

(2013) 07 P&amp;H CK 0437

**High Court Of Punjab And Haryana At Chandigarh****Case No:** F.A.O. No. 242 of 2012 (O and M)

Kuldeep

APPELLANT

Vs

Dharam Vir and Others

RESPONDENT

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**Date of Decision:** July 1, 2013**Hon'ble Judges:** Vijender Singh Malik, J**Bench:** Single Bench**Advocate:** Kamal Sharma, for the Appellant; Sanjiv Patyal, Advocate for respondent No. 1, Ms. Sonia Sharma, Advocate for respondent No. 2 and Mr. Neeraj Sharma, Advocate, for the Respondent**Final Decision:** Allowed

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**Judgement**

Vijender Singh Malik, J.

This is an appeal brought by Kuldeep, the driver of the motorcycle bearing registration No. HR-42-2191, who has been held responsible for causing this accident by his rash and negligent driving of the same. Learned Motor Accident Claims Tribunal, Panchkula (for short "the Tribunal") had assessed a sum of Rs. 10,00,000/- as compensation in favour of Dharam Vir for pecuniary and non-pecuniary loss suffered by him in the accident. The appellant has challenged the findings recorded by learned Tribunal on the question of responsibility of causing the accident. So the facts necessary to be reproduced are as under:--On 11.02.2004 Dharam Vir, the claimant was going towards village Bhag Khera, Police Station Pillu Khera, District Jind in a three-wheeler to see his parents. When the three-wheeler was near the premises of Police Station Pillu Khera, a motorcycle bearing registration No. HR-42-2191 driven by respondent No. 2 in a rash, negligent and zigzag manner came from the opposite side and struck against the three-wheeler on its right side. As a result of this accident, the claimant got his leg crushed. The three-wheeler turned turtle in the accident and the right leg of the claimant got crushed under the three-wheeler. The claimant was then taken to Civil Hospital, Pillu Khera where-from he was referred to PGI, Chandigarh and he has

alleged that he had spent a lot of amount on his treatment and had suffered loss of income as well.

2. Kuldeep, respondent No. 2 had contested the claim petition till the stage of filing the written statement. He had been proceeded against ex-parte thereafter. In his written statement, he denied the accident to have occurred on account of his rash or negligent driving of the motorcycle. He claimed the accident to be an outcome of rash and negligent driving of the three-wheeler. He also claimed that the claimant was sitting on the driver's seat of the three-wheeler in violation of the provisions of law and had contributed to the acts of the accident.

3. By taking ex-parte evidence, learned Tribunal decided the claim petition in favour of the claimant and awarded a sum of Rs. 10,00,000/- as compensation to him.

4. Learned counsel for the appellant has contended that the statement of the claimant made at the trial, which is relied upon by the Tribunal is contrary to the plea taken by him in the F.I.R. According to him, the FIR was lodged by the claimant himself and the version appearing therein is at cross-current with the version given by him at the trial. According to him, as the statement of the claimant made before the Tribunal is contrary or rather contradictory to the statement of facts appearing in the FIR, the statement of the claimant could not be believed to hold the accident to be an outcome of rash and negligent driving of the motorcycle by the appellant. He has read out the contents of the FIR and has submitted that learned Tribunal has mechanically decided the case against the appellant by holding him responsible for this accident.

5. Learned counsel for the claimant-respondent No. 1. has submitted that attitude of the appellant and the owner of the motorcycle had been quite callous. According to him, they appeared and filed written statement but thereafter did not care to contest the case. According to him, there is 80% disability on the part of the claimant and though he lodged the FIR, he was not in proper senses when he lodged the FIR and the contents of the same could not be seen to discredit the statement of the claimant made before learned Tribunal. He has also submitted that if the liability is not there on the part of the appellant as driver of the motorcycle, it will go to the driver and owner of the three-wheeler.

6. The accident occurred on 11.02.2004. The FIR was lodged on 12.02.2004, the next day. Dharam Vir lodged this FIR and had categorically claimed that on 11.02.2004 he took a three-wheeler (Auto-rickshaw) from Bus Stand Jamni and took seat by the side of the driver of the three-wheeler. He has further stated that the auto-rickshaw appeared to be without number. He has further stated that the said auto-rickshaw driver started driving the vehicle at a very high speed and in a rash and negligent manner. He has further stated in the FIR that he had told the driver to drive it slowly. According to him, he cautioned the driver in this regard by saying that it had become dark by that time. He has further stated that when the auto-rickshaw was in

front of the premises of Police Station Pillu Khera, a motorcycle bearing registration No. HR-42-2191 came from the side of Mandi and it was carrying Kuldeep and Shisha Singh. The claimant has further stated that the auto-rickshaw driver by driving the same in a rash and negligent manner gave a straight hit to the motorcycle, on account of which the motorcycle went towards the side of the police station and the auto-rickshaw also turned turtle.

7. The aforesaid statement of Dharam Vir appearing in the FIR certainly appears to have been a statement made in full senses. It cannot be said that the maker of this statement was either suffering from any disability on account of his injuries or on account of the treatment. He made a categoric statement to the effect that the auto-rickshaw driver was driving the vehicle in a rash and negligent manner and on account of his rash and negligent driving, gave a straight hit to the motorcycle.

8. The claimant then brought the claim petition giving an entirely different version of the occurrence. In the claim petition, he claimed the motorcyclist to be rash or negligent in driving his vehicle and the three-wheeler driver to be driving the vehicle properly.

9. The record of learned Tribunal shows that Ex.PA is the affidavit of Dharam Vir, which he tendered as his statement. He has stated that the motorcyclist appeared to be drunken and had hit the three-wheeler. He has nowhere mentioned as to how and under which circumstances he was justifying his changing the version. He has not even stated in Ex.PA the circumstances in which he had made the statement on the basis of which FIR was lodged.

10. Since the two versions are basically different, the version appearing as Ex.PA is in complete contradiction of the contents of the F.I.R. It could not be believed and learned Tribunal has erred in placing reliance on the version given as Ex.PA. It clearly shows that the claimant has miserably failed to prove his case that the accident was an outcome of rash and negligent driving of the motorcycle by Kuldeep, the appellant. So the basic fact required to be proved to allow a claim petition was not proved in this case and the award could never be made in these circumstances against the appellant and the driver of the motorcycle.

11. A question would however arise here as to whether any order can be made against the three-wheeler driver. What is the evidence on the record, whether believable or unbelievable, it is against the motorcyclist. There is no evidence against the three-wheeler driver in this regard. In these circumstances the only course left to this court is to accept the appeal and set aside the award made against the appellant. The appeal is consequently allowed and the award dated 03.12.2009 against the appellant as well as the owner of the motorcycle is set aside.