

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

FAO No.518 of 2005 (O&M)

Date of decision: 31.08.2018

Devi @ Jai Devi

.....Appellant

Versus

Ajmer Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Madan Gupta, Advocate for the appellant.

Mr. Manoj Kumar Sangwan, Deputy Advocate General, Haryana.

Mr. Sanjeev Pabbi, Advocate for respondent No.3-Insurance Co.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) against the impugned Award dated 26.10.2004, passed by learned Motor Accident Claims Tribunal, Kurukshetra (*for short 'Tribunal'*), whereby the claim petition of the appellant in case of 55% permanent disability has been dismissed while observing as under:-

“ the claimant rather has failed to substantiate the manner in which the accident took place. She also failed to sustain the plea of negligence of the respondent-driver in causing the accident, resulting in injuries to her. ”

(2) Brief facts of the case are that appellant filed a claim petition under Section 166 of the Act before learned Tribunal with the averments that she is 45 years of age, working as household labourer and earning ₹ 100 per day. On 16.12.2002 at about 2.00 PM, she boarded a Haryana Roadways Bus bearing registration No.HR-08-PA-0116 (*for short 'offending bus'*) from Kaithal to Kurukshetra and after reaching there, she tried to board another Bus for her native Village i.e. Babain. When she was crossing the offending bus, which was parked at the Bus Stand, immediately, driver-Ajmer Singh (respondent No.1)

drove the same in a very rash and negligent manner and hit the appellant and crushed her left leg under the front wheel thereof. Immediately, appellant was admitted for treatment in LNJP, Hospital, Kurukshetra and thereafter, shifted to Dr. Ravi Orthopedic Surgeon, Harbhagwan Hospital, Ladwa and ultimately to PGIMS, Rohtak, where her left leg was amputated by way of operation and her treatment was going on at the time of filing of the claim petition. Further pleaded that accident in question had taken place due to rash and negligent driving of the offending bus by respondent No.1 and as a result thereof, the entire life of appellant has become miserable on account of the permanent disability as she cannot do any household work and her entire family is suffering. FIR No.441 dated 23.12.2002, under Sections 279, 337 and 338, IPC was also registered against respondent No.1 in Police Post Sector 7 of Police Station City Thanesar. Further averred that ₹ 80,000/- were spent on her treatment.

(3) Respondent No.1 filed reply and denied the assertions made in the claim petition and submitted that accident in question had taken place due to the negligence of the appellant herself and there is no fault of the respondent. Further submitted that matter was patch up on the spot and she agreed, but at the instance of some interested persons, the false FIR has been lodged against him with a view to extract the compensation. Again submitted that appellant suffered injuries in the process of changing the bus due to hurry and consequently, she fell down from the offending bus and sustained injuries.

Appellant filed her replication to the written statement of respondent No.1 and reiterated her stand made in the claim petition that accident had taken place on account of the sole negligence of respondent No.1 and she

further submitted that if there is any statement recorded by the police, the same is the result of fraud committed by respondent No.1 in collusion with the police.

Respondent No.2 filed separate written statement and denied the claim petition and raised the similar plea as that of respondent No.1. Also submitted that offending bus was duly insured with respondent No.3-Insurance Company at the relevant time and in case the accident in question is proved, then Insurance Company/respondent No.3 is liable to pay the compensation. Further submitted that as per the statement of respondent No.1, on 16.12.2002, he was on duty with the offending bus from Kaithal to Yamuna Nagar route and he dropped the passengers at new Bus Stand, Kurukshetra. Appellant tried to board the running bus, but she lost her balance, fell down and received the injuries. Also submitted that respondent No.1 had got her admitted in the Government Hospital, Kurukshetra and a telephonic message in this regard was sent to her husband. Thereafter, police reached in the Hospital and doctor told the police that she will give her statement tomorrow. On 17.12.2002, police recorded the statement of the appellant that when she was trying to board the running bus, then her foot slipped and she received injuries and driver of the offending bus is not at fault. Thereafter, respondent No.1 was allowed to go home by the police, but later on, appellant has registered a criminal case against him for getting the amount of compensation.

Appellant filed replication to the written statement of respondent No.2 also and reiterated the contents of the claim petition to the effect that accident in question was caused due to sole negligence of respondent No.1 and the alleged *Rapat* is a forged document, prepared by respondent No.1/driver, in collusion with the police.

Respondent No.3-Insurance Company filed a separate reply and denied the claim petition, *inter alia*, on the ground that respondent No.1 was not having a valid driving licence and even the Registration Certificate as well as Route Permit of the offending bus were also alleged to be invalid due to the violation of the terms and conditions of the Insurance Policy. Further submitted that in view of the stand of respondent No.1, the appellant is not entitled for any compensation as the accident in question had occurred due to her own fault and moreover, there is delay of 7 days in lodging the FIR.

(4) On the basis of pleadings of both sides, learned Tribunal framed the following issues: -

- “1. *Whether the accident in question resulting in injuries to claimant Devi @ Jai Devi was caused on 16.12.2002 at about 2.00 P.M. in the area of new bus stand, Kurukshetra due to rash and negligent driving of bus No.HR-08-PA-0116 by its driver Ajmer Singh, respondent No.1? OPP.*
2. *If issue No.1 is proved, whether the claimant is entitled to compensation if so how much and from whom? OPP.*
3. *Whether the claim petition is not maintainable in the present form? OPR.*
4. *Whether the claimant is estopped by her own act and conduct from filing the present claim petition? OPR.*
5. *Whether the claimant has no cause of action to file and maintain the present claim petition?OPR.*
6. *Whether the claimant has suppressed true and material facts from the Court? OPR.*
7. *Whether respondent No.1 was not having a valid and effective driving licence at the time of accident in question? OPR.*
8. *Relief.”*

In order to prove the claim petition, appellant examined Tola Ram (eye-witness) as PW-1; Mehar Singh, Criminal Ahlmad of the Court of learned

CJM, Kurukshetra as PW-2; Dr. C.R. Khatri, SMO, LNJP Hospital, Kurukshetra as PW-3; Dr. M.P. Singh, Medical Officer as PW-4; appellant herself appeared as PW-5; Dr. Sansar Chand Sharma, Assistant Professor, PGIMS, Rohtak as PW-6 and produced the documentary evidence including Disability Certificate (Ex.P-2).

On the other hand, respondent No.1-Ajmer Singh (driver) appeared as RW-1 and produced Insurance Cover Note (Ex.R1) and copy of his driving licence (Ex.R2). Constable Ajmer Masih, Police Post Sector 7, Kurukshetra as RW-2.

(5) Learned Tribunal, while deciding Issue No.1, observed in paragraph 13 of the impugned award that appellant has failed to substantiate the manner in which the accident had taken place and she could not prove the negligence of respondent No.1/driver while causing the injuries, resulting out of the accident in question. Consequently, Issue No.1 was decided against the appellant and in favour of the respondents.

Learned Tribunal, while deciding Issue Nos.2 and 7, came to the conclusion that appellant has suffered 55% physical disability on account of amputation of her left leg, proved from the Disability Certificate (Ex.P-2) and assessed the compensation under the following heads:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount of Compensation (₹)</i>
1	Medical expenses	24,000/-
2	Pain and suffering	12,000/-
3	Permanent disability	55,000/-
4	Nutritious diet	2400
5	Attendant charges	2700
6	Transportation charges	2000
7	Loss of income	8100
	TOTAL	1,06,200/-

Learned Tribunal also concluded that respondent No.1 was on duty of the offending bus, which was owned by Haryana Roadways-respondent No.2 and further observed that his driving license (Ex.R-2) was genuine and in view of the genuine Insurance Policy (Ex.R-4), the Insurance Company cannot avoid the liability from the compensation. Consequently, held that all the respondents are liable jointly and severally, but in view of the finding on Issue No.1, appellant was held not entitled for the compensation from any of the respondents.

Issue Nos.3 to 6 were decided against the respondents as they failed to prove the same.

Finally, in view of the finding on Issue No.1, learned Tribunal decided Issue No.8 against the appellant and dismissed the claim petition. Hence, the present appeal.

(6) It is contended on behalf of the appellant that learned Tribunal has committed a grave error of law by adopting a very hyper-technical approach while recording the finding on Issue No.1 against the appellant like a criminal trial and consequently, the same is liable to be reversed. Further contended that compensation, assessed by learned Tribunal, is on the lower side in view of the 55% permanent disability suffered by the appellant as she has virtually become crippled for the entire life.

On the other hand, learned Counsel for respondent No.3-Insurance Company opposed the prayer of the appellant and submitted that findings, recorded by learned Tribunal on Issue No.1, are correct and do not require any interference by way of the present appeal and the same is liable to be dismissed.

(7) Heard arguments from both sides and perused the record.

(8) The points for determination in the present appeal are as under:-

- (1) *Whether appellant suffered injuries on 16.12.2002 due to rash and negligent driving of the offending bus by respondent No.1-Ajmer Singh or not?*
- (2) *What should be the 'just compensation' for which the appellant is entitled in view of the facts and circumstances of the present case?*

Point No.I

Claimant/appellant herself appeared as PW-5 and, *inter alia*, deposed that on 16.12.2012 at about 2.00 PM, she boarded the offending bus from Kaithal to Kurukshetra and after reaching at Bus Stand, Kurukshetra, she wanted to board another bus to go to her native Village i.e. Babain and while she was crossing the offending bus, which was standing, immediately respondent No.1 drove it and crushed her left leg. She specifically deposed that accident was caused by rash and negligent driving of respondent No.1. Immediately, she was taken to LNJP Hospital, Kurukshetra and remained admitted for three days. Thereafter, she was shifted to Hospital at Ladwa and then referred to PGIMS, Rohtak, where she remained admitted for ten days. The Doctors of PGIMS, Rohtak treated her and her left leg was amputated and thereafter, she was discharged. Specifically deposed that her treatment is still going on and she has spent lot of money on treatment and the bills have been produced as Ex.P-4 to Ex.P-38 and some of the bills have been lost. Further deposed that she is not able to do any work; rather cannot sit properly and prior to the accident, she was doing labour work, thereby earning ₹ 3000/- per month, but now she cannot do any work due to the accident, caused by negligent driving of respondent No.1.

During her cross-examination by respondent Nos.1 and 2, denied the suggestion that she fell down from running bus, when trying to board the bus or

that the accident was caused by her own fault. She also denied that any statement was made by her to the police on 17.12.2002 or that she is deposing falsely.

During cross-examination by respondent No.3, stated that she used to go for labour work in Kishan Cold Storage and denied that she was not doing any labour work or not earning anything. Also denied that she had not hired any taxi for follow up treatment or that she has not spent anything on her treatment.

In para 25 of the claim petition also, it is specifically alleged by her that when she left the offending bus and wanted to get another bus for her Village Babain and she was crossing in front of the same, which was standing at the Bus Stand, respondent No.1 immediately drove the offending bus in a rash and negligent manner and due to that, her left leg was crushed under the front wheel.

PW 1-Tola Ram supported the claim petition in similar terms to PW 5/appellant and deposed that FIR No.441 dated 23.12.2002 (Ex.P-1) was recorded on the basis of his statement when he came back from Haridwar.

During his cross-examination by respondent No.1, denied that accident took place due to the negligence of appellant or that she is responsible for the same.

On cross-examination by respondent No.2, he denied the suggestion that when appellant tried to board the running bus, she slipped, fell down and received the injuries. He specifically denied that accident took place due to sole negligence of the appellant.

During cross-examination by respondent No.3, he denied that he was not a witness to the accident in question and clearly stated that appellant is not related to him in any manner. Also denied that he is deposing falsely.

PW 2-Mehar Singh, Criminal Ahlmad brought the file pertaining to the criminal case resulting out of FIR No.441 dated 23.12.2002 and deposed that respondent No.1 is facing the criminal trial, which is fixed for prosecution evidence.

Despite due opportunity, no cross-examination was conducted by respondent Nos.1 & 2 and on cross-examination by respondent No.3, he simply stated that he has no personal knowledge about the case pertaining to FIR No.441 dated 23.12.2002 in question.

On 13.11.2003, PW 4-Dr. M.P.Singh, Medical Officer deposed that while posted as Medical Officer in LNJP Hospital, he medico-legally examined appellant and found the following injuries on her person:-

“ Crush injury on left foot with deformity over left leg in lower half, fresh bleeding was present. Advised for X-Ray. The certified copy of MLR of Jai Devi is Ex.P3 which is correct as per the original record. ”

Since this witness had not brought the record of treatment related to the appellant, therefore, his testimony was deferred.

Thereafter, on 13.03.2004, PW 4-Dr. M.P.Singh was further examined and deposed that he has brought the file pertaining to the appellant, which shows the history of road side accident at New Bus Stand, Kurukshetra and she remained admitted in LNJP, Hospital, Kurukshetra from 16.12.2002 to 18.12.2002 and suffered crush injury on left foot with deformity over left leg in lower half and fresh bleeding was present.

Despite due opportunity, this witness was not cross-examined by respondent Nos.1 and 2 and on cross-examination by respondent No.3, he *inter alia* deposed that injury is not possible by falling on the hard surface.

PW 3-Dr. C.R.Khatri, SMO, LNJP Hospital deposed that on 10.09.2003, a Board of three Doctors comprising himself; Dr. S.S.Saini, Civil Surgeon, Kurukshetra and Dr. D.S.Saini, SMO, LNJP Hospital, Kurukshetra assessed the total physical disability of the appellant as 55% due to amputation of her leg below middle in a road side injuries, sustained on 16.12.2002 as per alleged history. Disability Certificate was produced as Ex.P-2, which bears his signatures as well as other Members of the Medical Board.

Despite due opportunity, no cross-examination was conducted by respondent Nos.1 and 2 and on cross-examination by respondent No.3, he stated that disability is qua left lower limb and not for the whole body. Further stated that he cannot tell the disability for whole body and denied the suggestion that disability was assessed on higher side to assist the appellant.

PW 6-Dr. Sansar Chand Sharma, Assistant Professor, PGIMS, Rohtak deposed that appellant was admitted in PGIMS, Rohtak on 21.12.2002 with the diagnosis of crush injury left foot fracture both bone left leg with gangrene of left foot. Also deposed that her left leg was operated on 21.12.2002 and below knee amputation was done. Further deposed that patient was discharged on 31.12.2002 and Discharge Slip was produced as Ex.P-39. Also deposed that patient has been visiting as outdoor patient for follow-up treatment and copy of the OPD Card is Ex.P-40. Further deposed that appellant was not advised any special diet, but in such type of cases, patient is required good/nutritious diet.

RW 1-Driver Ajmer Singh (respondent No.1) deposed that on 16.12.2002, he was on duty with the offending bus from Kaithal to Yamuna Nagar route. When he dropped the passengers at New Bus Stand, Kurukshetra,

appellant tried to board from the running bus, her left foot slipped and as a result thereof, she fell down and received injuries. He got admitted the appellant in Govt. Hospital, Kurukshetra and he is not at fault as the accident in question was caused by negligence of the appellant herself. On 16.12.2002, police arrived in the hospital, but since the appellant was not fit to make statement, therefore, her statement was recorded on 17.12.2002, where it was stated that she had fallen from the running bus and her foot was slipped. Appellant stated before the police that there was no fault of the driver of the offending bus and she does not want to initiate any proceedings against him. This witness produced the Insurance Cover Note of the offending bus as Ex.R-1 and photocopy of driving license as Ex.R-2.

During cross-examination by respondent No.2, he stated that appellant was got admitted in the hospital by him along with Conductor and police personnel.

On cross-examination by appellant, he admitted that accident was caused by him on 16.12.2002 and due to that, he along with Conductor and some police personnel got the appellant admitted in LNJP Hospital, Kurukshetra. Also admitted that he is facing the criminal trial in FIR No.441 dated 23.12.2002 and he did not make any complaint to the police or Deputy Commissioner against his prosecution. Further admitted that left wheel of the bus crushed the leg of the appellant and the same has been amputated due to the accident.

RW 2-Constable Ajmer Masih has produced the copy of *Rapat Rojnamacha* (DDR) dated 17.12.2002 as Ex.R-3.

On cross-examination by appellant, he stated that *Rapat* dated 17.12.2002 is neither written by him; nor in his presence. Further stated that he

has given his statement only on the basis of the record and he has neither any personal knowledge about the Rapat; nor he joined the investigation of the case.

Learned Tribunal has recorded the findings on Issue No.1 against the appellant primarily on the basis of DDR No.8 dated 17.12.2002 (Ex.R-3), recorded by H.C. Bal Krishan, Police Post Sector 7, Urban Estate, Kuruksehtra, but he has not produced as a witness to prove as to how and in what circumstances, the above DDR was recorded. As mentioned above, RW 2-Constable Ajmer Masih specifically stated during his cross-examination that Rapat is neither written by him; nor in his presence and he has no personal knowledge of the same as he was not joined in the investigation of the case. Admittedly, respondent No.1 was facing the criminal trial while claim petition was decided and the same was pending for prosecution evidence. Thus, *prima facie*, learned Criminal Court was convinced that respondent No.1 has committed the offence under Sections 279, 337 and 338, IPC on account of the injuries caused to the appellant on 16.12.2002. Despite the pendency of the criminal trial, learned Tribunal has unnecessarily given the weightage to DDR No.8 dated 17.12.2002 (Ex.R-3) and recorded the findings on Issue No.1 against the appellant. Evidently, learned Tribunal has adopted a very hyper-technical approach while ignoring the testimony of PW 1-Tola Ram merely on the ground that appellant has not mentioned his name in her statement recorded before the police on 17.12.2002 (Ex.R-3) despite the fact that she herself has disowned the alleged statement and as such, there was no occasion to come to the conclusion that PW 1-Tola Ram was not present at the time of accident. Therefore, learned Tribunal ought to have accepted the version of the appellant that she never made such a statement and it was the creation of respondent No.1 in connivance with

the police to deprive her from the lawful claim. Further observation of learned Tribunal that neither PW 1 has taken the appellant to the hospital; nor he reported the matter to the police is again not sustainable in view of the fact that PW 1 has categorically deposed that on 16.12.2002, he along with one Tej Bhan was present at New Bus Stand, Kurukshetra at about 2 PM and since they had to board a Bus for Haridwar-Rishikesh, in the meanwhile, the offending bus came from Kaithal, driven by respondent No.1, which stopped at Bus Stand, Kurukshetra and at that time, appellant got down from the offending bus and while she was crossing the same, respondent No.1 immediately drove it and crushed her left leg under the front wheel. This witness specifically deposed that accident in question took place due to negligence of respondent No.1 and when he came back from Haridwar on 23.12.2002, then came to know that left leg of appellant was amputated in PGIMS, Rohtak and on the basis of his statement, FIR No.441 dated 23.12.2002 (Ex.P-1) was registered. In view of the clear and categoric stand taken by PW 1, learned Tribunal has wrongly discarded the testimony of this witness and the same ought to have been accepted as credible and trustworthy being an independent witness. Learned Tribunal has not even accepted the testimony of appellant/PW 5 on the ground that same is running contrary to her version contained in DDR (Ex.R-3). As discussed above, when appellant/PW 5 herself is denying the authenticity of such a statement, then there is no question to discard her testimony on the basis of said report. Thus, the course adopted by learned Tribunal, while ignoring the testimony of PW 5, is also liable to be interfered and reversed. Again in Para 13 of the impugned award and relevant part of which has been extracted in opening para of this order to the effect that appellant has failed to substantiate the manner in which

the accident took place is also not sustainable in view of the provisions of Section 168 of the Act, which clearly stipulates that proceedings in a claim petition are to be construed as an enquiry. Even otherwise, law is well settled that while deciding a claim petition filed under Section 166 of the Act, preponderance of evidence on the basis of probabilities is to be seen and the same is not to be converted into a criminal trial, where proof beyond reasonable doubt is required and reference in this regard can be made to a Division Bench judgment of this Court in **First Appeal From Order No.1950 of 1995**, titled as **Amolakdeep Singh and another Versus The Punjab State and another**, decided on 19.07.1996 and relevant part of the same reads as under:-

“ *The only contradiction brought out in the statement of Teja Singh was that he had not mentioned these facts in his statement before the police which was recorded in the hospital and the copy of the DDR (Ex.A-5). In our opinion, the Tribunal has seriously erred in discarding the testimony of Teja Singh merely because there was some variance in the statement made by him while he was in hospital and the statement made before the Tribunal. The Tribunal ignored the well established principle of law that in the proceedings under the Motor Vehicles Act, 1988 issues are required to be determined on the basis of preponderance of the evidence and degree of proof required for award of compensation is not the same as is required for holding a person guilty of an offence.* ”

Still further in '**Bimla Devi and others Versus Himachal Road Transport Corporation and others, (2009) 13 SCC 530**, the Hon'ble Supreme Court has held as under:-

" *In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants.*

The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. "

In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that findings recorded by learned Tribunal on Issue No.1 to the effect that appellant has failed to substantiate the manner in which the accident had taken place and that she could not prove the negligence of respondent No.1/driver while causing the injuries, resulting out of the accident in question are wholly erroneous and the same are liable to be set aside. Consequently, it is held that appellant has suffered injuries on 16.12.2002 due to rash and negligent driving of the offending bus by respondent No.1 and she was not at fault.

Point No.2

Disability Certificate (Ex.P-2) of the appellant clearly proves that she has suffered a permanent disability up to extent of 55% on account of amputation of her left leg and the same is duly corroborated with the testimony of PW 3-Dr. C.R.Khatri. It has also been duly proved from the testimony of appellant/PW 5 that she was working as Household Labourer and earning ₹ 3000/- per month. Therefore, learned Tribunal wrongly considered the monthly income of the appellant as ₹ 2700/- and the same also deserves to be increased. There is sufficient material on record to prove that in view of the injuries suffered by the appellant, she cannot even walk properly, therefore, being a labourer, it is not possible for her that she can perform her labour work with one leg.

In the opinion of this Court, the following amount of compensation would be the 'just compensation' for which the appellant/claimant is entitled:-

Sr. No.	Heads	Calculation (in ₹)
1	Compensation for Pain and suffering	50000
2	Compensation for loss of future earning on account of 55% permanent disability	3,36,000
3	Compensation for medical expenses	24000
4	Compensation for future medical expenses	25000
5	Compensation for loss of future enjoyment of life, special diet, transportation and attendant charges etc.	100000
	TOTAL	5,35,000

In view of above, the instant appeal is allowed and the amount of compensation, assessed by learned Tribunal, is modified and enhanced from ₹ 1,06,200/- to ₹ 5,35,000/- for the injuries suffered by the appellant/claimant. The amount of compensation shall also carry interest @ 9% from the date of filing the petition till its realization and the same be paid within a period of six weeks from the date of receipt of certified copy of this order.

Disposed off in the above terms.

August 31, 2018

naresh.k/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes