

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

**Reserved on 18.07.2022
Pronounced on 04.08.2022**

FAO No.5954 of 2014

Mohinder Lal @ Mohinder Pal

....Appellant

Versus

Ladi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.C. Sharma, Advocate
for the appellant.

Ms. Sukhpreet Kaur, Advocate
for respondents No.1 and 2.

PANKAJ JAIN, J.

Claimant is in appeal against the award dated 3rd September, 2013 passed by the Motor Accident Claims Tribunal, Jalandhar (for short, 'the Tribunal').

2. Claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of injuries suffered by the appellant in a motor-vehicular accident dated 8th of April, 2008.

3. It needs to be noticed that respondent No.3 i.e. Insurer already stood deleted before the Tribunal vide order dated 2nd of September, 2011. Thus, the issue remains between the claimant/appellant and the owner of the alleged offending vehicle.

4. As per the claim petition, while on 8th of April, 2008 at about 9.30 p.m. the appellant along with his friend namely Parkash Singh were

going for evening walk, respondent No.1 while driving motorcycle Make Hero Honda Splendor bearing Regn. No.PB-08-AJ-0959 came from the back side in a rash and negligent manner at a high speed without blowing any horn and banged the motorcycle with the appellant. The appellant received injuries and became unconscious. Shri Parkash Singh arranged for conveyance and took the appellant to Civil Hospital, Nakodar. The appellant remained under treatment in the hospital from 9th April, 2008 to 21st April, 2008 where he underwent surgery. Steel rod and plate were inserted in left leg of the petitioner. A sum of Rs.1,50,000/- was spent on medicines, operations, scanning, special diet, charges for Hospital, conveyance etc. Thereafter also he remained under treatment.

5. The claim petition was contested by the respondents. On the basis of the pleadings of the parties, following issues were framed by the Tribunal :-

1. *Whether Mohinder Pal applicant on 08.04.2008 met with an accident with motorcycle No.PB08-AJ-0959 driven rashly and negligently by respondent No.1 OPA*
2. *Whether the applicant is entitled to receive compensation on account of injuries suffered by him? OPA*
3. *Whether the claim application is not maintainable? OPR*
4. *Whether respondent No.1 has no concern with offending motorcycle, if so, its effect? OPR*
5. *Relief."*

6. The Tribunal dismissed the claim petition filed by the appellant holding that FIR was proved on file by the appellant. Thus, the best evidence having been withheld by the appellant it cannot be held that the accident was caused by rash and negligence on part of the driver of the offending vehicle. The Tribunal decided Issue No.2 also against the appellant and disbelieved Exhibit P-1 i.e. the Disability Certificate. It has been held that the alleged accident took place on 8th of April, 2008 and the Disability Certificate was got prepared on 1st of April, 2009 which creates doubt about genuineness of the same. The Tribunal decided Issue No.4 also against the appellant holding that the petitioner has failed to bring any evidence on record to show that respondent No.1 has any concern with the motor-cycle.

7. Ld. Counsel for the appellant has drawn attention of this Court to the statement of PW4 - Parkash Singh son of Jagat Singh on whose statement FIR No.82 dated 9th of April, 2008 was registered under Sections 279/337/ 338 of the IPC. He submits that in the cross-examination of the said witness suggestions have been put w.r.t. the contents of the FIR No.82 dated 9th of April, 2008 which was registered *qua* the accident. He thus submits that so far as the existence and the registration of the FIR is concerned, the same stands proved on record. He claims that in these circumstances finding recorded by the Tribunal on Issue No.1 is perverse and the same deserves to be reversed. He further refers to the statement suffered by RW-1 who is none else but respondent No.1 (driver of the

offending vehicle). He in his Examination-in-Chief himself refers to FIR and claims that the same is a false one.

8. Ld. Counsel for the appellant further refers to other evidence on record including statement of PW-1 to show that the cumulative effect of whole of the evidence leads to inference that the appellant suffered injuries in the accident and the same cannot be ignored merely for the absence of FIR even though the existence thereof is not denied. He further refers to statement of Sandeep Singh, Medical Officer from the Office of Civil Surgeon, Jalandhar, who has proved Disability Certificate dated 1st of April, 2009 to submit that the document having been proved on record, the same has been wrongly discarded by the Tribunal.

9. Per contra, Ld. Counsel for respondents No.1 and 2 submits that the Tribunal has rightly held that in the absence of FIR having been proved on record, the evidence was discrepant to prove factum of the accident. She further asserts that the Disability Certificate placed on record was got prepared after about an year from the date of accident and, thus, the same cannot be held to be a relevant piece of evidence.

10. I have heard Ld. Counsel for the parties and have carefully gone through the records of the case.

11. It is trite that in MACT cases, the test is not 'beyond reasonable doubt' but is 'preponderance of probabilities'. Equally trite is the law that the result of criminal case has no bearing on the claim petition seeking compensation pending before the Tribunal. This Court is guided by

law laid down by the Apex Court in the case of NK V. Bros (P) Ltd. vs. M. Karumai Ammal, 1980 A.C.J. 435. It is also not denied that respondent No.1 is facing criminal case on account of rash and negligent driving which itself shall lead to *prima facie* inference that the accident occurred on account of his rash and negligent act. Reference can be made to law laid down by this Court in the case of Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109.

12. In the considered opinion of this Court, Tribunal erred in completely brushing aside overwhelming evidence on record which goes on to prove the accident. Suggestions put to the claimant as well as author of the FIR, make it clear that respondent No.1 driver of the offending vehicle is facing trial for rash and negligent driving *qua* the accident in question. The Tribunal ought not have decided Issue No.1 against the claimant merely for the absence of FIR. Thus, finding recorded by the Tribunal on Issue No.1 is set aside. Similarly, finding on Issue No.2 which is consequential to finding on Issue No.1 is also erroneous and is set aside.

13. So far as finding on Issue No.4 is concerned, the onus was on respondents. Moreover, in order to claim compensation, the claimant is not required to prove ownership of the driver over the offending vehicle. Consequently, the claim petition ought not have been dismissed by recording that claimant has failed to bring evidence on record to show that respondent No.1 has concern with the motor-cycle.

14. As a sequel of the discussion held herein above, the appeal is allowed. The award passed by the Tribunal is set aside. The matter is remanded back to the Tribunal to decide the claim petition afresh.

15. Keeping in view that the parties are in litigation since 2009, Tribunal is directed to decide the claim petition preferably within six months from the date of receipt of certified copy of this order. Parties are directed to appear before the District Judge, Jalandhar on 16th of August, 2022. On their appearance, District Judge shall allocate the matter to the Tribunal of competent jurisdiction.

August 04, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

