that day. The mechanical report shows that there is no even a slight dent or damage to the truck. The driver and owner of the truck have not appeared in the witness box to substantiate their version. No explanation has come to how the truck and driver Ramphal has been substituted instead of car after a considerable delay of about 112 days from the date of lodging of the FIR. Thus there is direct contradiction between two version i.e. first



version made before the police and second made before the court, as discussed in dated above.

12. Another factor which arouses suspicion is that according to the pleadings and the statement of PW12 Sumit the front wheel of the truck ran over the abdominal portion of his body. It is impossible to believe that a person will survive when the tyre of a truck runs over the abdominal portion of the body. It also gives credence to the first version that was only a maruti car which is much lighter in weight and may not cause death of its tyre runs over the body.

13. In view of the discussion made above, since the petitioner has miserably failed to prove that the accident resulting in injuries to him took place due to rash and negligent driver of truck No. HR-38-2688 driven by respondent No.1. Ramphal he cannot claim any compensation from the respondents. Issue No.1 is accordingly, decided against the petitioner.”

10. A perusal of the record shows that the learned Tribunal has correctly appreciated the evidence and returned a well-reasoned finding that the accident in question was not caused by the alleged offending truck bearing registration No. HR-38-2688. The learned Tribunal's decision is based on material inconsistencies in the testimony of PW11-Sanjiv Kumar, the eye-witness, as well as other substantive evidence on record.

11. A fundamental principle of adjudication in motor accident claims is that the claimant bears the burden of proving, on a preponderance of probabilities, that the accident was caused due to the rash and negligent driving of the alleged offending vehicle.



12. It is evident from FIR Ex. P14, lodged soon after the accident by PW11-Sanjiv Kumar that the accident was attributed to a Maruti car No.30, which was allegedly driven by an unknown person. Notably, there was no mention of the involvement of the offending truck at that stage.

13. Further, the statement of PW12-Sumit @ Sunny under Section 161 Cr.P.C. (Ex. R4) corroborates the FIR version that the accident was caused by the Maruti car No.30. The subsequent claim that the accident was, in fact, caused by the truck stands in direct contradiction to these earlier statements, thereby severely impairing the credibility of the claimant's case.

14. Moreover, the mechanical inspection report of the truck, which was taken into possession only on 14.03.2002, after an unexplained delay of 112 days, reveals no signs of impact, dent, or damage that would indicate its involvement in a serious accident. The absence of any cogent explanation from the claimant regarding how the truck and its driver, respondent No.1-Ramphal, came to be implicated at a belated stage further lends credence to the inference that the truck was subsequently introduced in an attempt to claim compensation. It is well settled that courts must scrutinize claims with caution where there is a significant and unexplained delay in the identification of the alleged offending vehicle, particularly when such delay is accompanied by contradictory statements.

15. Additionally, appellant/claimant, PW12-Sumit @ Sunny's assertion that the front wheel of the truck ran over his abdominal region, yet he survived, is inherently improbable. The tribunal has correctly noted that such an impact from a heavy vehicle would, in all likelihood, result in fatal



injuries. This raises serious doubts regarding the veracity of the claimant's version and further weakens the case.

16. In light of these observations, it is evident that the learned Tribunal's conclusion that the claimant/appellant failed to establish that the accident occurred due to the rash and negligent driving of the truck is well-reasoned and based on a thorough evaluation of the evidence.

17. The evidence on record overwhelmingly suggests that the truck was belatedly introduced to manufacture a claim for compensation. Consequently, there is no merit in interfering with the findings of the learned Tribunal, and the same are hereby affirmed.

18. In sequel of the above, there is no legal infirmity in the award dated 18.04.2007 passed by the learned Tribunal. Accordingly, the appeal is dismissed being devoid of merits.

19. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Vinod Gupta, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007 by this Court.

20. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

10.02.2025
Virrendra

Whether speaking/non-speaking : Yes
Whether reportable : Yes/No