

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

FAO No. 1852 of 1994

Date of Decision: 14.09.2015.

Poonam Kaushik

.....Appellant

VERSUS

Union of India and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Sakshi, Advocate for the appellant.

Ms. Anita Baliyan, Advocate for Union of India.

SNEH PRASHAR, J.

1. This appeal is directed against the Award dated 10.05.1994 passed by learned Motor Accident Claims Tribunal, Jalandhar vide which the claim petition under Section 166 of the Motor Vehicles Act, 1988 filed by the claimant-appellant was dismissed.

2. Appellant-Poonam Kaushik filed a petition under Section 166 of the Motor Vehicles Act 1988 (for short 'the act of 1988') for grant of compensation on account of injuries, disability and damages suffered by her in a motor vehicular accident caused by C.R.P.F. Vehicle bearing registration No. DEP 5883 allegedly driven by Naik Driver Dalip Singh (respondent No.3) and owned by respondents No. 1 and 2.

The appellant alleged that on 13.08.1991 at about 2:00 p.m. she was going on her scooter bearing registration No.AP.10-8-46 from Jalandhar Cantt towards city to attend her computer classes at B.M.C. Chowk. When she crossed the Military Barrier and reached near second gate of BSF head quarter on Jalandhar Cantt. Road, a C.R.P.F. bus bearing

registration No. DEP 5283 (for short the 'offending bus') tried to overtake her from the wrong side and in this process, the bus struck against her scooter as a result of which she fell down on the road and sustained multiple serious and grievous injuries. She added that she was driving on her left side of the road at a normal speed by observing all precautions and it was due to rash and negligent driving of the offending bus that the accident had taken place.

The appellant pleaded that from the site of accident, she was taken to military hospital, Jalandhar. Her condition being serious, she was shifted to Delhi Military Hospital. Due to the injuries she suffered disfiguration of face and her left hand got paralyzed, which spoiled her dreams and ambitions.

3. The petition was contested by the respondents. In the written statement filed by them, they altogether denied the factum of accident as narrated by the appellant as well as involvement of the offending bus. They also denied that Naik Dalip Singh was the driver on duty on the school bus on 13.08.1991. According to them, Mukesh Kumar was the driver of the said bus and that the bus was not involved in any accident. The appellant sustained injuries due to skidding of scooter. Seeing her lying on the road, the driver stopped the bus and took her to military hospital on humanitarian grounds. Knowing about the accident, her father came to the hospital and after proper verification of all facts and finding nobody at fault, he did not even think of reporting the incident to the police.

4. On the pleadings of the parties, following issues were framed by the learned Tribunal:

1. Whether the petitioner received injuries on

13.08.1991 in a motor vehicle accident caused by the rash and negligent driving of military truck No. DEP 5283 by respondent No.3 in a rash and negligent manner as alleged?OPA

2. Whether the present petition is barred by limitation?OPR.

3. To what amount of compensation the petitioner is entitled to and from whom?OPA

4. Relief.

Both the parties adduced evidence in support of their rival contentions.

5. Finding that the accident had not taken place due to rash and negligent driving of the offending bus and that Dalip Singh-respondent No.3 was not the driver of the said bus at the relevant time, learned Tribunal dismissed the petition with no order as to costs.

6. Feeling aggrieved by the judgment dated 10.05.1994 passed by learned Motor Accident Claims Tribunal, Jalandhar, the appellant preferred the instant appeal.

7. The submissions made by Ms. Sakshi, Advocate for the appellant and Ms. Anita Baliyan, Advocate for Union of India have been considered and the record has been perused.

8. Learned counsel for the appellant argued that in her statement, appellant-Punam Kaushik gave a detailed narration of the accident. She stated that the driver of the offending bus while overtaking her scooter from the wrong side, had hit the scooter as a result of which she alongwith the scooter had fallen on the road and suffered multiple serious and grievous

injures. Her statement was corroborated by PW2-Major Rajbir Singh Brar, who witnessed the accident. He too stated that scooter of the appellant was hit by the offending bus during the process it was overtaking the scooter. He added that the driver of the bus had tried to flee away but he followed the bus and got the same stopped and then took the appellant to Military Hospital Jalandhar Cantt. in the same bus.

Learned counsel contended that Mukesh Kumar-RW1 who claimed to be the driver of the offending bus, admitted that the appellant was taken to the hospital in his bus. The presence of the bus at the time of accident is another important factor which substantiates the allegation of the appellant that it was involved in the accident.

9. Admittedly, no report in respect of the accident was got registered by the appellant or her father either with the CRPF authorities or with the police on the day of accident or on any subsequent date. PW3-Lt. Col. Ram Singh, father of the appellant was a serving officer at the time of accident. As admitted by the appellant in her cross-examination, she herself had given address of her father after the accident, may be in a semiconscious condition. On receipt of the information her father had reached the Military Hospital where she was admitted. However, he made no complaint to any authority with regard to the accident. Lt. Col. Ram Singh appeared in the witness box as PW3, but did not spell out a word to explain why no report was lodged by him with some competent authority regarding involvement of the offending bus in the accident of his daughter. His silence indicates that he verified the facts and finding no other vehicle involved in the accident, he did not lodge a report with regard to the accident.

10. The appellant examined PW2-Major Rajbir Singh Brar as an eye witness to the accident. In his examination-in-chief, he stated that he had taken the appellant to Military Hospital Jalandhar Cantt. in the same offending bus. Had he witnessed the accident and taken the appellant to the Military Hospital, he would have certainly informed the father of the appellant also about the cause of accident and would have also disclosed to him the identity of the offending bus which was responsible for causing the accident. It does not appear to reason that he met the father of the appellant in the hospital but did not inform him about the involvement of the offending bus in the accident. PW3-Lt. Col Ram Singh father of the appellant did not state that his daughter was brought to hospital by Major Rajbir Singh in the offending bus.

Otherwise also, the statement of PW2-Rajbir Singh fails to inspire truth. It was rightly concluded by learned Tribunal that this witness appeared to have been introduced by the appellant's father. The name of this witness who claimed to be known to the appellant to the extent that he even named her in his statement, was not stated to be an eye witness to the accident, in the claim petition. The appellant appeared as PW1 and during her deposition also she did not state that Major Rajbir Singh Brar had witnessed the occurrence. In her semiconscious state if she could tell the address of her father, she would have also recognized PW2-Major Rajbir Singh at the spot and would have stated about his presence in her pleadings and in her statement. The testimony of PW2- Major Rajbir Singh is also inconsistent in itself. On one hand he stated that he took the appellant to the military hospital in the same bus but during cross-examination he deposed that he did not get the appellant admitted in the military hospital. Also no

document was produced to prove that the appellant was accompanied by Major Rajbir Singh when she was brought to the hospital. The very introduction of a fake eye witness goes a long way to create suspicion in the version of the appellant.

11. Although the appellant deposed that the offending bus had hit her scooter during the process it was trying to overtake her scooter from the wrong side and PW2- Major Rajbir Singh stated that the driver of the offending bus had tried to flee away but he followed him and forced him to stop, but no evidence was led by the appellant to prove that her scooter sustained any damage/scratch. Had the bus hit the scooter and tried to sped away the scooter would have certainly sustained damage.

12 Respondent examined RW1-Mukesh Kumar who deposed that on 13.08.1991 he was deployed as driver of the offending bus. At about 2:30-2:45 pm when he was bringing back the children from the school, he found that some persons had assembled on the road and they gave him signal to stop. When he stopped the bus they told him that a girl had suffered injuries on account of skidding of her scooter on the road and they requested him to carry the girl to the military hospital. He was informed that the father of the girl was a Lt. Col. in the army. The girl was in senses, she told them the name of her father and he was called to the hospital. RW1 stated that some military officers including father of the appellant came and thanked him for bringing the girl to the hospital. He testified that the offending bus was not involved in the accident. A departmental inquiry was held and in that also he was found not guilty.

13. It may be mentioned here that RW1-Mukesh Kumar was not impleaded as party to the petition and in his place some other official

namely Naik Dalip Singh was named as driver of the offending bus. No reason was explained for changing the identity of the official, who was driving the offending bus at the time of accident.

14. In the above set of facts there appears no illegality or perversity in the findings of learned Tribunal that the appellant had failed to prove that the offending bus was involved in the accident and the appeal being devoid of merit is hereby dismissed.

(SNEH PRASHAR)
JUDGE

14.09.2015
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