

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

**FAO No. 1789 of 2014 (O&M)
DECIDED ON: MAY 01, 2017**

THE MANAGING DIRECTOR, PUNBUS & ANOTHER

.....APPELLANTS

VERSUS

SUKHBIR SINGH & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. B.S. Bhalla, Addl. AG, Punjab
for the appellants.

Mr. H.S. Rakhra, Advocate
for respondent No.1.

JASPAL SINGH, J

CM-6176-CII of 2014

In view of averments made in the application the same is allowed and delay of 284 days in filing the instant appeal is condoned.

FAO No. 1789 of 2014

Feeling dissatisfied against the award dated February 28, 2013 passed by Motor Accident Claims Tribunal (ad hoc), Amritsar whereby, claim petition preferred under Section 166 of Motor Vehicles Act (for short 'Act') by the claimants has been allowed and claimants have been held entitled to compensation to the tune of ₹3,87,757/- along-with interest

at 6% per annum from the date of petition till realization on account of

sustaining of injuries by the claimants in a vehicular accident occurred on November 30, 2009.

While assailing the findings given by learned Tribunal on issues No.1 to 4 as well as consequent acceptance of the claim petition vide impugned award, it has been argued with vehemence by learned State counsel that the same are absolutely against the evidence available on file and the settled canons of law. Misappreciation of evidence has resulted into miscarriage of justice. It is only made up story that Dharminder Singh and his family while travelling in Maruti Car bearing registration No. PB-02-BP 0670 were going from Ludhiana to Amritsar and Dupinder Singh his younger brother was going on another car bearing No. PB-17-1702. In fact, the accident took place due to rash and negligent driving of car No. PB-17-1702 by Dupinder Singh and not by the bus driver. The owner and insurance company of the car PB-17-1702 have not been impleaded as a party, which are necessary for the proper adjudication of the matter in controversy between the parties. On this score alone, he prayed for setting aside the impugned award.

Learned State counsel further argued that learned Tribunal has assessed the income of the claimant-Sukhbir Singh @ ₹3000/- per month. In fact, he was not doing any job being an old aged person. At the time of accident, he was 66 years of age and was not engaged in any profession. Moreover, while assessing the compensation learned Tribunal has failed to deduct 1/3rd of the income of the claimant/injured. While concluding his arguments, he submitted that since impugned award is absolutely against

the evidence available on file and settled canons of law, it deserves to be set aside.

On the hand learned counsel for respondent No.1 has controverted the various contentions put forth by learned State counsel submitting that the bus driver has rightly been held to be responsible for causing accident, in which, Dupinder Singh and Santokh Singh succumbed to the injuries, whereas claimant-Sukhbir Singh sustained multiple injuries and has become disabled to the extent of 100%. Moreover, grant of compensation to the tune of ₹3,87,757/- is on lower side but claimant feels satisfied with the grant thereof. He did not prefer any appeal. As far as the contention of learned State Counsel with regard to the deduction of 1/3rd income of the claimant is concerned, there is no such provision of law. In fact, 1/3rd income is to be deducted while assessing the compensation in a death case. Thus, there is no infirmity or illegality in the impugned award and instant appeal being devoid of merits deserves to be dismissed, that too, with special cost.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and appraisal of evidence available on record and scrutinizing the impugned award, this Court does not find any material infirmity or illegality or perversity in the impugned award. In fact, there is cogent and convincing evidence adduced by the claimant before learned Tribunal, which clearly establishes that accident occurred due to rash and negligent driving of bus No. PB-12-H-1871 by its driver Joginder Singh. The mere assertion of Joginder Singh while appearing in

the witness box as RW-1 that accident occurred due to rash and negligent driving of car No. PB-17-1702 is not suffice to rebut the testimony of the injured, whose presence at the spot cannot be doubted..

Though it is also the case of the appellants that Joginder Singh was found innocent in an inquiry but no such inquiry report has been seen in the light of day. Moreover, none of the occupants of the car was ever joined in any such inquiry proceedings. It has emerged on record that Joginder Singh as well as Manjit Singh-conductor had slipped away from the spot, after the accident, in which, three persons lost their lives and some others received multiple serious injuries. FIR was also registered against Joginder Singh on the basis of statement of Dharminder Singh, who while appearing in the witness box as PW-8 has categorically stated that it was Joginder Singh who was driving the bus at a very high speed in a rash and negligent manner which resulted into accident. Though, it has also been alleged by him that driver of the car was in a drunken condition at the time of accident but no such document has been produced on record in this regard except his bald assertion.

In view of the afore-said cogent and convincing evidence, learned Tribunal has rightly held that the accident took place due to rash and negligent driving of driver of bus No. PB-12-H-1871 by Joginder Singh, which resulted into causing of injuries to the claimant-Sukhbir Singh and others. Thus, findings recorded by learned Tribunal in this regard do not call for any interference by this Court and are affirmed.

As far as the contention of learned State counsel with regard

to the non impleadment of owner as well insurance company of car No. PB-17 1702 is concerned, it carries no legal and factual value, in view of the fact that the negligence and rashness have been specifically attributed to the driver of the offending bus. Thus, the owner and driver of the offending bus are liable to pay the compensation. The impleadment of either owner or driver of car referred to above is not necessary. The matter in controversy can be decided effectively and judiciously even in the absence of evidence. Thus, the non arraying the owner as well as driver of car PB-17-1702 does not in any way effect the case of the claimant.

As regards the assessment of income of the claimant, he sustained injuries in accident at the age of about 66 years. As he did not adduce any documentary evidence of his income and the profession, if any adopted by him, by treating him to be a casual labourer, his income has been assessed to the tune of ₹3000/- per month, which is not on higher side. The principle with regard to the deduction from income is not applicable, as the claim petition has been filed seeking compensation on account of injuries sustained by him.

Thus, taking into consideration the case of the appellants from any of the angles, this Court does not find any infirmity or illegality in the impugned award. Rather, the same is absolutely in consonance with the evidence available on file as well as settled proposition of law.

As an upshot of afore-said discussion, this Court does not find any merit in the instant appeal, as such, the same is dismissed being devoid

of any merits and impugned award is upheld.

No order as to costs.

JASPAL SINGH
JUDGE

MAY 01, 2017

sham

<i>Whether speaking/non-speaking</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>