

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 3212 of 1996(O&M)

Date of Decision: April 29 , 2016.

Harvinder Singh APPELLANT (s)

Versus

CTU, Chandigarh and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Parminder Kaur, Advocate and
Mr. Vishal Gupta, Advocate
for the appellant.

Mr. Parminder Singh Kanwar, Advocate
for respondent – CTU.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been preferred by appellant – Harvinder Singh being aggrieved of the award dated 01.08.1996 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as, the 'Tribunal') whereby his claim petition under Section 166 of the Motor Vehicles Act, 1988 has been dismissed.

Brief facts of the case as delineated in the claim petition are

that, the appellant-claimant and his wife Satinder Kaur were returning home on 26.08.1993 at about 8.00 p.m. after purchasing household articles from Janta Market, Mohali on his scooter. Appellant's wife Satinder Kaur (since deceased) was riding pillion. When they reached near Madanpur Chowk, a bus bearing registration No. CH01-G-5506 approached from the opposite direction being driven in a rash and negligent manner by respondent No.2 – Gurdial Singh and dashed against their scooter, due to which they both fell down on the non-metalled portion of the road and received multiple injuries. Street lights were functioning on both sides of the road. Both, the claimant and his wife, were taken to PGI Chandigarh but his wife was declared dead at the hospital. The appellant was treated for the injuries sustained by him. It is alleged that the whole story was narrated to the police officials at Police Station Mohali on 27.08.1993 but no action was taken in league with the driver of the offending bus. The case was filed and no action was taken against the driver of the offending vehicle. ₹15,00,000/- were claimed as compensation on account of the death of appellant's wife Satinder Kaur. Respondents denied the allegations and averments in the claim petition and contested the claim of the appellant.

Learned Tribunal on the basis of pleadings of the parties framed the following issues:-

1. Whether Satinder Kaur had died as a result of accident dated 26.8.1993, caused by Gurdial Singh respondent, while driving bus No. CH-01-G-G/5506 rashly and negligently?
OPP

2. To what amount of compensation, if any, the claimant is entitled to recover and from whom? OPP

3. Relief.

After going through the pleadings, evidence as well as entire facts and circumstances of the case, learned Tribunal decided Issue No.1 against the appellant-claimant holding that the appellant failed to prove that his wife, Satinder Kaur had died on account of the injuries received in the alleged accident caused due to the rash and negligent driving of bus No. CH01-G-5506 by respondent No.2. Claim petition was consequently dismissed. Aggrieved therefrom, present appeal has been preferred.

Learned counsel for the appellant vehemently argues that registration of an FIR is not a sine qua non for grant of compensation under the Act. There is sufficient evidence on record to show that the accident in question took place due to the rash and negligent driving of the offending bus of the Chandigarh Transport Undertaking being driven by respondent No.2. It is argued that the claimant has specifically deposed that the accident in question was caused by the offending vehicle. Discrepancy in the number of the bus in DDR No.21 (Ex.PE) and the number of bus actually involved, cannot be held against the appellant. Furthermore, the abovesaid DDR was recorded immediately after the occurrence when the claimant was under shock therefore, the same should not be read against him. Similarly, the factum of the post-mortem not having been conducted is also not sufficient to non-suit the appellant, who is entitled to compensation on account of the death of his wife, Smt. Satinder Kaur. It is, thus, prayed

that the impugned award dated 01.08.1996 be set aside and necessary compensation be awarded to the appellant-claimant.

Learned counsel for respondents while referring to DDR No.21 (Ex.PE) submits that the appellant himself had stated that he had become nervous when a CTU bus No. CH01-G-5506 came from front side and due to his nervousness, fell down on the road on his right side due to which appellant received injuries on his right shoulder and his wife received injuries on her head. The appellant has specifically recorded that none is at fault and he did not want action to be taken against the driver. Learned counsel for the respondents, thus, prays for upholding the said award.

Having heard learned counsel for the parties and going through the award as well as the available record as provided by learned counsel for the parties (record of this case had been burnt in a fire which took place in the High Court premises on 30.01.2011), it is apparent that lodging of DDR No.21 (Ex.PE) is not denied. The said statement made by the appellant is sought to be explained on the ground that he was under shock, thus his statement that the accident took place due to his nervousness and none is at fault, should not be held against the appellant. There is no dispute that lodging of FIR is not sine qua non for grant of compensation in the present proceedings for compensation under the Motor Vehicles Act. However, there should be cogent and convincing evidence on record to prove the accident in question having been caused due to the rash and negligent driving of the offending vehicle. In the present case, such evidence is conspicuous by its absence. Apart from the self-serving statement of the

appellant and PW3 Gurmail Singh, there is no other evidence to substantiate the appellant's claim.

The DDR in question has not been recorded on the same day i.e., on 26.08.1993 when the accident took place. It is recorded on the next day i.e., 27.08.1993 at about 5.00 p.m. Therefore, it cannot be held that the appellant was in a state of shock at that time to the extent that he has held none to be guilty for the accident in question. Undisputedly no further action was taken against the driver on the said report being filed. No objection was ever raised by the appellant. It is not denied that the post-mortem of deceased Smt. Satinder Kaur was not conducted, neither was any medical evidence led to prove the injuries on the person of the appellant. There is no site-plan on record which might buttress the appellant's case. Be that as it may, the appellant has miserably failed to prove that Satinder Kaur passed away on account of the accident caused due to the rash and negligent driving of the offending vehicle by the respondent driver. It was incumbent upon the appellant to have led positive evidence to prove the rash and negligent act on the part of the said driver.

In the given factual matrix, learned Tribunal has rightly decided Issue No.1 against the appellant-claimant, who has woefully failed to prove the death of Smt. Satinder Kaur to have been caused in an accident caused by the rash and negligent driving of the offending bus No. CH01-G-5506 by respondent No.2 – Gurdial Singh on 26.08.1993 at 8.00 p.m.

Learned counsel is unable to point out any illegality, infirmity

or perversity in the impugned award dated 01.08.1996 passed by learned Motor Accident Claims Tribunal, Rupnagar which warrants interference by this Court.

Thus finding no merit in this appeal, the same is dismissed.

April 29 , 2016.
'om'

(LISA GILL)
JUDGE