

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

FAO No.5745 of 2011 (O&M)

Date of decision: 25.09.2018

PARBHAT KIRAN

... Appellant

Versus

BALBIR SINGH & ORS.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. D.S. Nain, Advocate
for the appellant.

Mr. Ashok K. Singla, Sr. DAG, Punjab.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 03.12.2010 passed by the Motor Accidents Claims Tribunal, Kaithal whereby application for grant of compensation filed under Section 166 of the Motor Vehicles Act, 1988 in respect of injuries sustained by appellant-Parbhat Kiran has been dismissed by the Tribunal on the basis of findings qua issue No.1.

The facts relevant for disposal of present appeal are that as per case set up by the claimant, on 25.08.2008 at 12 pm, he along with Anoop son of Balwan boarded bus bearing No.PB-30D-4380 (hereinafter to be referred as 'the offending vehicle') to go to college. The said bus went towards Dabwali near old truck union. On coming to know of boarding wrong bus, claimant asked conductor of the offending bus and the

conductor whistled to stop the bus. The driver slowed down the bus to stop the same. Anoop alighted from the bus. When the claimant tried to alight, respondent No.1 without ascertaining as to whether claimant has alighted from the bus or not, suddenly accelerated speed of the bus rashly and negligently. The claimant fell down and rear wheel of the bus crushed his leg, waist and abdomen. He was taken to General Hospital, Sirsa and referred to PGI, Rohtak. He has prayed for compensation to the tune of Rs.6 lakh.

Respondent No.1 filed reply and raised the plea that the injured himself was negligent. He alighted from the moving bus and fell down. He never asked the conductor or driver to stop the bus. The bus was going from Sirsa to Muktsar and when it reached near Old Truck Union, Dabwali road, Sirsa, claimant jumped from the bus and in that process sustained injuries. At that time, bus was in the city area and moving at a speed of 20-25 kmph. There was no rashness and negligence on the part of answering respondent.

Respondents No.2 and 3 also filed reply, in line with the averments raised by respondent No.1.

Claimant filed replication and reiterated his stand taken in the claim application.

The controversy between the parties led to framing of following issues by the Tribunal:-

1. Whether the claimant Prabhat Kiran has sustained injuries

in the accident, which took place on 25.08.2008 at about 12 pm near old truck union, Dabwali road, Sirsa involving the offending bus bearing No.PB-30-D-4380 and on account of rash and negligent driving of it by respondent No.1? OPP

2. If issue No.1 is proved, then what amount of compensation, the claimant is entitled to, and from whom? OPP

3. Whether the claim petition is not maintainable in the present form? OPP

4. Relief.

To prove his case, claimant appeared in the witness box and examined Dr. Rajesh Kumar PW2, Bharta @ Bharat Singh his father PW3.

Respondent No.1 appeared in the witness box.

Having heard counsel for the parties in the light of materials on record, the learned Tribunal determined issue No.1 against the claimant and consequently, the application for compensation was dismissed.

Counsel for the appellant has submitted that the Tribunal has answered issue No.1 against the claimant primarily on two grounds i.e. there was delay in reporting the matter to the police and Anoop son of Balwan Singh, companion of the claimant has not been examined. It is further argued that duly sworn testimony of claimant is more than sufficient to establish that occurrence in question took place due to rash and negligent driving of offending bus by respondent No.1.

Counsel representing respondents No.2 and 3 has supported findings of the Tribunal on issue No.1 with the submission that the Tribunal has appreciated testimony of the claimant and Balbir Singh, driver of the

offending vehicle in details and right perspective to negate plea of the claimant that negligence for the occurrence can be attributed to Balbir Singh, driver of the alleged offending vehicle.

I have heard counsel for the parties, perused the paper book and records.

To decide the controversy with regard to correctness or otherwise of findings of the Tribunal on issue No.1, it is material to appreciate testimony of Prabhat Kiran PW1 and Balbir Singh @ Dalbir Singh, driver of the bus RW1.

Parbhat Kiran tendered into evidence his duly sworn affidavit Ex.PW1/A. A relevant extract from para 2 of the affidavit reads as follows:-

“That the deponent has got admission in Polytechnic College, Sirsa in Agriculture Trade in August, 2008. On dated 25.08.2008 at about 12.00 pm the deponent along with one Anoop son of Balwan resident of village Sista boarded a bus of Punjab Roadways bearing Regn. No.PB-30D-9380 to go to college. The offending bus went towards Dabwali near old truck union. On coming to know of boarding wrong bus, the deponent asked the conductor to stop bus, the conductor whistled to stop the bus. The respondent No.1 Balbir Singh, the driver of the bus slow down the bus to stop the same. Anoop alighted from the bus, when the deponent tried to alighted, the respondent No.1 without ascertaining whether the deponent alighted or not, suddenly accelerated the bus rashly and negligently on which the deponent fell down and immediately rear wheel of the bus crushed the leg,

waist and abdomen of the deponent causing multiple injuries on various parts of the body of the deponent including fracture pelvis, rupture of urethra, fracture right tibia and femure.”

A perusal of the aforesaid extract would reveal that as per statement of the injured, when the bus went towards Dabwali near Old Truck Union, he came to know of boarding wrong bus. He asked the conductor to stop the bus and conductor whistled to stop the bus. Balbir Singh, the driver slowed down the bus to stop and Anoop alighted from the bus but when the injured tried to alight, Balbir Singh accelerated the bus without ensuring that the claimant has alighted the bus safely. In his cross examination, he has deposed to the following effect:-

“I boarded in the aforesaid bus from bus stand Sirsa and no ticket was purchased by me. Volunteer the conductor of the bus had not reached to me till then. The driver of the bus driving the bus in normal speed but some time he applied the breaks and some time he accelerated the speed. Dabwali was situated at a distance of 30-35 from Sirsa. I was not acquainted the stoppage of the bus in question. It is incorrect to suggest that I jumped down from running bus without asking the conductor or the driver in question to stop the same. Volunteered I got down from the bus when it was got stopped and started with a speed. Volunteered when I alightened from the bus my both feet were on the road.”

In the later part of cross examination, he had stated to the following effect:-

“It is incorrect to suggest that every bonafide passenger of the bus have to purchase a ticket for travelling and at the same time I was not having such ticket. Volunteered the conductor of the bus did not approach me till then. I alighted from the front window of the bus and had also boarded the front window. I never tried to approach the conductor to purchase the ticket because there was heavy rush in the bus.”

Perusal of the aforesaid extracts would reveal that neither conductor of the bus had reached the claimant nor the claimant reached him for purchase of ticket because there was heavy rush in the bus. There is no challenge to testimony of Balbir Singh that by the time the bus in question reached Truck Union, Dabwali road, Sirsa, the bus had already covered distance of 4/4.5 kms from Sirsa bus stand. If the claimant could not approach the conductor during his travel from bus stand, Sirsa to the place of accident which was at a distance of 4/4.5 kms, it is difficult to accept version of the claimant that he made any such request to the conductor to stop the bus in order to enable him to get down. This fact alone is sufficient to substantiate plea of the respondents that on coming to know that the claimant had boarded wrong bus, he tried to get down from the bus in a hurry and in the process, fell down and sustained injuries. It is only for this reason that neither he examined Anoop, his alleged companion nor reported the matter to the police for a period of 1-2 months from the date of occurrence. The Tribunal has rightly appreciated the evidence while determining issue No.1 against the claimant and in favour of the

respondents. I would hasten to add that nothing tangible and material has been broughtforth in cross examination of Balbir Singh RW1 that he was asked by conductor of the bus to stop and he had slowed down the bus but thereafter accelerated the speed, in order to attribute negligence to respondent No.1 for the unfortunate occurrence in which Parbhat Kiran sustained multiple injuries. That being so, I do find an error much less illegality in the conclusion arrived at by the Tribunal that claimant has failed to establish his plea attributing rashness and negligence to the bus driver. Accordingly, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered so.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

25.09.2018

ashok

(REKHA MITTAL)
JUDGE

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