

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

FAO No.5324 of 2011

Date of Decision.14.11.2017

Mohd. Ali son of Rahim Khan

.....Appellant

Vs

Punjab Roadways, Punjab State Bus Stand Management Company Limited
and another

.....Respondents

Present: Mr. Ashish Gupta, Advocate
for the appellant.

Mr. IPS Doabia, Addl. A.G., Punjab.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The claimant is in appeal against the award dated 23.4.2011 rendered in MACT Petition No.38/2008 preferred by the claimant namely Mohd. Ali, aged 53 years, who was injured in a motor vehicular accident involving two buses bearing registration No.PB-12C/9022 and DL-1P/8397, in the former one he was a passenger, whereby an amount of ₹25,000/- has been awarded by the Tribunal on account of no fault liability.

Mr. Ashish Gupta, learned counsel appearing on behalf of the appellant submitted that the Tribunal has committed illegality and perversity in awarding aforementioned compensation inasmuch as it has been clearly proved that it was the driver of the Punjab Roadways bus who was negligent and therefore, non impleadment of owner and driver of the other bus as respondents, could not be fatal, thus, was entitled to a compensation of ₹10 lacs as in the aforementioned accident, owing to serious injuries on his person. In other words, he submitted that the Tribunal has failed to read the evidence in correct perspective.

Per contra, Mr. IPS Doabia, Addl. A.G., Punjab submits that the claim petition was liable to be dismissed on account of non-impleadment of the owner and driver of the bus bearing registration No. DL-IP/8397. On the basis of evidence, particularly, the statement of the Conductor of the Punjab Roadways Bus, RW1, Swarn Singh, it had been proved on record that owing to the closure of the road, the bus had to go on the other side of the road and while overtaking, struck the Punjab Roadways Bus which was moving on extreme left hand side, thus, in this manner the entire negligence was of the driver of the bus bearing registration No. DL-IP/8397. In the absence of its impleadment, compensation awarded under Section 140 of the Motor Vehicles Act is just and reasonable and cannot be enhanced by taking the aid of parameters as envisaged under Section 166 of the Motor Vehicles Act. He also submitted that in the aforementioned accident, the driver of the Punjab Roadways Bus unfortunately died, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. No ground is made out to interfere with the finding arrived at by the Tribunal. No contrary evidence had been brought either before the Tribunal or this Court by way of additional evidence to establish that it was due to negligence of the driver of Punjab Roadways bus the accident had taken place. Statement of RW1, Swarn Singh extracted in para 19 of the award reads as under:-

“19. Apart from above, RW1 Swarn Singh who was conductor on bus No.PB-12-C/9022 at the time of accident has deposed in his affidavit Ex.RW1/A that on 17.7.2000 the bus of Punjab Roadways being driven by Surender Kumar was coming from

the side of Delhi towards Ambala and when it reached near Kohand chowk on GT road, right side of the road was closed due to repair. One bus bearing No.DL-1P/8397 came there from the opposite side i.e. from the side of Ambala and since that side was closed, the driver of bus No.DL-1P/8397 came there from wrong side and while over taking he struck the bus of Punjab Roadways because the driver of bus No.DL-IP/8397 was driving his bus on high speed and that too in a rash or negligent manner. This witness was not cross-examined by the learned counsel for the petitioner on these facts. It is settled principle of law that if a witness is not cross examined by the adverse party on the facts which he has deposed in his examination-in-chief then it shall be presumed that the adverse party has admitted those facts which the witness has deposed in his examination in chief.”

The aforementioned statement has not been rebutted by any direct and cogent evidence. In the absence of the same, the Tribunal had no other choice but to award compensation under Section 140 of the Motor Vehicles Act. The finding rendered by the Tribunal cannot be faulted with. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

November 14, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No