

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

FAO No.4665 of 2005 (O&M)

Date of decision: 19.11.2015

Sher Singh

....Appellant

Versus

Ram Bhagat and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Narinder Sharma, Advocate
for Mr. Hari Om Attri, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate
for respondent No.3.

RITU BAHRI J. (Oral)

CM No.20485-CII of 2005

For the grounds mentioned in the application, the same is allowed and the delay of one day in filing the appeal stands condoned.

MAIN CASE

As per office report, notice issued to respondent No.1 has not been received back served or otherwise. However, respondent No.2 was proceeded against ex parte vide order dated 08.12.2014. Since, the offending vehicle was duly insured, so, service upon respondent No.1 is dispensed with.

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide award dated 18.05.2005, on account of injuries sustained by Sher Singh, in a motor vehicular accident which took place on 29.12.2000.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 29.12.2000, Sher Singh was standing near Hazisarai Park, Hansi along with Mahender, Gangadhar and Jagdish. They were waiting for a bus at Bus-stand, Hansi. A private bus bearing registration No.HR-39-9099, came from Barwala side and it was being driven by respondent No.1 in a rash and negligent manner. The bus came at a high speed and struck against the petitioner, who was standing on the kachha portion of the road. The petitioner fell down and sustained grievous injuries. The bus driver fled away after causing the accident. The claimant-appellant was, thereafter, shifted to General Hospital, Hansi.

From the pleadings of the parties, following issues were framed:-

- 1. Whether the accident in question took place due to rash and negligent driving of bus No.HR-39-9099, by Ram Bhagat, respondent No.1? 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 liable to make the payment of compensation, if awarded, or not? OPR.

4. Relief.

On Issue No.1, a finding has been recorded against the claimant-appellant and it has been held that it was the claimant-appellant who was negligent while boarding the bus and thus, he fell down from the bus and suffered injuries.

The version in the FIR was that the claimant-appellant along with other persons were waiting for the bus and they had signaled the bus to stop, but the bus driver without picking up the passengers raced up the bus. Gulshan managed to board the bus, but the claimant-appellant could not catch hold of the window of the bus and he fell down and sustained injuries. Hence, the driver of the bus could not be found to be at fault.

Learned counsel for the appellant has referred to the written statement filed by respondents No.1 and 2 before the Tribunal, where in paragraph 24, it has been admitted that the bus had come from Barwala side and on signal it was stopped. The passengers boarded it and the bus started. Gulshan boarded the bus while the claimant-appellant fell down as he could not catch the window firmly and received two injuries as described in MLR. Gulshan was examined and during investigation under Section 161 Cr.P.C. he corroborated the version of the claimant-appellant.

Once, in the written statement, the driver and owner of the vehicle have admitted that claimant-appellant fell down while boarding the bus, then the version in the FIR should not have been rejected by the Tribunal and a finding could not be returned against the claimant on Issue No.1.

So, keeping in view the above facts and circumstances, the present appeal is accepted, the award is hereby set-aside and the matter is remanded back to the Tribunal for giving afresh finding on Issues No.2 and 3, in accordance with law.

Disposed of, accordingly.

(RITU BAHRI)
JUDGE

19.11.2015

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