

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.1460 of 2002

Date of Decision.06.10.2017

Bhag Singh son of Kali Ram

.....Appellant

Vs

Gian Chand and others

.....Respondents

Present: Mr. Vijay Lath, Advocate
for the appellant.

Ms. Deepali Puri, Advocate
for respondent Nos.2 and 3.

Mr. Vikas Mohan Gupta, Advocate
for respondent Nos.5 and 6.

Mr. Vinod Gupta, Advocate
for respondent No.7.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been preferred against the award passed by the Tribunal whereby the claim petition filed under Section 166 of the Motor Vehicles Act arising out of an accident occurred on 19.09.1991 while travelling in a CTU bus bearing registration No.CH-01G-5085 from Chandigarh to Una has been dismissed.

Mr. Vijay Lath, learned counsel appearing on behalf of the appellant-claimant submits that the appellant was travelling in the aforementioned bus on a journey to Una from Chandigarh. He was seated in the last row and while taking a turn, the back side of the bus hit a truck bearing registration No.PAT-9778, which was coming from the other direction, resulting into injuries on his head and shoulder. As per the

medical certificate brought on record, he suffered 33% disability. In this regard, an FIR bearing No.128 dated 19.9.1991 under Sections 279, 337, 427 IPC was also lodged at Police Station, Ropar. The statement of the claimant also showed that both the vehicles were negligent, thus, the Tribunal should not have dismissed the petition rendering the finding in paragraph 14 which reads as under:-

“14. The claimant has not led any other material evidence to prove his claim except his own statement, which is not sufficient to determine the quantum of compensation. Rather, the said claimant appeared before the Criminal Court and made a statement Ex.R-2 in which he has averred that bus driver was not at all at fault in driving the vehicle and accordingly, the accused driver was acquitted by the learned Trial Court. In the present claim petition, he has given contradictory statement as compared to the statement given by him before the learned Judicial Magistrate 1st Class, Ropar and hence, he cannot be believed.”

The Tribunal did not read the statement in correct perspective whereas contributory negligence to the owner and driver of the truck and driver of the CTU had been attributed. The statement recorded in the aforementioned criminal case qua attribution of negligence was erroneously read against the appellant, for, the appellant was not in a sound state of mind due to injuries. At least, the Tribunal ought to have assessed the compensation for 33% disability suffered by the appellant, as per Ex.P2, thus, urges this Court for modification of the award passed by the Tribunal.

Mr. Vinod Gupta, learned counsel appearing on behalf of the insurance company of the truck and Ms. Deepali Puri, learned counsel appearing on behalf of the CTU submit that finding rendered by the

Tribunal in paragraph 14 has not been rebutted by producing on record any

medical evidence. The medical certificate has not been proved through the testimony of the doctor. Mere exhibition of the document does not dispense with its proof. The statement suffered before the Criminal Court has been admitted by the appellant and on such admission, the driver of the CTU bus i.e. accused in the FIR had been acquitted. The statement suffered in the Criminal Court was prior to the one given before the Tribunal, therefore, it was an afterthought, thus, urges this Court for dismissal of the appeal by upholding the award.

I have heard learned counsel for the parties and appraised the paper book. The facts emanated from the preceding paragraphs would reveal that the appellant-claimant could not establish the negligence on the part of either the truck driver or CTU bus. Though the FIR was registered against the CTU driver but the claim petition was dismissed owing to the statement Ex.R2 suffered by the appellant, which was admitted when confronted. The relevant portion of the cross-examination reads as under:-

“.....It is correct that I have made a statement in the Court on 19.4.94 that I do not know regarding the accident against Gian Chand. It is also correct that I had made a statement that I do not know who the accident occurred. It is also correct my statement is Ex.R1. Ex.R2 is the copy of judgment.”

However, the fact remains that the accident was not denied by either of the parties, in essence, the accident had actually taken place and the injuries also. The claimant-appellant had suffered injuries but was not able to get compensation owing to insufficient and incomplete evidence. The Tribunal, in my view, ought to have awarded a compensation of ₹25000/- by taking into consideration the provisions of Section 140 of the

Motor Vehicles Act for the injuries suffered by the appellant under 'no fault liability'.

Resultantly, the award is modified to the extent that it shall be treated to have been awarded a compensation of ₹25000/- under Section 140 of the Motor Vehicles Act. This amount shall also entail interest @7.5% per annum from the date of filing of the claim petition till its realization. The respondent No.1 and 2 shall be liable to pay the compensation jointly and severally. The aforementioned amount along with interest shall be paid within a period of three months, failing which it shall entail interest @10% per annum.

The appeal stands disposed of.

(AMIT RAWAL)
JUDGE

October 06, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No