

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

(1)

FAO No. 630 of 1995

DATE OF DECISION : 23.08.2017

Balbir Singh

.... APPELLANT

Versus

Kaka Singh and others

.... RESPONDENTS

(2)

FAO No. 1050 of 1995

DATE OF DECISION : 23.08.2017

M.A.S.D. Public School and another

.... APPELLANTS

Versus

Balbir Singh and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Gobind Rana, Advocate, for
Mr. Harkesh Manuja, Advocate,
for the appellant in FAO No. 630 of 1995 and
for respondent No.1 in FAO No. 1050 of 1995.

Mr. Arun Kumar Singal, Advocate,
for respondents No.1 and 2 in FAO No. 630 of 1995 and
for the appellants in FAO No. 1050 of 1995.

Mr. Ankush Jagwan, Advocate, for
Mr. R.K. Bashamboo, Advocate,
for the respondent – Insurance Company (in both appeals).

* * *

AVNEESH JHINGAN, J.

These are cross appeals, one (FAO No. 630 of 1995) filed by
the claimant and the other (FAO No. 1050 of 1995) filed by the owner and

driver of the bus, against the award dated 05.12.1994 passed by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Tribunal').

2. The facts of the case, relevant for decision of both these appeals, are as under :-

On 22.03.1992 at about 7.00 AM, bus bearing registration No. PAB-1011, carrying marriage party, was going to village Seenkh from village Kalkha. At a distance of about 1.5 kilometer from village Chichrana towards village Seenkh, the bus took a sudden jump. As a result of the jump, claimant Balbir Singh's head struck against the ceiling of the bus, he fell down from his seat, and his left leg was fractured. The other members of the marriage party also suffered injuries. Balbir Singh was removed to Civil Hospital, Panipat, for treatment. After treatment from Civil Hospital, Panipat, he was shifted to Nursing Home of Dr. P.N. Gandhi. In the Nursing Home, he was operated upon to treat his fractured leg.

3. Balbir Singh filed a claim petition before the Tribunal claiming compensation of ₹ 2,00,000/-. It was pleaded that at the time of the accident, he was 32 years of age, working as farm labourer, and was earning ₹ 1,500/- per month. He claimed that he had spent ₹ 50,000/- on his treatment and medicines.

4. Notice was issued. Driver and owner of the bus filed joint written statement and separate written statement was filed by the respondent - Insurance Company.

5. The Tribunal, after hearing learned counsel for the parties and on the basis of evidence as well as witnesses produced before it, held that

the accident of bus No. PAB-1011 was result of rash and negligent driving by the driver. The Tribunal, after taking into consideration the medical treatment, earning of the claimant and the temporary disability of 30%, awarded ₹ 15,000/- for the injury and for pain and suffering; ₹ 13,426.60 paise for medical treatment for which receipts were produced; and ₹ 5,000/- for rich diet and miscellaneous expenses. The claimant was awarded ₹ 7,200/- as compensation for remaining out of work for one year. In total, he was allowed ₹ 40,626.60 paise along with interest at the rate of 15% per annum. Counsel fee was assessed at ₹ 150/-. The Tribunal also held that the driver and owner of the bus would be liable to pay the awarded amount.

6. Aggrieved of the award of the Tribunal, the claimant and the owner and driver of the bus have filed cross appeals. Since both the appeals are inter-connected, these are being decided by one order.

7. Dealing with the appeal (FAO No. 630 of 1995) filed by the claimant first, regarding enhancement of the compensation, I have heard learned counsel for the parties and perused the paper book.

8. Learned counsel for the claimant argued that the compensation awarded by the Tribunal is very less. There was a fracture in the leg of the claimant, for which he was hospitalised and operated upon. It was submitted that the claimant being an illiterate person was not able to keep accurate account of expenses of his treatment. It was further argued that because of the fracture in the leg, he is not able to do his normal work as a labourer. The fixing of his monthly income as ₹ 600/- by the Tribunal is also challenged to be on the lower side. Enhancement of compensation for rich

diet and for pain and suffering was also prayed for.

9. Learned counsel for the owner and driver of the bus argued that the claimant has suffered no permanent disability. The fracture in leg has not effected his day to day working. The claimant was a farm labourer and it cannot be expected that a farm labourer will get work on all the 30 days of the month. The amount awarded by the Tribunal was just and equitable.

10. I have heard learned counsel for the parties and perused the paper book with their assistance, regarding enhancement of compensation.

11. It has been accepted by the Tribunal that the claimant remained admitted in Civil Hospital from 22.03.1992 to 27.04.1992. Thereafter, he was admitted in the clinic of Dr. P.N. Gandhi, where he remained admitted from 18.06.1992 to 02.07.1992. He was operated upon in order to treat fracture of his left leg. Apart from grafting of bone, nailing was done. The doctor had given disability certificate of 30% as the claimant had restricted movement of knee. The Tribunal, while granting compensation, restricted the medical expenses only to the extent the receipts were produced. The transportation expenses were not awarded, as the claimant failed to produce the receipts from auto rickshaw. The claimant claimed that he was earning ₹ 1,500/- per month as a farm labourer, but his monthly income was taken as ₹ 600/-. He was granted ₹ 7,200/- as compensation for remaining out of work for one year.

12. Keeping in view the injury, expenses incurred on the treatment, pain and suffering, permanent disability, transportation required by the

claimant for treatment and the fact that accident effected his day to day earning as a farm labourer, compensation awarded by the Tribunal is enhanced to ₹ 80,000/-.

13. The appeal (FAO No. 630 of 1995) filed by the claimant for enhancement of compensation is partly allowed and the award dated 05.12.1994 is modified to the extent that the compensation amount of ₹ 40,626.60 paise awarded by the Tribunal is enhanced to ₹ 80,000/-.

14. Now, dealing with the appeal (FAO No. 1050 of 1995) filed by the owner and driver of the bus, learned counsel for the parties have been heard and the paper book has been perused.

15. Learned counsel for the owner and the driver argued that the Tribunal has erred in holding that the bus was being used for carrying a marriage party at the relevant time. The finding of the Tribunal regarding validity of the driving licence was challenged submitting that the photostat copy of the driving licence was on the file of the criminal case and the driver was always ready to produce the driving licence. Learned counsel argued that the appellants alone are not liable to pay compensation. Further, it was argued that bus was not being driven rashly and negligently.

16. Learned counsel for the respondent – Insurance Company argued that the driving licence was not produced in spite of the fact that the same was with the driver at the relevant time. He further argued that the bus was insured and registered as a school bus, but it was being used to carry a marriage party, therefore, the finding of the Tribunal that owner and the driver are liable to pay compensation does not require any interference.

17. Learned counsel for the claimant argued that it has been proved on record that the bus was being driven rashly and negligently, as a result of which the appellant suffered fracture in his leg.

18. I have heard learned counsel for the parties and perused the paper book with their assistance.

19. The argument of the appellants that the bus was not being used for carrying a marriage party and no booking or payment receipt was produced, has no merit. It has come on record that the marriage party was going from village Kalkha to village Seenkh. PW.1 Prem Singh in his statement stated that for marriage of his son, he had hired the bus of MASD Public School, Faridpur, District Panipat, for ₹ 1,500/-. The driver in his statement stated that 22.03.1992 was Sunday and on that day, he never took the marriage party. Rather, he was taking the school children to N.F.L. Statement of the driver prima facie is false as if it was Sunday, the school was closed and there was no occasion to carry the school children on Sunday. Further, no evidence or explanation has been rendered as to how the claimant was travelling in bus No. PAB-1011. Statement of the driver was not reliable. The Tribunal accepted that the bus was being used for carrying the marriage party.

20. RW.1 Yash Pal, the licensing Clerk, appeared before the Tribunal and stated that the bus being a school bus had been exempted from road tax by the Transport Commissioner vide order dated 16.12.1992. Further, the offending bus was not having any route permit as it had to take school children from their houses to the school and back. This fact has not

been disputed in the present appeal. The school bus was not permitted to go out of Panipat as there was no route permit. No evidence has been produced as to how the bus was plying beyond Panipat and that too on Sunday.

21. In view of the above discussion, finding of the Tribunal that the bus was hired to carry marriage party cannot be faulted.

22. So far as the challenge to the finding of the Tribunal regarding validity of the driving licence is concerned, there is no basis for the said challenge. The undisputed facts are that driving licence of the driver was taken in possession by the police. Thereafter, the same was returned on superdari and a certified copy of Superdarinama was produced as Ex.P73. PW.3 Ishwar Chand, Criminal Ahlmad of the court of Judicial Magistrate Ist Class, Panipat, also supported the fact that the driving licence was taken on superdari by the driver. In spite of this, the driver falsely stated before the Tribunal that the driving licence was on the file of the criminal case. Non-production of the driving licence itself may not be enough to hold the owner or the driver liable to pay compensation. But the facts of the present case and the conduct of the owner and driver do not show that it is a simple case of non-production of driving licence. The driving licence was neither produced before the Tribunal nor before this court. The submission of the owner and the driver that they are not liable to pay compensation is ill founded. The driving licence which was in their possession has not been produced for the reasons best known to them. Further, exemption has been sought from payment of road tax on the ground that the bus is a school bus and it had no permit as it had to ply within the city for carrying the school children from home to school and back. The bus was insured as a school

bus, yet it was being used to carry a marriage party. In such circumstances, the plea raised by the appellants is rejected.

23. In view of the above discussion, the appeal (FAO No. 1050 of 1995) filed by the owner and the driver is hereby dismissed.

24. The Tribunal had already granted compensation to the tune of ₹ 40,626.60 paise along with interest at the rate of 15% per annum. This court, in order to reach at just and equitable compensation, while dealing with FAO No. 630 of 1995 filed by the claimant, has enhanced the amount of compensation to ₹ 80,000/-. This amount has been arrived at by considering the fact that no proof regarding medical expenses and transportation etc. were produced. It has also been considered that the interest should have been awarded under Section 171 of the Motor Vehicles Act, 1988. In the facts and circumstances of the case, while awarding lump sum compensation, the matter regarding interest has been considered.

August 23, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes