

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

**FAO-2159-1995 (O&M)
Date of decision : 3.7.2019**

Swaran Singh

.....Appellant.

Versus

Jaspal Singh and another

..... Respondents.

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. H.S. Dhindsa, Advocate for the appellant.

Mr. Nikhil K. Chopra, Addl. AG, Punjab.

KULDIP SINGH, J.

Claimant-appellant has preferred this appeal against the Award dated 24.5.1995, passed by Motor Accident Claims Tribunal, Amritsar (for short 'the Tribunal') vide which claim petition filed by the claimant-appellant was dismissed.

Facts of the case are that according to the case put forward by the claimant-appellant in the claim petition on 22.8.1990 at 6.30 P.M, he was going on his scooter along with Harpinder Singh sitting on pillion from Amritsar to Village Thothian. Claimant was driving the scooter on his left side just on the berm of the road. When they reached near Manawala drain, a Punjab Roadways bus bearing registration No. PB-12/AF/2 which was coming from Chandigarh to Amritsar being driven by respondent No. 1- Jaspal Singh rashly and negligently on high speed without giving any horn, struck against the scooter of the claimant-appellant. Claimant-appellant tried

to avoid the accident by taking the scooter on the *kacha* path about two yards away from the *metalled* road but respondent No. 1-Jaspal Singh driver turned the bus on wrong side and hit the claimant-appellant from its rear side. Claimant-appellant and Harpinder Singh fell down and received grievous multiple injuries. They were removed to SGB Hospital, Amritsar by respondent No. 1-Jaspal Singh. Conductor of the bus-Kailash Chander informed the relations of the claimant-appellant about the accident. Claimant-appellant claimed Rs. 7.00 lacs as compensation. It is claimed that claimant-appellant was aged about 45 years at the time of accident and his monthly income was Rs. 5,000/-.

Respondents in the reply took the plea that bus was not at fault. In fact bus in question was going from Chandigarh to Amritsar on 22.8.1990 at about 6.30 P.M. When it reached near the place of occurrence, a truck was coming from the opposite side and the scooter was coming behind the truck and when the scooterist tried to overtake the truck without noticing the bus is coming from the opposite side, he lost his control over the scooter and fell down in the middle of the road. The scooterist was talking with the person sitting on the pillion and was driving the scooter at a very high speed. Respondent No. 1-Jaspal Singh applied the breaks and also brought the bus to *kacha* path and did not touch the scooterist. In fact, the scooterist received injuries due to fall on the road. Driver of the bus-respondent No. 1 stopped the bus and provided help to the injured.

From the pleadings following issues have been framed: -

- “1. Whether the accident took place due to rash and negligent act of Jaspal Singh, respondent No. 1? OPP.

2. Whether the applicant is entitled to any compensation, if so to what amount and from whom? OPP.
3. Whether the application is bad for non-joinder of necessary parties? OPR.
4. Whether the application is not maintainable? OPR.
5. Relief.”

While deciding issue No. 1 the Tribunal took the view that accident did not take place due to rash and negligent driving of the bus by respondent No. 1. In view of the findings on issue No. 1, claim petition was dismissed.

Heard, learned counsel for the parties and have also gone through the case file.

The moot question in this case is as to whether the accident took place due to rash and negligent driving of the bus or rash and negligent driving of the scooter? Further, question arises as to whether any accident, if any, took place with the bus or not?

Admittedly, in this case, no FIR was registered nor any DDR was lodged with the police. Even a criminal complaint was not filed before the Court. In order to prove his averments, claimant-appellant examined himself as AW-5 and also examined the pillion rider-Harpinder Singh as AW-4. In the statement, claimant-appellant has stated that when he reached near the Manawala drain, the offending roadways came from Chandigarh side towards Amritsar. The bus was being driven at a high speed in rash and negligent manner. On seeing the bus, it took the scooter towards the *kacha*

path on the left side of the road. The bus driver after overtaking the truck could not control the bus and hit the scooter from the rear side. On account of the same, he along with Harpinder Singh received injuries. Kailash Chander, the conductor of the bus came out of the bus and they were removed to SGB hospital, Amritsar. Harpinder Singh, pillion rider, made the similar statement.

The Tribunal disbelieved the said story. A perusal of the claim petition shows that there is no mention about the bus overtaking the truck. In the claim petition it is projected that the bus came at high speed and hit the scooter. From the statements of Swaran Singh-claimant and Harpinder Singh-pillion rider, it comes out that in fact the bus was over taking the truck. The scooter was coming from the opposite side. Unluckily, in this case, best evidence was not produced. The site plan showing as to how the accident took place was not produced. Even the photographs of the place of accident were not produced, though the counsel for the claimant-appellant claimed that the photographs are with him and in fact these were shown to the Court. However, these were not produced before the Tribunal and were not taken into consideration. Since these are not part of the file, these cannot be taken into consideration. If there was rash and negligent driving on the part of the bus driver, the claimant-appellant would have approached the police or at least lodged the DDR or filed the criminal complaint. The scooter and bus were also not got mechanically examined to see whether the bus actually hit the scooter or not. In this way, best evidence has been kept

away from the Court. Now left is the only oral testimony and self serving statement of the claimant and the pillion rider.

I am of the view that it is not claimed that there was a much damage to the scooter. In fact no claim for the damage to the scooter has been claimed. If a bus coming from the opposite side on a high speed hits a scooter, the damage to scooter is likely to be much more. The scooter is likely to be crushed and will be a total loss.

In this way, I am of the view that the Tribunal rightly held that the claimant-appellant could not prove that accident took place due to rash and negligent driving of the bus. It should be added that according to the claimant-appellant himself, bus was stopped and the driver helped him along with conductor and removed him to hospital and even the conductor of the bus informed his relations.

As such findings on issue No. 1 are affirmed. Consequently, the present appeal fails and is dismissed.

(KULDIP SINGH)
JUDGE

3.7.2019
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Whether speaking / reasoned	Yes
Whether Reportable:	No