

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

FAO No.2254 of 2015

Date of Decision: 15.02.2017

Balwan Singh

....Appellant

Versus

Mangat Ram and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. K.S. Chahal, Advocate
for the appellant.

Mr. V.D. Sharma, Advocate
for respondent No.1.

Mr. Avin Sandhu, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

Claimant-Balwan Singh has filed the present appeal to challenge the award dated 19.01.2015 passed by the Motor Accident Claims Tribunal, Hisar (here-in-after referred to as 'the MACT'), whereby, the claim petition filed by the appellant-claimant has been dismissed.

Briefly, the facts of the case are that the appellant was working as conductor with Haryana Roadways, Hisar Depot, Hisar. On 09.03.2014, the appellant along with driver of vehicle bearing No.HR-39C-9467, namely, Shri Dalbir Singh was going from Hisar Bus Stand to Chandigarh Bus Stand. After boarding the passengers from Chandigarh, they started their journey back to Hisar at about 10.00 p.m on the same day. At about 1.15 a.m (night) in the intervening night of 09/10.03.2014, they reached

near Guarded Railway Crossing, Near Railway Station, Narwana, District Jind but while crossing the railway line, the train struck the bus and a truck, which was on the other side of the *phatak* due to which, the driver of the bus and 4-5 passengers sustained serious/grievous multiple injuries on various parts of their bodies. The driver of the truck also received grievous injuries and truck was also damaged. The injured were shifted to General Hospital, Narwana and thereafter, the matter was reported to the police and an FIR No.3 dated 10.03.2014 was registered under Sections 336/337/338/427 IPC and 175 of the Railway Act at Police Station Jind, District GRP Ambala Cantt. The claim petition was filed under Section 166 of the Motor Vehicles Act by appellant- Balwan Singh, the conductor of Haryana Roadways, for grant of compensation to the tune of ₹ 10 lacs on account of injuries sustained in the Motor Vehicle accident. Two applications were moved by respondents under Order 7 Rule 11 CPC and for dismissal of claim petition on the ground of jurisdiction stating that the Claims Tribunal at Chandigarh was having jurisdiction to entertain the claim and the claim petition filed before the MACT, Hisar was liable to be dismissed.

Reply to the applications was filed. Ultimately, vide order dated 19.01.2015 by holding that the MACT, Hisar does not have jurisdiction to decide the claim petition as the sole negligence was attributed to the railways and claim petition was returned to the claimant for filing before the appropriate Court/forum and original claim petition along with original documents were returned to the claimant. The impugned order dated 19.01.2015 is subject matter of challenge in the present appeal.

Learned counsel for the appellant submits that the Tribunal has

wrongly dismissed the claim petition by relying upon the judgment in case *Union of India vs United India Insurance Company Limited and others 1998(1)PLR 248*, whereas, the said judgment has been overruled by the judgment of Hon'ble the Apex Court in case *Union of India vs Bhagwati Prasad (dead) and others, Appeal (Civil) 431-466 of 1988* decided on **07.03.2002**.

While issuing notice of motion, the contention of learned counsel for the appellant was recorded and the fact that overruled judgment has been relied upon by the learned Tribunal has also not been disputed by learned counsel for the respondent.

Undisputedly, the judgment relied upon by the Tribunal in *United India Insurance Company Limited case* (supra) has been overruled by judgment of *Bhagwati Prasad's* case (supra). The Tribunal has wrongly relied upon the overruled judgment, which is not a correct law.

In view of facts as mentioned above, the present appeal is allowed and the impugned award dated 19.01.2015 passed by the MACT, Hisar is set aside and is remitted back to the Tribunal to reconsider in view of ratio of judgment of *Bhagwati Prasad's* case (supra) and pass necessary order afresh in accordance with law within a period of not more than three months.

(DAYA CHAUDHARY)
JUDGE

15.02.2017
gupreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes