

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

Date of Decision: 19.11.2015.

FAO No.2650 of 1998

Sokinder

....Appellant.

VERSUS

Mohamad Idris and others

....Respondents.

WITH

FAO No.2651 of 1998

Baldev Singh

....Appellant.

VERSUS

Mohamad Idris and others

....Respondents.

AND

FAO No.2652 of 1998

Siri Chand

....Appellant.

VERSUS

Mohamad Idris and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Ritu Pathak, Advocate for
Mr. Kulwant Singh, Advocate for the appellant.

Mr. Suvir Dewan, Advocate for respondent No.3.

SNEH PRASHAR, J.

The above captioned three first appeals had arisen from an award dated 01.09.1998 passed by Motor Accident Claims Tribunal, Karnal in MACT case No.72, 73, 74 and 103 1995. Each shall be disposed of by this common judgment in FAO No.2650 of 1998.

The facts garnered from the record are that on 19.12.1994 Lokender, Baldev Singh, Siri Chand and Sokinder were coming from Village Toda to Karnal by means of Tractor-Trolley bearing registration No.UP-12A-4493 (hereinafter referred to as the “Tractor-Trolley”) of which Siri Chand was the owner and Sokinder was the driver. When they reached near Haryana Barrier Yamuna Bridge, a bus bearing registration No.UP-11-7171 (hereinafter referred to as the “bus”) came from their backside and struck against the tractor by coming on the wrong side of the road. As a result of accident, all the occupants of the Tractor-Trolley suffered injuries and the same also got damaged. On the statement of Sokinder, a criminal case under Sections 279/337 of the Indian Penal Code was registered against Mohammad Idris, driver of the bus.

All the four injured, namely, Lokinder, Baldev Singh, Siri Chand and Sokinder filed separate claim petitions against the respondents (driver, owner and insurer of the bus) invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) and claiming compensation for the injuries sustained by each of them.

Respondents No.1 and 2 (driver and owner of the bus) filed a joint written statement in each petition raising various legal preliminary

objections. Replying on merits they denied the allegation that the accident had taken place as a result of rash and negligent driving on part of driver of the bus. They submitted that the Tractor-Trolley was going ahead of the bus. The driver of the bus sought side from the Tractor-Trolley. Since the driver of the Tractor-Trolley was in drunk condition, he while giving side took the Tractor-Trolley on the stones lying beside the road and in that process the tractor turned turtle and a portion of it also hit the bus causing damage to it.

Insurer of the tractor, who was impleaded as respondent no.3, filed a separate written statement raising all legal and factual objections available to it under the Act of 1988. It denied its liability to pay compensation as the owner and driver of the tractor had not been arrayed as party to the petition. It also alleged that the driver of the tractor was not holding a valid and effective driving licence.

On the rival contentions of the parties, following issues were settled:-

1. Whether the accident took place on account of careless, rash and negligent driving of bus No.UP-11-7171 by respondent No.1 Mohammad Idrish and in that accident Lokender, Sokender and Baldev Singh recived injuries and tractor belonging to Siri Chand was damaged? OPP.
2. Whether tractor driver had no driving licence, if so to what effect? OPR1&2.
3. Whether any claim petition is bad on account of non joinder of necessary parties? OPR1&2.
4. Whether the bus river was not holding a valid and effective driving licence at the time of accident, if so to what effect? OPR Insurance Company.

5. How much compensation the claimants are entitled and from whom? OPP.

6. Relief.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the Tribunal came to the conclusion that the accident had taken place due to the negligence on part of the driver of the Tractor-Trolley and there was no fault on part of driver of the bus. Accordingly, issue no.1 was decided against the claimants-appellants. Driver of the Tractor-Trolley, Sokinder, was found to be having a valid driving licence and accordingly issue no.2 was disposed of. Issues no.3 and 4 were resolved against the respondents for not having pressed during arguments. Lastly, under issue no.5 each claim petition was separately examined and it was held that none of the claimants had been able to prove the injuries, if any, suffered by them as well as the expenditure on treatment etc., therefore, none of them was entitled to compensation.

In petition titled 'Siri Chand vs. Mohammad Idrish etc.', MACT Case No.103 of 1995 filed by owner of the Tractor-Trolley claiming compensation for the damage sustained by his tractor, an amount of Rs.30,000/- was awarded as compensation, but as regards liability of payment of the compensation amount, it was held that the accident had taken place due to negligence of the tractor driver and no reason has been explained by the owner in not claiming compensation from the insurance

company directly when the tractor was comprehensively insured. Accordingly, the said issue was also decided against the claimants.

Feeling aggrieved by the award passed by learned tribunal, separate appeals by the claimants were preferred. Appeal titled 'Lokinder vs. Mohammad Idris' was dismissed for want of prosecution by this Court vide order dated 11.03.2014.

The submissions made by Ms. Ritu Pathak, learned counsel representing the appellants-claimants and Mr. Suvir Dewan, learned counsel representing the appellant-respondent No.3-insurance company have been heard.

Learned counsel for the appellants-claimants argued that it was admitted by RW1 Mohammad Idrish, who was driving the bus at the time of accident, that a criminal case in respect of the accident had been registered against him on the statement of Sokinder, driver of the tractor-trolley. He also admitted that he had not made any complaint to any police authority pleading his false implication in the case. It was further his own version that he had run away from the spot immediately after causing the accident. Learned counsel contended that had there been no fault on part of RW1, he would not have fled away from the spot after causing the accident. Also from the fact that he had never challenged registration of the case against him before any higher authority, it is proved that it was because of his rash and negligent driving that the accident had taken place.

A claim petition is to be decided on the basis of the evidence led by the parties during its trial irrespective of the evidence led in the

criminal case registered in respect of the accident. All the four claimants, namely, Sokinder, Lokinder, Siri Chand and Baldev Singh appeared as PW1, PW2, PW3 and PW4 respectively. Surprisingly, PW4 Baldev Singh did not utter a word to state the cause of accident. His simple statement, that the accident was caused by the bus driver, was not enough to prove his allegation. As observed by learned tribunal, PW1 Sokinder during his cross-examination admitted that he did not see the bus which came from his backside as he was on the driving seat of the tractor. Similarly, PW3 Lokinder stated that he too had not seen the bus before the accident as he was sitting on the tractor. The only other witness PW2 Siri Chand stated that he was sitting in the trolley in which five quintals of **Toria** was loaded. In his cross-examination, he stated that he saw the bus when it was at a distance of 100 yards from the tractor and asked his nephew, who was driving the tractor, to take the tractor on the side of the road. His statement to the said effect was apparently an improvement during cross-examination as it was not so stated by him in his examination in chief. Moreso, it was not the version of Sokinder, driver of the tractor, that Siri Chand had seen the bus and asked him to take the tractor on the side of the road.

None of the witnesses explained the reason why the bus hit the trolley of the tractor first and then the tractor, but at the same time they admitted that during the accident, the Tractor-Trolley turned turtle. PW3 and PW4 did not even state that the bus was being driven in a rash and negligent speed because of which it dashed against the Tractor-Trolley. In absence of said complete particulars about the accident especially when

none of the witnesses saw the bus before it allegedly hit against the Tractor-Trolley, it cannot be held that the accident had taken place due to rash and negligent driving of the bus by RW1 Mohammad Idrish.

No doubt, it was admitted by RW1 Mohammad Idrish that he was facing trial in the criminal case in respect of the accident and also that he had fled away from the spot after the accident, but merely on the said facts it cannot be held that he was at fault or was responsible for causing the accident by his rash and negligent driving. It was necessary for the claimants to have produced direct and substantive evidence to prove the manner in which the accident had taken place as well as the cause of accident but when none of them had even seen the bus before the accident, it did not lie in their mouth to say that the bus was being driven in a rash and negligent manner.

The matter does not end here. RW1 Mohammad Idrish, driver of the bus, was fair enough to not deny the accident but he stated that the Tractor-Trolley, being driven in a rash and negligent manner, was going ahead of his bus. He blew horn seeking side on which the tractor driver took his Tractor-Trolley on the beem beside the road and as there was a heap of stones lying there, the tractor slipped and the Tractor-Trolley turned turtle. In that process the Tractor-Trolley hit the conductor side portion of the bus. The claimants alleged that the bus was damaged from the front side but no evidence was led by them to prove the mechanical examination report of the bus in order to rebut the testimony of RW1 Mohammad Idrish.

In addition to the statement of RW1 Mohammad Idrish, it is

noteworthy that there were two persons sitting on the tractor and two were sitting in the trolley when the tractor has only one seat that too of the driver and the trolley is not meant for carrying passengers especially when in the present case it was loaded with *Toria* crop.

The said violation of the traffic rules supports the version of driver of the bus that the Tractor-Trolley driver was driving in a rash speed and he lost balance over the stones lying beside the road because of which the Tractor-Trolley turned turtle. Thus, seen from every angle, it was the tractor driver who was at fault and it could not be proved that the accident occurred due to rash and negligent driving of the bus. No medico legal report of any of the claimants was tendered in evidence. The medical prescription slips produced did not indicate that the injuries suffered had been sustained in a vehicular accident. For the said reason learned Tribunal rightly did not award compensation to any of the claimants.

Resultantly, there being no merit in the appeals, the same are hereby dismissed.

(SNEH PRASHAR)
JUDGE

19.11.2015.
jitender