



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

213

FAO-404-2007 (O&M)

Date of Decision: May 14, 2025

Abhey

.....Appellant

Vs.

Satya Vir Arya and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pankaj Maini, Advocate
for the appellant.

Mr. Vinod Gupta, Advocate
for respondent-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 02.12.2005 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') vide which the claim petition filed by the appellant/claimant for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 06.10.1999, the claimant-Abhey was pillion rider of scooter No. HR-20-4418 being driven by respondent No. 1-Satya Vir Arya. The scooter of respondent No.1 struck into a hand driven rickshaw being driven by Jai Ram. As a result of the impact, the claimant/appellant fell down and sustained injuries.

3. Upon notice of the claim petition, respondents appeared and filed written 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 took place due to rash and negligent driving of scooter No. HR20/4418 by respondent No. 1 S.V. Arya ? OPP*
2. *Whether the applicant is entitled to any compensation on account of his injuries, if so, how much and from whom? OPP*
3. *Whether the Insurance Company is not liable to make the payment of compensation, if awarded, or not? OPR*
4. *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. The learned counsel for the claimant-appellant contends that the claim petition was dismissed only on the ground that in the FIR, cart puller was not named. Therefore, he prays that the present appeal be allowed and compensation be granted to the claimant/appellant.

7. *Per contra*, learned counsel for the respondent-Insurance Company argued on the lines of the award and contends that the claim petition has rightly been dismissed by the learned Tribunal, therefore, 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. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

6. *The onus of this issue was upon the claimant, the claimant appeared and filed his affidavit Ex. PW1/A, it would be necessary to re-produce para No. 5 of the affidavit as it is important and reads as under:*

"That I faced an accident which took place at opposite Setia Hospital, Delhi road, Hisar at about 6 A.M. on 6.10.1999. I was going with Mr. Satya Vir Arya Advocate on vehicle Bajaj Super Scooter No. HR-20-4418 on left side of the road which was driven by Mr. Satya Vir Arya Advocate and a hand driven rickshaw driven by Mr. Jai Ram strucked the scooter of Mr. Satya Vir Arya Advocate from the left side and I and Mr. Satya Vir Arya Advocate fell down on the road. The accident in question took place due to the negligence and rashness driving of Mr. Satya Vir Arya Advocate.

7. *No other evidence was led by the claimant on this issue. The respondent also failed to lead any evidence.*

8. *The counsel for the claimant had urged that the accident had occurred on account of negligence of respondent No.1. Therefore, the insurance company was liable. It was contended that the claimant's statement has gone unrebutted and the issue should be decided in claimant's favour.*

9. *On the other hand it was urged that the claimant had admitted in his cross examination that he had got the case registered against Jai Ram who was pulling the cart and that was the version given in the FIR and the claimant had placed the copy of the FIR on the file but did not chose to introduction the same in their evidence and the claimant had admitted that the accident was*



caused by a person who had suddenly brought the cart in front of the scooter and had blamed Jai Ram of having caused the accident and in this petition they have shifted the entire blame upon the respondent No. 1 and both were contrary and the claimant had failed to prove that the accident occurred on account of negligence of respondent No. 1.

10. A perusal of the affidavit specifically para No.5 of the affidavit would show that the claimant had stated in his affidavit that the scooter was being driven on left side of the road by Satya Vir Arya and Jai Ram struck against the scooter from the left side. The last line of the affidavit reads that the accident took place on account of negligent driving of Satya Vir Arya Advocate. In the petition, it was stated that the cart driven by Jai Ram came from right side and his right foot was injured. There is a contradiction in the affidavit. The claimant has been unable to clarify as to who was responsible for the accident either his uncle Satva Vir Arya or the cart puller. The claimant got the report lodged with the police against the cart puller. The cart puller was not named in FIR. No evidence was produced to show as to what came out in the investigations by the police. It is found that the claimant has not been able to prove that the accident occurred on account of the negligence of respondent No. 1 according to the claimant, the scooter was being driven on the correct side of the road. There is no evidence that the driver was negligent. Therefore, the issue is answered against the claimant.”

10. A perusal of impugned award reveals that learned Tribunal correctly dismissed the petition on the ground that the appellant/claimant failed to discharge the burden of proving that the accident occurred due to rash and negligent driving of respondent No.1.

11. An analysis of the record reveals that the claimant/appellant, who is the sole eye witness to the accident, adduced his evidence by way of affidavit



(Ex. PW1/A), wherein he attributed the cause of the accident to respondent No.1, the driver of the scooter. However, upon cross-examination, several material contradictions surfaced between the contents of the affidavit, the pleadings in the claim petition, and the version of events set out in the First Information Report (FIR). These inconsistencies significantly diminish the credibility of the evidence of claimant/appellant.

12. It is noteworthy that while the affidavit attributes the cause of the accident to the negligence of respondent No.1 (the driver of the scooter), the FIR got registered by the claimant/appellant places the blame on the cart puller-Jai Ram. The claimant/appellant failed to reconcile this fundamental inconsistency, thereby casting serious doubt on reliability of his own version. The fact that no independent witnesses were examined further weakens the case.

13. It is trite law that in a claim brought under Section 166 of the Motor Vehicles Act, 1988, the claimant bears the burden of proving that the accident was caused by rash and negligent act of the driver of the offending vehicle. This burden must be discharged on a preponderance of probabilities, supported by consistent and credible evidence. In the present case, the claimant-appellant failed to adduce any substantive material to establish negligence on the part of respondent No.1. There is also no record of any investigative findings by the police substantiating the allegations of the claimant/appellant.

14. The contradictions in the testimony of the claimant/appellant, coupled with the discrepancy between the contents of the First Information Report (FIR) and the version presented during the trial, cast serious doubt on



the credibility of the case advanced by the claimant/appellant. In the absence of any reliable or cogent evidence attributing fault to respondent No.1, the learned Tribunal was fully justified in reaching the conclusion that the claimant/appellant had failed to discharge the burden of proving his case.

15. Considering the above, the findings recorded by the learned Tribunal are based on a sound and reasoned appreciation of both oral and documentary evidence, as well as the applicable legal standards.

16. In view of the above legal position and on a careful appraisal of the evidence on record, this court find no illegality or infirmity in the findings recorded by the learned Tribunal. The conclusions drawn are supported by cogent reasoning and are in consonance with the settled principles of law.

17. Accordingly, this Court finds no legal infirmity in the impugned award dated 02.12.2005 and the same is hereby upheld. Consequently, the present appeal is *dismissed* being devoid of any merit.

18 The Insurance Company is hereby directed to disburse the current scheduled fee 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.

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

(SUDEEPTI SHARMA)
JUDGE

May 14, 2025

sonia arora

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