

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

FAO No.323 of 2017 (O&M).
Decided on:-January 23, 2017.

Pepsu Transport Corporation (PRTC) and another

.....Appellants.

Versus

Gurpreet Singh and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Aman Sharma, Advocate
for the appellants.

HARI PAL VERMA, J.

Appellant Pepsu Transport Corporation (PRTC) has filed the present appeal against the award dated October 26, 2016 passed by learned Motor Accidents Claims Tribunal, Faridkot (for short, the Tribunal) whereby claim petition filed by respondent No.1-claimant Gurpreet Singh under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act) was allowed and the appellant-PRTC along with driver, namely, Jagmail Singh and owner of the bus bearing registration No.PB-11U-8707 were held liable jointly and severally to pay compensation to the tune of Rs.7,22,000/- to the respondent No.1-claimant.

Brief facts, as enumerated in the present claim petition are that on 29.10.2011, respondent-claimant Gurpreet Singh along with Chand Singh was going to Kotkapura to buy furniture. When they reached near Bus Stand, Kotkapura at about 11.00 AM, a bus bearing registration No.PB-11U-8707

of Pepsu Road Transport Corporation being driven by Jagmail Singh in a rash and negligent manner came without blowing horn and struck into the claimant from the back side. As a result thereof, the claimant suffered multiple injuries including a crush injury on his right foot. The claimant was taken to GGS Medical College & Hospital, Faridkot from where he was referred to PGI, Chandigarh. He remained under treatment in various hospitals from 29.10.2011 to 14.8.2012. The bus was not insured with any insurance company. The claimant is about 25 years of age. He was doing agricultural work and also running a milk dairy. In this manner, he was earning more than Rs.40,000/- per month. Prior to the accident, the claimant was hale and hearty, but after the accident, he has become permanently disabled due to amputation of his right foot. He also received injury on the other parts of his body.

The Tribunal has passed the impugned award which is subject matter of challenge by way of instant appeal.

Learned counsel for the appellants has argued that the Tribunal has erred on facts as well as law while passing the impugned award. The evidence led by the appellants has not been appreciated. The accident has not taken place with the bus owned by the appellants. The accident has allegedly taken place on 29.10.2011 at 11.00 AM near Bus Stand, Kotakpura, whereas the bus in question reached Bus Stand, Barnala at 10.28 AM and it reached Bus Stand, Kotkapura at 12.20 PM. Thus, at about 11.00 AM, the bus has not reached Kotkapura as claimed in the claim petition. He has further argued that in the said accident, FIR No.205 dated 30.10.2011 under Sections 279, 337 and 338 IPC was registered at Police Station City

Kotkapura. In the said case, the respondent-driver Jagmail Singh against whom the FIR was registered, has been acquitted by the trial Court. The Tribunal has failed to appreciate the fact that the very eye-witness, namely, Chand Singh PW2 was related to the claimant and the claimant has filed the claim petition just to extract compensation from the appellants. In this manner, the claimant has committed fraud. Even otherwise, the compensation awarded by the Tribunal is highly excessive. In support of his contentions, learned counsel for the appellants has placed reliance upon the judgment of Hon'ble Supreme Court in ***S.P. Changalvaraya Naidu (dead) by LRs Versus Jagannath (dead) by LRs 1994 AIR (SC) 853*** and the judgment of this Court in ***FAO No.55 of 2013*** titled as ***The Oriental Insurance Co. Ltd. Versus Kamla and others*** decided on 04.03.2016.

I have heard learned counsel for the appellants.

The statement of PW2 Chand Singh supports the claimant's version. He has denied that the claim petition was filed to secure compensation and the bus in question has falsely been implicated. This witness has stated that the claimant was doing the agricultural work and was running the dairy business. But now, after the accident, he is unable to do the physical work. The appellants have nowhere put a suggestion during cross-examination that this witness Chand Singh is related with the claimant in any manner. Therefore, the argument by learned counsel for the appellants that this witness is related with the claimant, cannot be accepted.

Similarly, the argument that the bus in question cannot reach Kotkapura at 11.00 AM as it started from Barnala at 10.28 AM. It has been pleaded by learned counsel for the appellants that on the relevant date, the

bus in question has not reached Kotkapura at 11.00 AM cannot be accepted as the document which the appellants intends to rely is a time-table framed by the Transport Authority. Moreover, RW2 Surinder Kumar, Data Entry Operator working in the RTA Office, Bathinda has specifically stated that he cannot tell the time when the bus in question reached at Kotkapura. Therefore, in the absence of any substantial evidence, it cannot be accepted that accident has not taken place at 11.00 AM on 29.10.2011.

The judgment in *S.P. Changalvaraya Naidu (dead) by LRs Versus Jagannath (dead) by LRs' case (supra)* cited by learned counsel for the appellants has no applicability which is a challenge to a decree obtained by playing fraud. Moreover, the judgment of this Court in *The Oriental Insurance Co. Ltd. Versus Kamla and others (supra)* is not relevant in the facts and circumstances of present case.

There is a finding of fact recorded by the Tribunal that on the basis of clear and specific testimonies of claimant-injured Gurpreet Singh PW1 and eye-witness Chand Singh PW2 coupled with the recital of FIR and the medical report, it was amply established that the accident in question had taken place due to rash and negligent driving of the driver. The said bus was owned by PRTC and was being driven by respondent-driver Jagmail Singh. The claimant has sustained injuries in the accident. The Tribunal has rightly awarded compensation to the claimant as his right foot was amputated due to the injuries suffered in the accident. In this manner, he has become permanently disabled and his permanent disability has been assessed to the extent of 50% as is clear from the disability certificate Ex.P2.

The plea as raised by learned counsel for the appellants that in

the FIR case, the respondent-driver Jagmail Singh has been acquitted, cannot be accepted. Firstly, the finding recorded by the criminal Court is not binding upon the Tribunal. Further more, the said driver was acquitted in the case by giving him the benefit of doubt.

Therefore, this Court does not find any infirmity or illegality in the impugned award dated 26.10.2016 passed by the Tribunal and the same is hereby upheld. The present appeal is, consequently, dismissed.

January 23, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No