

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

FAO No. 4855 of 2010

Date of Decision: 01.09.2016

Kulwinder Kaur

.....Appellant

Vs.

Amrik Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Arvind Kashyal, Advocate,
for the appellant.

None for respondents No. 1 and 2.

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

AMOL RATTAN SINGH, J. (ORAL)

1. The claim petition of the claimant before the learned Motor Accidents Claims Tribunal, Fatehgarh Sahib, having been dismissed, she is in appeal against that Award of the Tribunal, dated 16.04.2010.

2. The case set up by the appellant-claimant was that on 19.02.2007, she along with her husband Balwant Singh, boarded a bus from Khamanon to Jalandhar and when the bus reached Samrala Chowk, Ludhiana, they both alighted to change a bus to go to Jalandhar. At about 10:30 a.m. the “offending bus”, bearing registration N0. PB-23-E-5797, reached the Samrala Chowk, bound for Jalandhar. While she and her husband were trying to board the bus and she had stepped inside, respondent No. 1, who was driving the bus, moved it “on fast/high speed”,

due to which she fell down and suffered injuries on her left leg and other parts of the body. Upon a hue and cry being raised by passengers, the bus was stopped at some distance, with the first respondent stepping down and disclosing his name to be Amrik Singh.

She was got admitted to the Mohan Dai Oswal Cancer Treatment and Research Foundation, Ludhiana, by her husband, along with the driver of the bus and police employees. However, taking advantage of the fact that she was under treatment, the police employees allegedly came to her and asked her to sign some blank papers so that a case may be registered against the driver of the bus. Stating that she believed the version of the police constable, she signed the blank papers, whereas in the meantime, the driver allegedly slipped away from the hospital.

3. After her treatment in the aforesaid hospital, she was also stated to have been admitted to two other hospitals, after which she went to the police station to inquire about her case. An assurance was stated to have given by the police, that they would take action against the driver. Thereafter, allegedly, the police kept putting off her queries on one pretext or the other. It was further alleged that the police of Police Post Shingar Cinema, Division No. 6, Ludhiana, in collusion with the bus driver, had not registered any case against him.

4. It was further stated in the claim petition that the appellant remained admitted in hospitals and also took treatment as an outdoor patient and that her leg was operated upon twice, due to which she had become incapable of walking properly and was continuously suffering a pain in her leg, with the leg not even bending properly so as to allow her to sit in a normal manner.

It was further claimed that Rs. 5,00,000/- has been spent on her treatment, special diet and other expenses etc. in different hospitals and that the treatment was still going on, with no fault on the part of the claimant.

Consequently, a compensation of Rs. 10,00,000/- was claimed, along with interest upon that sum @ 18% per annum.

5. Upon notice issued to the respondents, respondent No. 1 did not appear and was proceeded against *ex parte* by the Tribunal. Respondent No. 2, i.e. the company that had owned the bus, appeared and filed a written reply through its "Proprietor" (as given in the memo of parties). All the averments in the claim petition were denied, stating that the accident actually never took place with the bus aforesaid and that the company and the bus had been 'falsely implicated'.

It was further stated that in any case, respondent No. 1 was holding a valid driving license and the bus was duly insured with respondent No. 3. It was, however, yet again reiterated that no accident had taken place with the said bus.

6. The insurance company, in its written statement, other than taking the usual preliminary objections of a non-valid driving license, non valid route permit etc., submitted that the police had recorded the correct version of the accident and had not found the driver of the bus to be negligent.

The contention that the appellant-claimant had remained admitted in different hospitals and had spent a large amount on her treatment, was also denied.

Further, it was contended that respondent No. 2 had purchased the insurance policy from the insurer, alleging that he himself was the

owner of the bus (as opposed to the company-respondent No. 2).

It was further contended that the insurance company had no liability to pay the compensation and that the claimant was trying to get “easy money” by filing the claim petition.

7. On the usual issues having been framed with regard to negligence, the validity of the driving license of respondent No. 1 and the amount of compensation, if any, that the claimant was entitled to, the Tribunal found that there was a compromise deed effected (Ex. C-33) between the parties, which had not been challenged earlier, except by way of the claim petition. The signatures on the said document were admitted by the claimant to be hers' and those of her husband, though she stated that the recital in the compromise deed was not at her instance.

8. It was further found that CW-2 Balwant Singh, i.e. the husband of the claimant, had given the wrong number of the bus and in his cross examination had stated that it was bus no. 5797 (i.e. the last four digits of the allegedly “offending vehicle”).

He also could not give the name of the company which owned the bus that his wife and he had travelled in from Khamanon to Ludhiana, prior to attempting to board the vehicle owned by respondent No. 2.

It was also noticed by the Tribunal that he admitted that he had gone to Jalandhar for the treatment of his wife, regarding a skin problem.

9. Thereafter, discussing the documentary evidence in the shape of bills produced by the claimants, it was held by the Tribunal that neither any doctor, nor any other person was examined, to even prove that the claimant was admitted to hospital, with she herself stating that she was admitted from 19.02.2007 to 28.02.2007, whereas some bills showed that

she was in hospital on 22.03.2007.

10. Eventually holding that even if the accident itself is to be held to have taken place, the matter having been compromised between the parties and no evidence having been led with regard to the period of admission of the claimant, to various hospitals, or with regard to the nature of injuries received by her, the claim petition was dismissed, with costs of Rs. 1,000/-.

11. Before this Court, learned counsel for the appellant submits that though the compromise deed (Ex. R2/C-33) shown to have been entered into between the appellant and respondents No. 1 and 2, is not denied on the date of the accident, i.e. 19.02.2007, however, the compromise was allegedly obtained under stress of the accident itself and as such, cannot be relied upon by the respondents to deny just compensation to the appellant.

12. Having considered the aforesaid contention, whereas that otherwise may be an acceptable contention, however, it is further seen that neither any doctor was examined to testify as to the nature of the injuries suffered by the appellant, nor was any other evidence produced, other than bills for the treatment stated to have been received by her. The said bills have also been discussed in paragraph 15 of the Award, showing that there was an ambulance charge of Rs. 200/- and thereafter various minor charges for hair oil, tooth brush etc. Thereafter, though, there are bills discussed amounting to Rs. 1,72,952/-, shown to be for Laboratory charges, Radiology charges, a Cardiology procedure, ward charges, consumable/drugs, OT charges, an anesthetists' charges, along with consultation charges of three different doctors.

As noticed, it was also contended in the claim petition that the

appellant-claimant had been admitted first to the Mohan Dai Oswal Cancer Treatment and Research Foundation, Ludhiana, after which she was taken to the Satguru Partap Singh Apollo Hospital Ludhiana and the Satluj Hospital, Ludhiana, and that her left leg was also operated upon twice.

Yet, no doctor, or even any record keeper from the aforesaid hospitals, is shown to have been examined.

12. Learned counsel for the appellant has further pointed to the fact that though the negligence in causing the accident was held to be not proved by the Tribunal, however, the factum of the accident itself was not denied by the insurance company, though with a stand taken that the correct version of the accident was the one recorded by the police, to the effect that there was no negligence on the part of respondent No. 1, i.e. the driver of the vehicle concerned, but was that of the appellant herself.

13. Since the records of this case have been burnt in the fire accident of January 2011, this Court specifically put a question to learned counsel for the appellant, as to whether any evidence was led in support of the contentions that the appellant had been operated upon and had remained in hospitals for more than five months, as claimed. He has fairly submitted that other than the medical bills, no witness in support of either the bills, or any treatment, was examined.

14. Thus, in the opinion of this Court, though even if the compromise deed (Ex. C33) is accepted to be evidence that the accident actually took place, the fact remains that no evidence whatsoever was led with regard to the nature of the injuries and the amount spent by the appellant on her treatment.

15. Consequently, though of course if the contentions in the claim

petition are correct, then the appellant would have deserved just compensation, but with no evidence led in support of the contentions, other than medical bills which were also not supported by any witness to prove them, I find no error in the Award of the learned Tribunal in dismissing the claim petition.

Consequently this appeal is also dismissed, but with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

September 01, 2016
nitin

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.