

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4803 of 2004 (O&M)
Date of Decision: September 07, 2016.

Varinder Kumar

.....APPELLANT(s).

VERSUS

Gurwinder Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Akshay Rawal, Advocate
for the appellant (s).

Service of respondents No.1 & 2 already dispensed with.

Mr. Rajeev Sharda, Advocate
for respondents No.3 to 5.

SURINDER GUPTA, J.

This is appeal by claimant Varinder Kumar against the award passed by Motor Accident Claims Tribunal, Nawanshahr (later referred to as 'the Tribunal'), dismissing his petition filed under Section 166 of Motor Vehicles Act, claiming compensation for the injuries suffered by him in an accident while boarding bus bearing registration No.PB-08-S-9871 (later referred to as 'the offending bus') driven by respondent No.1 and owned by respondents No.3 to 5.

The claimant described the accident in para 24 of the claim petition, which reads as follows:-

“That on 06.07.1999 at about 01.15 p.m., the petitioner (sic boarded) the Bus No. PB-08-S-9871, driven by respondent No.1 and owned by respondents No.3 to 5 on which respondent No.2 was the conductor, at Samrala Chowk, Ludhiana for coming to Nawanshahr. At about

01.30 p.m., when the bus reached Jalandhar bye-pass, Ludhiana, it came to halt to take passengers. The petitioner alighted from the bus in order to urinate and while doing so, he asked respondent No.2 to wait for him. After making urinal, the petitioner came back and when he was about to board the bus and he had put his one foot in the back door, respondent No.2 gave whistle and the respondent No.1 without bothering that the passengers were still boarding the bus speeded up the bus, as a result of which, the petitioner lost grip of the handle and fell on the metalled road and the rear tyre of the bus ran over his left leg, thus, crushing the same. He also suffered other multiple injuries on his body. The accident has occurred purely due to the negligence of respondent No.1 as well as respondent No.2. Thus, the petitioner is entitled to the compensation as claimed.”

Respondents i.e. driver, conductor and owners of the offending bus did not appear to contest the claim petition and were proceeded against ex parte.

In order to prove his case, the claimant examined AW1 Harbhajan Singh, a co-passenger in the offending bus on the date of accident, who deposed as follows:-

“On 6.7.99, I was travelling in Bus No.PB-08-S-9871 of Walia Coach and was coming from Ludhiana to Nawanshahr. Varinder Kumar petitioner boarded the said bus from Samrala Chowk, Ludhiana and he alighted from the bus at Jalandhar Bye-Pass, Ludhiana telling the conductor that he was going to urinate. After urinating, when Varinder Kumar was about to board the bus, the conductor gave whistle and the driver of the said bus, without bothering to look behind, speeded up the bus.

Due to the said negligence, Varinder Kumar, who was in the process of boarding the bus, fell down and left side wheel of the bus ran over the left leg of Varinder Kumar and the said leg of petitioner got crushed badly. This accident had occurred purely due to the rashness and negligence of the driver, as well as, the conductor of the offending bus. I had witnessed this accident.”

The claimant himself appeared as AW2 and made statement, supporting the averments in the claim petition. He stated that after the accident, he was taken to D.M.C. Hospital, Ludhiana where he remained admitted for two months as indoor patient. He was operated upon and plastic surgery was conducted on his left leg. He had spent ₹1,50,000/- on his treatment in D.M.C. Hospital, Ludhiana as indoor patient. Thereafter, he got himself periodically checked up at the same hospital by hiring a taxi at the rate of ₹700/- per trip. He has suffered permanent disability as his left leg does not withstand load and the joints have become immobilised. He suffered loss of his business during the period he remained admitted in hospital as indoor patient and even after his discharge. He was running a confectionary shop and was earning ₹10,000/- per month. Now, he is unable to drive two wheeler or four wheeler and needs help of an attendant.

The claimant examined Om Parkash, Cashier of Dayanand Medical College and Hospital, Ludhiana as AW3, who produced the hospital record of the claimant and stated that the claimant was admitted in the hospital on 06.07.1999 and remained admitted there upto 09.08.1999. He paid the bill of hospital(Ex.P60) amounting to ₹38,000/- and also proved the medical certificate Ex.P61. The claimant also proved the bills for purchase of medicines Ex.P2 to P56 by examining P.K. Sharma, Accountant

of M/s Datta Brothers Drugs Store, inside New D.M.C. Hospital, Ludhiana. Dr. Sanjeev Uppal, Plastic Surgeon in D.M.C. Hospital, Ludhiana appeared as AW6 and has stated that claimant was admitted with injuries in road traffic accident. He was having skin loss all around the left leg and fracture of leg bone (fibula) and ankle bone. He was operated for skin grafting on 06.07.1999, 12.07.1999, and 17.07.1999 and was discharged on 09.08.1999 with advice to come for regular follow up and treatment. Claimant had been coming thereafter as OPD patient. There is permanent disability in the form of hyper trophic scarring and mild contractures which cause restricted mobility of ankle and to some extent knee joint. He further stated that information to the police was sent from the emergency ward vide No.32947 on the day of admission of claimant i.e. 06.07.1999.

The Tribunal dismissed the claim petition with the observations as follows:-

- (i) In the DDR recorded on 07.07.1999, the claimant has narrated the entire incident and stated that he did not want to take any action as talks of compromise were going on with the owners of the offending bus and in case, compromise did not materialise, he would inform the police.
- (ii) Though the copy of DDR was on record, the claimant while appearing as PW2 has not deposed about lodging of the DDR.
- (iii) Claim petition was filed in February 2000 and claimant has not explained as to why he did not initiate criminal action against the driver of the offending vehicle and what was the result of his talk of compromise with the owners of the offending bus.

(iv) In the DDR, the name of driver of the offending vehicle and its particulars were not mentioned.

(v) It is quite possible that claimant might have fallen down from the bus due to his own negligence while trying to board a moving bus.

Relying on above facts, the Tribunal drew the conclusion that the claimant has not come before it with clean hands or had disclosed the correct facts.

On perusal of the evidence discussed above and the reasoning given by the Tribunal while discarding the plea raised by the claimant, I am of the considered opinion that the conclusions drawn by the Tribunal are perverse against facts and not inconsonance with the spirit of provisions of Motor Vehicles Act. There is un rebutted statement of claimant about the manner in which the accident took place. His statement finds corroboration from the statement of PW1 Harbhajan Singh and the medical evidence on record. The matter was also reported to the police without any delay and if the owner of the offending vehicle wanted to have amicable settlement with the claimant, no fault can be attributed to him(claimant) for requesting the police not to proceed further in the matter for the time being. On receipt of information of accident, police was duty bound to proceed further in the matter. If the police has not recorded any FIR or made any further inquiry from the claimant regarding the accident, the lapse is on the part of the police and cannot be attributed to the claimant.

It is proved on file that the offending bus was involved in the accident. The witnesses have stated that the driver of the offending bus caused the accident due to his rash and negligent driving. Name of driver of

the offending bus is mentioned in the claim petition. The owners of the offending bus have not come up with any version that respondent No.1 was not driver of the offending bus at the relevant time. The reasons put forth by the Tribunal while discarding claim of claimant are not tenable or are inconsonance with the evidence on record, as such, are liable to be set aside. The claimant by leading cogent and convincing evidence has been able to prove that the accident was caused by the driver of the offending bus due to his rash and negligent driving. The findings of the Tribunal to this effect are reversed.

The claimant has placed on record bills Ex.P2 to Ex.P56 and Ex.P60 which learned counsel for the claimant on calculation found to be of ₹54,081.50p, which is rounded off to ₹54,100/-. The claimant remained admitted in the hospital for 34 days and thereafter he had been going from Nawanshahr to Ludhiana for follow up treatment. Dr. Sanjeev Uppal AW6 has stated that the claimant has suffered permanent disability but did not quantify the same. No disability certificate has been produced or proved on record. During the period the claimant remained admitted in the hospital and thereafter till he became capable to attend his business, he suffered loss of income, which is quantified for three months @ ₹6,000/- per month, total amounting to ₹18,000/-. A person who suffered the injuries as the claimant has suffered and undergone so many operations and is suffering from restricted mobility to the organs of left leg, requires regular medical treatment, care and physiotherapy etc., as such, claimant is entitled to compensation on this score amounting to ₹10,000/-. For the pain and sufferings, he is awarded a compensation of ₹20,000/-; for nutritious diet

₹10,000/-; for expenses on attendant ₹10,000/-, for transportation ₹10,000/-.

For loss of amenities of life due to restriction of mobility of ankle and knee joint, he is awarded a compensation of ₹50,000/-.

In view of my above discussion, compensation to which the claimant is entitled to, is assessed as follow:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Medical expenses	₹54100
(ii)	Pain and suffering	₹20000
(iii)	For future treatment, physiotherapy etc.	₹10000
(iv)	Loss of income @ ₹6000 p.m. for 3 months	₹18000
(v)	Attendant services	₹10000
(vi)	Transportation charges	₹10000
(vii)	Nutritious/Special diet	₹10000
(viii)	For loss of amenities of life	₹50000
<i>Total</i>		₹182100

The appeal is accordingly allowed. The award of the Tribunal is set aside and the claimant is held entitled to compensation of ₹1,82,100/- for the injuries suffered in the accident. The claimant shall be entitled to the interest on the compensation amount @ 7.5% per annum, from the date of filing of the claim petition till its realisation. Amount of compensation shall be payable by proprietors/owner of Walia Transport Company, Phagwara i.e. respondents No.3 and 5 jointly and severally with respondent No.4. The claimant is also entitled to the costs of this appeal. Counsel fee is assessed at ₹5,000/-.

September 07, 2016.
Sachin M.

Whether speaking/reasoned:

Whether Reportable:

(SURINDER GUPTA)
JUDGE

√
Yes/No

Yes/No