

In the High Court of Punjab and Haryana at Chandigarh

**F.A.O No. 2356 of 2007
Date of Decision: 08.5.2017**

Pritam Kaur

.....Appellant

Versus

Lok Sewak Bus Pvt. Ltd. and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vivek Suri, Advocate
for the appellant.

Mr. Vijay Partap Singh, Advocate
for respondents No. 1 and 2.

Mr. Ravinder Arora, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

This is the claimant's appeal aggrieved by the dismissal of the claim petition.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Copy of the award, grounds of appeal and some evidence and pleadings are available. The counsel appearing for both the parties stated that the matter can be decided on the basis of the material available.

The claim petition makes an interesting reading. The claimant is Pritam Kaur widow of Mohinder Singh. Mohinder Singh was going on a scooter and his son Ranjit Singh along with his cousin were stated to be following him on another scooter. A bus driven by respondent No. 2 came at a high speed and Mohinder Singh fell down. This is how it is described

pleaded that the bus was coming on wrong side and the bus driver suddenly applied a cut and due to “velocity of air” Mohinder Singh fell down along with the scooter and died instantly.

An FIR was lodged after half an hour where a similar version was given. The FIR was lodged by Ranjit Singh son of the deceased. The claimant examined Hardip Singh who in his affidavit made the following statement:-

“ x x x x x

3. *I state on oath that due to high and rash speed of the bus Mohinder Singh fell down on the road and died on the spot.*

x x x x x”

In the cross-examination he had a different statement to make and according to him the bus had hit the scooter and Mohinder Singh fell down and suffered injuries.

The Tribunal noted the following:-

“10. The learned counsel for the respondents argued that no part of the bus struck Mohinder Singh or his scooter. The bus was going on the main road. It is not possible that with the pressure of air, when the bus crossed Mohinder Singh who was allegedly standing with his scooter, the scooter and Mohinder Singh fell down on the road and he died there and then. Whereas the post-mortem report of deceased shows that parietal region of scalp was having lacerated wounds and the underlying bone was fractured. Bones were bilaterally compressed and fractured producing a distorted Geometry of head and face. Cavity was full of blood. So, it cannot be possible by falling of a person from a standing scooter and that too with pressure of air only. Moreover, the only alleged eye-witness of the accident examined by the petitioner PW2

Hardip Singh has nowhere stated that Mohinder Singh fell down on the road due to fault on the part of the driver of the bus. He has only stated that due to high and rash speed of the bus, Mohinder Singh fell down on the road and died at the spot. Even Ranjit Singh son of the deceased, who was very much available, has not been examined by the claimant. Therefore, the present petition is false and fabricated one just to extract easy money from the Insurance Company.

11. I have gone through the entire evidence produced on the record by both the parties as well as the FIR Ex. P1 got registered by Ranjit Singh son of the deceased at P.S. Bhadson as well as post-mortem report of deceased Mohinder Singh Ex. P2. The oral evidence produced by the claimant is totally against the medical evidence of this case. PW2, Hardip Singh, the only alleged eye-witness of this accident, examined by the claimant, has simply stated that due to high and rash speed of bus, Mohinder Singh fell down on the road and died on the spot. He has nowhere stated that whether there was any rash or negligent fault on the part of the driver of the bus or this accident took place due to fault on the part of driver of the bus. The case of the claimant is that Mohinder Singh stopped his scooter on the right side of the road. There came bus No. PB-23B-8915 belonging to respondent No.1 Lok Sewak Bus Pvt. Ltd., Fatehgarh Sahib and due to the pressure of air when the bus crossed Mohinder Singh, Mohinder Singh fell down along with his scooter on the road and he died there and then. Whereas, the post-mortem report of Mohinder Singh Ex. P2 shows that there was lacerated wound over parietal region of scalp and fractured underlying bone. Bones of cranium were bilaterally compressed and fractured, producing a distorted Geometry of head and face. Cavity was full of blood. Cerebrum was badly lacerated. All this was not possible by a fall of a person wearing turban from a standing scooter only due to pressure of air when the bus crossed him. Such like fracture of skull causing distorted Geometry of head and face

is not possible. Moreover, the only witness of alleged accident examined by the claimant PW2 Hardip Singh has nowhere stated that this accident took place due to the fault on the part of driver of the bus. He has simply stated in two lines that due to high and rash speed of the bus. Mohinder Singh fell down on the road and died on the spot. He has nowhere stated that the bus was being driven rashly and negligently by respondent No. 2. The bus never hit Mohinder Singh or his scooter. The bus was being driven on the main road and there is every possibility of having pressure of air to cross him. So, the petitioner has badly failed to prove that there was any fault on the part of the driver of bus No. PB-23B-8915. Even in the cause of death of Mohinder Singh, the doctor has stated that in his opinion the death is due to massive head injury, which is not possible by falling from a standing scooter and that too to a person wearing turban. It is not the case of the claimant that the turban of the deceased fell down on the spot and after that he suffered injuries.

12. Apart from this, Ranjit Singh son of deceased Mohinder Singh, who lodged the FIR with the police Ex.P1, was available but not examined by the claimant/petitioner for the reasons best known to her. Whereas the presence of Hardip Singh at the spot is highly improbable because the case of the petitioner is that Mohinder Singh had called his son Ranjit Singh only at Bus Stop of village Ablowal in connection with electric motor. No witness has been examined to prove that this witness Hardip Singh accompanied Ranjit Singh to bus stand of village Ablowal. Moreover, this witness has deposed totally against the case of the claimant. The case of the claimant is that Mohinder Singh stopped his scooter on the right side of the road when the bus crossed him without even touching the scooter or Mohinder Singh deceased. Whereas this witness in the cross-examination has stated that Mohinder Singh was going on scooter on the left side of the road, and the bus struck into his scooter from front and the

front side of the scooter struck into the bus. The case of the claimant is that the bus driver fled away with his bus, whereas this witness has stated that the driver stopped the bus there and he also remained with his bus at the place of accident and the police reached there and the police enquired the name and particulars of the driver from the driver himself at the spot. Whereas, the case of the police is that neither the bus nor the driver were present at the spot.”

The counsel refers to '***Bimla Devi and others versus Himachal Road Transport Corporation and others, 2009(13) SCC 530***', and urges that the involvement of the bus had been proved and in similar circumstances, the Apex Court in *Bimla Devi's* case (supra) had held that strict proof of accident caused by a particular bus is not possible and the Tribunal is not bound by the pleadings and its function is to determine the fair compensation.

The submission on the other hand is that the statement given by the claimant in the examination-in-chief is different to what was stated in the cross-examination and the author of the FIR was not produced and the presence of Hardeep Singh is doubtful as Mohinder Singh had only called his son and there was no reason for Ranjit Singh to stay away from the witness box and his statement is not believable. It was urged that in the claim petition it was pleaded that the bus was at a high speed, therefore on account of velocity the scooter driver lost balance and died.

The appellant was seeking support from ***Bimla Devi's*** case (supra), however, I find it is of no help. There a bus was parked and the driver of the bus suddenly reversed the bus without blowing any horn as a result Jawala Ram died on the spot. It was alleged that the conductor also did not bother to check whether any person was standing behind. The

respondent had denied the occurrence and taken a plea that the deceased died the previous evening and finding the dead body of a person wrapped in a blanket they had informed the police whereafter the driver was implicated. The Tribunal noted that the death of Jawala Ram on 11.2.1997 was not disputed and an FIR of the same date was admitted. The post-mortem report showed that he had died of brain injury and there was an eye witness who supported the claimants and the Tribunal disbelieved the case set-up by the respondents and held that the police officers would not fabricate a case.

In the present case, the FIR was lodged within half an hour of the incident which did not speak about any collision. The bus did not strike Mohinder Singh or his scooter. The first version that was given was that on account of velocity of air when the bus crossed Mohinder Singh, it shook the scooter driver and he fell on the road and died. Ranjit Singh son of the deceased was supposedly present on the spot but he was not examined and the Tribunal had rightly held that it was a false and fabricated case. Hardip Singh had given a different version in his affidavit and did not speak about any collision or fault of the bus driver, however, in the cross-examination he had stated that the bus had hit the scooter driven by his uncle. The presence of Hardip Singh was doubted by the Tribunal and rightly so. Mohinder Singh had called his son Ranjit Singh and it was Ranjit Singh who had gone alone. Ranjit Singh had lodged the FIR but he was not examined for reasons only known to them. The story put-forward by the claimant is bared by the fact that the post-mortem report indicated that there was massive head injury. If the deceased had fallen on account of high velocity of air, the injury would not have been so massive. According to the claimant the bus driver had fled from the spot whereas the witness had claimed that the

driver stopped the bus and the police reached the spot whereas the police did not find either the bus or the driver on the spot. It appears that the true version has been kept away from the Tribunal and a concocted story was made up and the FIR was lodged to claim compensation. The claimant had set-up an eye witness who was the nephew of the deceased who tried to make improvements in the cross-examination. The statement was not believable and the petition was rightly dismissed.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

May 08, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No