

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

FAO No. 1703 of 2014(O&M)

Date of Decision: August 16 , 2018.

Sunil Kumar

..... APPELLANT (s)

Versus

Mukhtiar Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. V.B.Aggarwal, Advocate
for the appellant.

Mr. Subhash Goyal, Advocate
for respondent No.4 – 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.

The appellant is aggrieved of award dated 10.10.2013 passed by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, the 'Tribunal') whereby his petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') has been dismissed.

The appellant claimed that he alongwith his friend Sunil Kumar were travelling in Haryana Roadways bus bearing registration No.HR-65-0804 on 03.07.2010 at about 8.15 a.m. He was sitting on the window side seat. It is averred that respondent No.1 was driving the bus rashly and negligently. When

the said bus reached near Gurukul, it struck with a vehicle which was coming from the opposite side. As a result thereof, the appellant alongwith co-passengers received injuries. The bus was stopped. The appellant took another vehicle and reached hospital. He was admitted in Anand Orthopaedic Hospital, Kurukshetra. FIR No.155 dated 06.07.2010 was registered against respondent No.1. The respondents, in their separate written statements refuted the claim of the appellant. It was submitted that the claimant himself was negligent and careless as he was sitting in the bus by keeping his arm/elbow out of the window.

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

- “1. Whether the accident in question took place due to sole negligence, fault, rash driving of the respondent No.1, resulting the injuries to claimant? OPP
2. If issue No.1 is proved, what amount of compensation the claimant is entitled from the respondents? OPP
3. Whether there was violation of the terms and conditions of the insurance policy and respondent No.4 is not liable to pay any compensation? OPR-4
4. Relief.”

The learned Tribunal on consideration of the facts and circumstances of the case as well as records of the criminal case i.e., FIR No.155 dated 06.07.2010 concluded that there is no mark of accident on the body of the bus. In case any injury has been sustained by the claimant, no liability can be fixed upon the respondents. Issue No.1 was accordingly decided against the claimant. Claim petition was dismissed by the learned Tribunal vide impugned award dated 10.10.2013. Aggrieved therefrom, the present appeal has been filed by the claimant.

It is not in dispute that the respondent-driver in the written statement

has stated that the claimant was sitting in the bus with his arm protruding out of the window. The offending vehicle was not driven in rash and negligent manner. The bus was taken over to the Katcha portion of the road to avoid collision with the open body pick-up van, which was coming from the opposite side. The collision was avoided. The said vehicle struck against the arm/elbow of the claimant. It is to be noticed at this stage that no particulars etc. of the said van are available on record neither did claimant implead the owner or insurer of the said vehicle as party to the claim petition. There is indeed no evidence on record to suggest that the bus in question was driven in a rash and negligent manner leading to the injury on the appellant's arm.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned award dated 10.10.2013.

At this stage, learned counsel for the appellant submits that at least a sum of ₹25,000/- on account of no fault liability should have been afforded to the appellant. No serious objection thereto has been raised.

Keeping in view the facts and circumstances of the case, I find the said prayer of learned counsel for the appellant to be justified.

Accordingly, a sum of ₹25,000/- is directed to be paid to the appellant with interest at the rate of 7.5% from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

August 16 , 2018.
'om'

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