

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.7211 of 2018(O&M)

Date of Decision:19.12.2018

**General Manager Rajasthan Roadways Ganga Nagar
Depot and another**

.....APPELLANT

Vs.

Dalipa @ Dalip Singh and another

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.R.S.Sharma, Advocate for the appellants.

DR. RAVI RANJAN, J.(Oral)

I have heard learned counsel for the appellant and perused the records of this case.

This appeal is directed against the impugned judgment and award dated 14.09.2018 passed in MACT Case No.16 of 2017 by Motor Accident Claims Tribunal, Jind (for short “the Tribunal”). The claimant is the injured person himself. Claimant has claimed compensation of Rs.50 lacs in the claim petition.

Short facts which would be necessary for consideration of the *lis*, stand enumerated as under:-

Regarding the accident claimant-injured has stated that on 18.07.2014, he along with her grand daughter namely Komal was coming from village Danoda Khurd to Narwana for some personal work and boarded in Bus bearing registration No.RJ-13PA/3865. At about 10.00 a.m. when bus reached in front of Court campus, then claimant asked the Conductor to stop the bus. When claimant was alighting from bus, the driver abruptly drove the bus in a very high and negligent manner, as a consequence, he fell down from the bus and his left foot got crushed under the rear wheel of bus. Just after the accident, he was brought in General Hospital, where he was medically examined and due

to serious condition, he was referred to PGIMS Rohtak but he was got admitted in Jindal Hospital Hisar, where he remained admitted for several days. Later on, he was got admitted in Medical College and Hospital, Agroha on 27.10.2014, where he remained hospitalized till 20.12.2014.

The claimant-injured has stated that he is aged to be 60 years on the day of the accident and claimed that he was working as watchman-cum-labourer and was earning Rs.9,000/- per month and has further claimed that he had spent more than Rs.5 lacs on treatment and expenses and further that he has lost his working and earning capacity permanently as consequence of injuries suffered in motor vehicular accident. He has become permanent patient and disabled person and has also undergone painful agony due to amputation of his left leg.

Respondent No.2 (driver of the bus) herein appeared before the Tribunal and filed written statement taking preliminary objections regarding maintainability, cause of action, locus standi of the claimant and also alleging that claim petition is false and frivolous. On merit also, he had stated that no such accident had taken place with the bus in question and he has been falsely implicated in the case. Respondent No.1 has further stated in his pleadings that he was having valid driving licence and the case was filed only to extract money from him. He has also questioned the claimed amount of Rs.50 lacs. It is further submitted that according to version of FIR, the alleged accident took place at 7.00 p.m., but as per time table of the route of the bus, its time for reaching at Narwana is 11.00 a.m. and there is no first window in the aforesaid bus and there is having only one window in the middle of the bus for boarding and alighting the passengers.

Respondents no. 2 and 3 filed separate written statement taking the preliminary objections, as has been stated above. A ground was also taken that

since the claimant has earlier filed a claim petition, his second claim petition would not be maintainable by mentioning the time of accident about 10.00 a.m.

The Tribunal after considering the rival pleadings framed following issues:-

- “1. Whether the accident took place on 18.07.2014 on account of rash and negligent driving of respondent No.1, while driving bus bearing registration No.RJ-13PA/3865, resulting into causing injuries to claimant Dalipa, as alleged? OPP.*
- 2. If issue No.1 is proved in the affirmative, then what amount of compensation, the claimant is entitled and from whom? OPP.*
- 3. Whether the respondents no.1 and 2 have violated terms and conditions of the Insurance Policy, if so, to what effect? OPR-3.*
- 4. Whether the present claim petition is not maintainable on the ground that earlier claim petition was withdrawn by claimant? OPR.*
- 5. Relief.”*

The claimant-injured, to establish his claim, examined himself as PW1 and in cross-examination, he admitted that he is a retired person and at that time, he was not posted as Chowkidar. He also denied that he was having a travelling ticket of alleged bus. However, he is said that it is wrong to suggest that he is 75 years old and is drawing old age pension since 5-6 years regularly.

The respondents before the Tribunal examined RW-1 Rakesh Kumar(Traffic Manager Delhi Depot) and in cross-examination, he has stated that he is not summoned witness and also it is correct that on the fateful day i.e. on 18.07.2014, he was not traveling in the alleged vehicle and he cannot tell the stoppage of alleged bus on 18.07.2014 between Ganga Nagar to Yamuna Nagar. He also admitted that it is correct that Bus No.RJ-13PA-3865 is not mentioned in Mark-A.

RW-2 Jasbir son of Balwan has also been examined by the respondent. In his cross-examination, he answered that he started from Ganga Nagar at about 4.40 A.M. to Yamunanagar and it is also correct that a criminal case is pending against him in Narwana Court regarding the alleged accident. He has further admitted that it is also correct that Haryana Roadways Department has Power to check the bus of Rajasthan Depot.

The Tribunal has come to the conclusion that in a motor vehicular accident claim, the claimant is not required to prove the case beyond all reasonable shadow of doubt. In the present case, claimant has to establish that the accident was caused due to rash and negligent driving of the offending vehicle for which an FIR has already been lodged.

So far as the filing of the second claim petition is concerned, the Tribunal has accepted that in the first claim petition itself, a petition for amendment for correction of time was filed which was rejected then claimant withdrew the petition with a permission to file fresh case upon which the same was permitted to be withdrawn.

It has also noticed that a careful scrutiny of FIR reveals that no specific time of accident was stated therein. Thus, it may be presumed easily that wrong time of accident mentioned in the first claim petition may be a bonafide mistake. However, investigation carried out by the police found involvement of respondent no.1 in causing motor vehicular accident in which the claimant received multiple injuries. Thus, it has been held that mere mentioning of wrong time due to inadvertence in the first claim petition would not defeat the right of claimant to seek compensation against the respondent. It has finally been held that the accident was caused by rash and negligent driving of the driver.

So far as the compensation part is concerned, nothing except the expense of treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure as well as loss of earnings during the period of treatment of Rs.10,000/- and future medical expenses of Rs.10,000/- and for damages for pain, suffering and trauma due to amputation of leg of Rs.10,000/- has been awarded to the claimant. The total amount of compensation has come to Rs.2,63,000/-, which includes actual medical expenses of Rs.1,25,000/- and for transportation, nourishing food, hospitalization and miscellaneous expenditure of Rs.2,000/- per day as indoor patient which comes to Rs.1,08,000/-.

Learned counsel for the appellant has submitted that the second claim petition was not maintainable.

In view of the stand taken by the Tribunal that the claim petitioner was allowed to withdraw the claim petition with a liberty to file a fresh one and further that wrong declaration of time of accident would of no value in the present case when the FIR does not disclose the time of the accident and the police has already found in the investigation that respondent No.1 was responsible for the motor vehicular accident causing injury upon the claimant, such question raised by the appellant already stands answered.

It is next contended that there is false implication of the driver in the present case, as the time of FIR has been given as 7.00 P.M.

These aspects also would not find favour of this Court for the reason that the Tribunal has already noted that police has also found that the driver of the vehicle responsible for the motor vehicular accident. Thus, prima facie, it has to be presumed that the claimant has been able to prove it, whereas there is no material placed for rebuttal by the respondents by bringing out of any

concrete evidence showing false implication or any fraud played by the claimant in implicating the driver and the offending vehicle.

So far as the time shown in the FIR as 7.00 P.M. is concerned, learned counsel for the appellant himself has stated that it is the time of registration of FIR or the time when the complaint was made. It is not the time of accident which has been noticed by the Tribunal and, in fact, no time of accident actually has been revealed in the FIR. Thus, in my considered view, the findings recorded by the Tribunal cannot be faulted with.

In my considered opinion, the impugned Judgment and Award does not require any interference by this Court. In the result, this appeal is dismissed, However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

19.12.2018
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No