

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 1739 of 2005(O&M)

Date of Decision: October 10 , 2018.

Union of India APPELLANT (s)

Versus

Gurmeet Singh and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Sheenu Sura, Advocate
for the appellant.

Mr. Man Mohan, Advocate
for respondent No.3 – Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been filed by the claimant-Union of India challenging award dated 08.12.2004 passed by the learned Motor Accident Claims Tribunal, Faridkot (for short, the 'Tribunal') whereby the claim petition preferred by the appellant was dismissed.

Brief facts necessary for adjudication of the case are that, the claimant filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation in respect to the damages caused to its vehicle and a gun in a motor vehicle accident which took place on 26.09.1998. It is

averred that a military convoy of the army including truck No.97E-12792-H towing gun of 40 MM L/70 started from Faridkot military station towards Samba. When it reached near the petrol pump on Talwandi road on 26.09.1998 at about 7.20 a.m, a truck bearing registration No.PB-03D-8357, being driven by respondent No.1 – Gurmeet Singh in a rash and negligent manner, struck against the military convoy. As a result thereof, damage was caused to the truck as well as gun of the military convoy. Injured were taken to GGS Medical College, Faridkot. FIR was lodged against respondent No.1.

Claim petition filed by the claimant was resisted by respondent No.3- Insurance Company as well as respondents No.1 and 2, the driver and owner of the offending vehicle by filing separate written statements.

From pleadings of the parties, the learned Tribunal framed the following issues:-

- “1. Whether respondent No.1 caused accident on 26.7.1998 while driving truck No.PB-03D/8357 rashly and negligently caused damage to the gun as mentioned in the claim petition? OPA
2. To what amount and from whom, the claimant is entitled for compensation? OPA
3. Whether the the claim petition is filed by the competent person? OPA
4. Whether the liability of the Insurance Company is limited upto Rs.6,000/-? OPR-3
5. Whether Gurmit Singh was not holding valid and effective driving licence at the time of accident, if so its effect? OPR3
6. Whether the claim petition is vague and incomplete? OPR3
7. Relief.”

The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 26.09.1998 due to the rash and negligent driving of truck bearing registration No.PB-03D/8357 by

respondent No.1 – Gurmeet Singh. Damage was caused to the vehicle and the gun. However, on a perusal of evidence on record, it was concluded by the learned Tribunal that the actual expense incurred on the repair of the truck or gun was not proved, in the absence of which no award could be passed in favour of the appellant. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that specific evidence has been led on record and assessment of the cost of the damage caused to the vehicle as well as gun has been clearly proved on record. Therefore, in this situation, the learned Tribunal has erred in dismissing the claim petition filed by the appellant. It thus prayed that the impugned award dated 08.12.2004 be set aside and compensation be awarded in favour of the appellant.

Learned counsel for respondent No.3 – Insurance Company however submits that the learned Tribunal has dismissed the claim of the appellant vide a well reasoned award based on a proper appreciation of the evidence on record.

I have heard learned counsel for the parties and have gone through the requisitioned record.

In order to prove its claim, the appellant examined AW3 Naib Subedar K.M.Chamy, who stated that he mechanically examined the vehicle. Test report of the vehicle was prepared and copy of the same was tendered as Ex.AW3/A. Cost of the damage was assessed as ₹42,331/-. In order to prove the damage to the vehicle, AW7 Lt. Col. Yogesh Arya, 3 EME Centre, Bhopal was examined. AW4 Col. P.R.Deshpande did not appear for cross-examination, therefore, no reliance can be placed on his evidence.

I have gone through the statements of AW3 Naib Subedar

K.M.Chamy, AW6 Subedar Gulab Singh as well as AW7 Lt. Col. Yogesh Arya. AW3 Naib Subedar K.M.Chamy admitted that he did not repair the vehicle. He merely assessed the loss. Vehicles of the army are got repaired from private sources and he could not give any opinion regarding the source of purchase or replaced parts. Quotations, it is stated, had been taken from private dealer regarding the price of the parts to be replaced including repair charges, specifically from Udhampur (J&K). However, there is no such material proving the said quotations is available on record.

AW6 Subedar Gulab Singh stated that he had made the assessment regarding the damage caused to the gun in question. He proved his inspection report Ex.A7. AW6 Subedar Gulab Singh specifically admitted that he had not assessed the costs of repair of the parts of the gun as required. Loss was assessed on the basis of a price list sought from the Gun Carriage Factory, Jabalpur in respect of damaged parts as if they were to be replaced. AW7 Lt. Col. Yogesh Arya stated that the repair of the gun was carried out at the Base Workshop, Jabalpur, but he did not know what was the repair which was carried out and what was the actual loss assessed.

Thus perusal of the record reveals that the actual expense incurred on the repair of the truck or the gun in question was never proved by the appellant. What has been proved on record is the price of the parts of the gun and the truck. It is also not clear from the record as to whether the said parts were ever replaced. In the facts mentioned, the case is made out of repair of the parts. No specific details are forthcoming from the record. In this situation, the learned Tribunal has rightly dismissed the claim petition filed by the appellant. The claimants

indeed failed to prove the expense incurred on the repair of the gun or the vehicle in question. There is thus no question of the learned Tribunal proceeding on the basis of rule of thumb.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned award dated 08.12.2004 passed by learned Motor Accident Claims Tribunal, Faridkot which warrants interference by this Court.

Consequently, this appeal is dismissed.

October 10 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No