



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

(206)

FAO-4569-2006

Date of Decision: 04.03.2025

NARINDER PAUL

..Appellant

Versus

SUKHBIR AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present:- Mr. Pankaj Rana, Advocate for
Mr. R.S. Malik, Advocate for the appellant.

Mr. Vijay Dahiya, Advocate for respondent No.1.

Mr. Raj Kumar Bashamboo, Advocate
for respondent No.3.

SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred against the award dated 07.06.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Sonipat (for short, 'the Tribunal') vide which the claim petition filed by the appellant/claimant, was dismissed.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 01.01.2004, the claimant-Narinder Paul while going on a bicycle to supply sweets to the shopkeepers towards Geeta Bhawan Chowk stood on the berm of the road in front of the building of State Bank of India, Sonapat and started talking with one Duli Chand when respondent No.1-Sukhbir while driving his motorcycle No. HR-12C-7021 at a high speed came there from the opposite side and struck his motorcycle against the right leg of the claimant by turning it on the wrong



side. As a result of the accident, the claimant fell down and sustained various injuries including a compound fracture on the right leg. He was removed from the place of accident to General Hospital, Sonapat where he was medically examined and treated. The matter was reported to the Police whereupon FIR No.1 dated 01.01.2004 under Sections 279/337 IPC was registered at Police Station City Sonapat against respondent No.1.

3. Upon notice of the claim petition, respondents appeared, filed their written reply by denying the factum of accident/compensation.

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

1. Whether the claimant sustained injuries due to rash and negligent driving of motorcycle No. HR-12C-7021 by respondent No.1. OPP.
2. If issue No.1 is proved in affirmative, what compensation the claimant is entitled to and from whom? OPP.
3. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimant/appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant contends that even FIR was registered against the respondent No.1-Sukhbir, still the claim petition was dismissed by the learned Tribunal only on the ground that the claimant/appellant failed to prove the involvement of the respondent No.1-Sukhbir in the accident. Therefore, he prays that the present appeal be



allowed and compensation be granted to the appellant/claimant as per settled law.

7. Per contra, learned counsel for the respondent No.1 has vehemently argued that the respondent No.1 was acquitted in the FIR registered against him in the present case and claim petition has rightly been dismissed. Therefore, he prays for dismissal of the appeal.

8. Learned counsel for the respondent No.3-Insurance Company contends that the Insurance Company was never a party before the learned Tribunal and it has been made a party before this Court at appellate stage, and as such, the Insurance Company is not liable to pay any compensation.

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

10. The relevant portion of the award is reproduced as under:-

“Issue No. 1:

8. In support of this issue, the claimant appeared as PW-1 and deposed that on 1.1.2004 he was going on a cycle from Subhash Chowk towards Geeta Bhawan Chowk, Sonipat, and on reaching near old Civil Hospital, Sonapat, he started talking with Duli Chand while standing on the left side of the road. He further deposed that at about 2:00 p.m. a motorcyclist came from the side of Geeta Bhawan Chowk while driving his motorcycle No.HR-12C-7021 at a fast speed and struck the side of his motorcycle against him, as a result of which he fell down and sustained injuries on the right side of pelvic region and his pelvic bone was broken. He also deposed that police met him on the date of accident at 6:30 p.m. and recorded his statement on the basis of which FIR, copy of which is Ex.P1, was registered.



9. *In rebuttal of this evidence, Sukhbir respondent no.1 appeared as RW-1 and deposed that he was neither the owner of motorcycle No.HR-12C-7021 nor he knows driving the motorcycle nor he caused any accident by driving any motorcycle.*

10. *There is no dispute that the claimant while standing on the side of the road near old Civil Hospital, Sonapat, was talking with one Duli Chand when a motorcycle No.HR-12C-7021 came there and struck against the claimant as a result of which he fell down and his right femur was broken. But the dispute in this case is as to who was the driver of the motorcycle which caused the accident. The accident took place on 1.1.2004 at about 2:00 p.m. The report of the accident was lodged with the police on the same day by Narinder Paul claimant at 7:15 pm It is so revealed from the copy of FIR Ex. P1. The number of motorcycle has been given in the FIR as well as by the claimant in his statement as PW-1 but the name or description of the driver of the motorcycle has neither been given in the FIR nor in his statement by the claimant. The counsel for the claimant in order to connect respondent No.1 with the driving of the motorcycle at the time of accident has relied upon the statement of RW-1 Sukhbir respondent in cross-examination where he admitted that he has been facing trial in this case of accident which is now fixed for evidence in the court of Chief Judicial Magistrate, Sonapat. But simply because respondent No.1 has been challaned as an accused by the police after investigation, that is not sufficient to hold that respondent No.1 was actually driving the motorcycle at the time of the accident. When the name of the driver of the motorcycle does not figure in the FIR nor it figures in the statement of the claimant as PW-1, it is not understandable as to how respondent No.1 Sukhbir was challaned as the driver of that motorcycle by the police. The copy of report under section 173*



Cr.P.C. has not been placed on file. The Investigating Officer, who challaned respondent No.1 as accused in the accident case, was not examined as a witness. No other person was examined to depose that he had told the name of respondent No.1 as the driver of the motorcycle. So in the absence of any evidence to connect the respondent No.1 with the driving of motorcycle No.HR-12C-7021 at the time of accident, the mere fact that respondent No.1 was challenged by the police as the accused in this accident case is not sufficient to hold that he was actually the driver of the motorcycle which caused the accident. There is one more circumstance to doubt that respondent No.1 was the driver of the motorcycle and the circumstance is that PW-1 Narinder paul deposed in his cross-examination that though he did not know the driver of the motorcycle prior to the accident but the age of the driver was between 30 to 40 years whereas Sukhbir respondent No.1 when appeared as RW-1 described his age as 64 years and he seemed to be of that age.

11. The counsel for the claimant, however, argued that no reliance should be placed upon the testimony of RW-1 when he made a false statement to the effect that he did not know driving of the motorcycle when he was having a driving licence for driving the motorcycle and scooter even at the time of his examination before the Tribunal as RW-1 and secondly when he was found to be responsible for causing the accident by the police and was also challaned in the case of accident by the police. But this argument of the counsel for the claimant is devoid of merit. Simply because respondent No. 1 told a lie about his knowledge to drive the motorcycle, he cannot be connected with the driving of the motorcycle in question at the time of accident. In spite of his being challaned by the police he is not connected with the accident when the name of the driver was not given in the FIR nor any witness was examined to show



that the respondent No. 1 was driver of the motorcycle at the relevant time nor the report under section 173 Cr. P.C. was placed on the file nor the Investigating Officer who introduced the respondent No.1 as the driver of the motorcycle was examined to depose on what basis he introduced respondent No.1 as the driver.

12. So, the conclusion is that motorcycle No.HR-12C-7021 was involved in the accident in which the claimant sustained injuries but it is not proved that respondent No.1 was the driver of that motorcycle. So, this issue is decided against the petitioner.”

11. A perusal of the impugned award, reveals the Learned Tribunal has correctly rejected the claim petition of the claimant, as the claimant has failed to establish that respondent No. 1, Sukhbir, was driving the offending motorcycle bearing registration No. HR-12C-7021 at the time of the accident. The learned Tribunal has duly appreciated the evidence led before it and has arrived at a well-reasoned conclusion.

12. The claimant, Narinder Paul (PW-1), deposed that on 1st January, 2004 at about 2:00 p.m., while he was standing near the old Civil Hospital, Sonipat, conversing with one Duli Chand, a motorcycle bearing registration No. HR-12C-7021, came from Geeta Bhawan Chowk, and struck against him. As a result, he sustained injuries, including a fracture to his right pelvic bone. However, a bare reading of FIR (Ex. P-1) reveals that it was lodged on the same day at about 7:15 p.m., wherein the registration number of the offending motorcycle is mentioned, there is a conspicuous absence of any mention of the driver's identity, either by name or description. Similarly, the claimant/appellant- Narinder Paul, during his



deposition as PW-1, did not identify the driver of the motorcycle, nor did he disclose any description that could establish the identity of the driver of the offending motorcycle.

13. Further, the respondent No.1- Sukhbir while appearing in the witness box as RW-1, has denied his involvement in the accident. He testified that he neither owns the motorcycle nor knew how to drive it. He further denied that he was not driving the motorcycle at the time of the accident. The fact that Sukhbir is facing trial and was challaned by the police for the accident is insufficient to establish that he was the driver of the offending motorcycle at the relevant time. It is settled proposition of the law that mere filing of a challan against respondent No.1 or the fact that the police have proceeded with a trial does not establish conclusive proof of his involvement in the accident.

14. In Motor Accident Claims Tribunal proceedings, the standard of proof is preponderance of the probability, and the mere existence of a challan without corroborative evidence is insufficient to establish the liability.

15. The Tribunal aptly noted that the claimant failed to prove the identity of the driver in the FIR or during his testimony. Moreover, the police report under Section 173 of the Cr.P.C., which would elucidate the investigation's findings and the rationale for implicating respondent No.1- Sukhbir, was not produced as evidence. The Investigating Officer, who presumably identified respondent No.1- Sukhbir as the driver, was also not called to testify, which would have been necessary to establish the respondent's involvement in the accident.



16. The failure to produce these pieces of evidence, which could have established a direct connection between respondent No.1-Sukhbir and the accident, leaves the claimant’s case devoid of any substance and insufficient to meet the requisite standard of proof.
17. In light of the above, it is clear that the claimant has failed to establish, on the preponderance of probabilities, that respondent No.1-Sukhbir was the driver of the motorcycle involved in the accident. The Tribunal has correctly assessed the facts, reviewed the evidence, and found that the identity of the driver remains unproven.
18. Consequently, I find no infirmity in the award rendered by the Learned Tribunal. The present appeal is therefore dismissed being devoid of any merit, and the impugned award is upheld.
19. Further Insurance Company is directed to disburse the current schedule fee to Mr. Raj Kumar Bashamboo, Advocate, within a period of twenty days from the date of receipt of copy of this order, in view of order dated 18.07.2024 passed by this Court in FAO-1682-2007.
20. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

04.03.2025
mahima

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