



FAO-4417-2017

Page 1 of 7

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224

FAO-4417-2017 (O&M)

Date of decision: 20.01.2026

Sunil Kumar

...Appellant(s)

Vs.

Dharamvir & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sukhdeep Singh, Advocate
for the appellant.

Mr. Alankrit Bhardwaj, Advocate
for respondent No.3.

NIDHI GUPTA, J.

The present appeal has been filed by the injured-claimant against the dismissal of his claim petition by the learned MACT, Karnal (hereinafter 'the learned Tribunal'), vide Award dated 15.03.2017 passed in MACT Case No.28 dated 18.02.2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

2. It was the pleaded case of the appellant before the learned Tribunal that the appellant had suffered injuries in a motor vehicle accident that took place on 09.12.2015 due to the rash and negligent driving of motorcycle bearing registration No.HR-05U-7028 (hereinafter the "offending



vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3.

3. Upon appraisal of the pleadings and evidence on record, the learned Tribunal had returned the following findings: –

“10. But, here in the case in hand, there is absolutely no evidence nor any material to prove or to establish rash or negligent driving on the part of Dharamvir - respondent No.1, or any fault on his part for causing this accident. At the very outset, it is a pleaded case of the claimant that on 09.12.2015 claimant started his journey from Taraori towards village Chora, on motorcycle bearing registration No.HR-05U-7028. The motorcycle was being driven by Dharamvir - respondent No.1, whereas the claimant was pillion rider on the motorcycle. When they reached near village Kutail, at about 5:00 - 6:00 a.m., a bulk-cart was coming from the opposite direction. Because of fast speed as well as rash and negligent driving the respondent No.1 could not control his vehicle and hit the same against the bulk-cart, as a result of which both the occupants of the motorcycle fell down on the road and claimant Sunil Kumar sustained multiple and grievous injuries. Claimant Sunil Kumar has deposed so while appearing as PW-3. He also deposed that DDR entry No.35 dated 14.12.2015 was registered at Police Station Madhuban in this context. However, from a perusal of DDR Ex.P9, it reveals that the report was lodged by respondent No.1 - Dharamvir i.e. driver of the motorcycle in question and it was specifically mentioned therein that on the fateful day, at about 5:00 -6:00 a.m. it was a very foggy day and therefore, he could not notice the bulk-cart, which entered on the road all of a sudden and the



accident took place. The claimant has failed to examine any other eye witness of the accident, including the bulk-cart puller/owner, who could have been the best person to unfold the case of the claimant on the point of negligence, but the claimant has not produced any such evidence for the reasons best known to him. The claimant has failed to produce any other cogent and convincing oral as well as documentary evidence, to prove on record that the accident in question took place due to sole rash and negligent driving on the part of the respondent No.1, despite the fact that respondent No.1 has taken a specific plea in the written statement that the accident in question took place by chance and there was no negligence on the part of respondent No.1. As such, keeping in view these facts, it cannot be said that the accident took place on account of rash and negligent driving of respondent No.1.”

4. Ld. counsel for the appellant submits that the learned Tribunal was in error in dismissing the Claim Petition of the appellant as it failed to appreciate that in respect of the accident in question, a DDR No.35 dated 14.12.2015 had been duly registered. It is submitted that the appellant had also appeared in the witness box and deposed that the accident in question had taken place due to the rash and negligent driving of the offending motorcycle by respondent No.1. Moreover, the Tribunal failed to appreciate that in the accident in question, the appellant had suffered less than 40% disability and had received multiple grievous injuries. This evidence has not been rebutted by the respondents. It is contended that even as per the injuries suffered by the appellant, he is entitled for compensation.



5. Ld. Counsel further submits that the Learned Tribunal wrongly dismissed the claim petition on the ground that there was no eyewitness account of the incident; whereas, in the present case, the Respondent No. 1 i.e. the driver of the offending vehicle himself lodged the DDR with the contents that on the date of accident, it was foggy and he could not notice the bullock cart and due to this, accident occurred by chance. Thus, there is no corroborative evidence was lodged by the respondents that accident had occurred by chance. Thus, the findings of the Learned Tribunal merely on the strength of DDR that accident had occurred by chance and the Appellant was not entitled to compensation is illegal and unwarranted in the eyes of law.

6. It is accordingly prayed that the impugned Award be set aside.

7. Per contra, Id. counsel for respondent No. 3 opposes the submissions advanced on behalf of the appellant. It is submitted that the appellant is not entitled to compensation as he was a pillion rider on the offending motorcycle; and was therefore, a gratuitous passenger. As such, he is not entitled to compensation. It is submitted that the impugned Award suffers from no error; and the present appeal deserves to be dismissed.

8. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellant.

9. It was the pleaded case of the appellant before the learned Tribunal as mentioned in Para 2 of the impugned Award is that: -



“2. The cause of accident with brief description extracted from the petition is reproduced hereunder:

On 09.12.2015 claimant Sunil Kumar was going from village Taraori towards village Chora alongwith one Dharamvir son of Pala Ram i.e. respondent No.1 on the motorcycle bearing registration No.HR-05U-7028. It was pleaded that respondent No.1 was driving the motorcycle at a very fast speed in a very rash and negligent manner. When they reached near village Kutail, at about 5:00 - 6:00 in the morning, a bulk-cart was coming from the opposite direction. Because of the fast speed as well as rash and negligent driving, respondent No.1 could not control his vehicle and hit the same against bulk-cart, as a result of which, the claimant fell down on the road and received multiple and grievous injuries. Respondent No.1, however escaped with minor scratches as he fell on the Kucha portion of the road. A DDR No.35 dated 14.12.2015 regarding the accident in question was lodged with the Police Station Madhuban. He deposed that the accident in question took place due to rash and negligent driving of motorcycle bearing registration No.HR-05U-7028 by respondent No.1. It was also pleaded that at the time of accident the offending motorcycle was being driven by Dharamvir - respondent No.1; owned by Bhagat Ram - respondent No.2; and insured with The Oriental Insurance Company Ltd., respondent No.3, so all the respondents are jointly and severally liable to compensate the claimant.”

10. From the above facts, it is clear that it is admitted fact on record that at the time of accident, the appellant was a pillion rider on the offending motorcycle. Thus, there is merit in the contention of learned counsel for respondent No.3 that, pillion rider being a gratuitous passenger and not a third party, would not be entitled to compensation. Therefore, Claim Petition of the appellant has been correctly dismissed.



11. I find support in my view from the judgment of the Hon'ble Supreme Court in **Oriental Insurance Co. Ltd. V. Sudhakaran K.V. (SC) : Law Finder Doc ID # 144020**; wherein it is held that:-

"Accident with Scooter – Death of pillion rider – Insurance company not liable – Pillion rider is not a third party."

12. Reliance may also be placed upon judgment of Hon'ble Supreme Court in **"United India Insurance Co. Ltd. V. Tilak Singh (SC) : Law Finder Doc ID # 122630**, wherein it is held that:-

"A. Motor Vehicles Act, 1988, Section 157 - Motor Vehicles Act, 1939, Section 103A Transfer of ownership of the insured vehicle - No intimation of transfer sent to insurer - Liability of an insurer does not cease on transfer as far the liability towards a third party is concerned - It is not the transfer of the vehicle but the accident which furnishes the cause of action before the Tribunal.

B. Motor Vehicles Act, 1988, Sections 147 and 157 - Death of pillion rider of scooter - Insurance company not liable - Deceased was a gratuitous passenger - As the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to gratuitous passenger."

13. Moreover, it has come on record that DDR No.35 dated 14.12.2015 was registered on the basis of statement made by respondent No.1 himself. As such, collusion between the appellant and respondent no.1 cannot be ruled out.

14. Furthermore, I find no merit in the contention of learned counsel for the appellant that he is entitled to compensation on account of the fact that he has suffered less than 40% permanent disability. Perusal of the record of the case shows that the appellant has adduced no evidence regarding his injuries. Although the appellant has claimed in his Claim



Petition that he was permanently disabled, however, no Disability Certificate has been brought on record by the appellant. No doubt, the appellant has examined PW1 Dr. Mohit and PW2 Dr. Tarun Goyal. During arguments, learned counsel for the appellant has read out deposition of PW1 who has deposed that as per the Disability Certificate (Ex.R1), the appellant has suffered less than 40% permanent disability. However, a complete reading of the deposition of PW1 shows that he has admitted that he has made the assessment regarding permanent disability of the appellant, without seeing the treatment record. Even otherwise, record shows that Ex.R1 is the Insurance Policy and not the Disability Certificate. In any event, this Court cannot go beyond the parameters of law.

15. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts, findings, and legal position.

16. In view of the above, present appeal is **dismissed**.

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

20.01.2026
Sunena

(NIDHI GUPTA)
JUDGE

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