

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

(1)

**FAO No.2437 of 2007 (O&M)
Date of Decision: April 30, 2019.**

Roshan Lal

.....APPELLANT(s).

VERSUS

Sama Masih and others

.....RESPONDENT(s).

(2)

FAO No.2438 of 2007 (O&M)

Roshan Lal

.....APPELLANT(s).

VERSUS

Sukhi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinish Singla, Advocate
for the appellant in both the appeals.

Mr. Vaibhav Narang, Advocate
for respondents No.1 & 2 in FAO-2437-2007
and for respondents No.1 to 4 in FAO-2438-2007.

Mr. N.K. Banka, D.A.G. Punjab.

SURINDER GUPTA, J.

These appeals have been filed by Roshan Lal against the award dated 07.03.2007 passed by Motor Accident Claims Tribunal, Amritsar (later referred to as the tribunal), whereby he was directed to pay the compensation as awarded to the claimants in MACT case No.83/FTC of

2006 titled as '*Sama Masih and others Vs. Nirvail Singh and others*' and in MACT case No.82/FTC of 2006 titled as '*Sukhi and others Vs. Nirvail Singh and others*'.

As per case of the claimants, deceased Raja Masih, Judge Masih with Major Masih were going on scooter bearing registration No.PB-02Z-8454, which was hit by Mini Bus having registration number displayed on it as PB-02A-2291 (later referred to as the offending vehicle), resulting in death of Raja Masih and Judge Masih while Major Masih and one Constable of BSF namely Hari Ram sustained injuries. The accident took place due to rash and negligent driving of the offending vehicle. The matter was reported to the police and FIR No.29 dated 12.02.2004 was registered at Police Station Bhikhiwind for the offences punishable under Sections 279, 337, 338, 304-A, 427/34 IPC.

Learned counsel for the appellant has challenged the award on the sole ground that appellant Roshan Lal was not owner of the offending vehicle, as such, is not liable to pay compensation as awarded by the tribunal.

The tribunal, while considering the above submission of appellant, observed as follows:-

“Plea taken by respondents is that the bus was not being driven by respondent No.1 and it was not even owned by respondent No.2. It has been denied by respondent No.2 in his reply that the bus is owned by him. He has also appeared as RW/1 and in his statement respondent No.2. Roshan Lal has stated that he is not owner of the mini bus No.PB-02A-9921 and after the filing of the present case, he made enquiry and came to know that there is no

vehicle bearing registration No.PB-02A-9921 and vehicle No.PB-02A-9921 is a three wheeler. Respondent No.2 has even examined Sampuran Singh, Jr. Asstt. DTO, as RW/1 and he has stated that as per record pertaining to registration of vehicles, vehicle No.PB-02A-9921 is three wheeler vehicle and there is no bus registered at the said number. The Ld. Counsel for the respondent No.2 has argued that the evidence is not sufficient to prove that the respondent No.2 is the owner of the vehicle and as such the liability of respondent No.2 is not there. In this case, statement of two witnesses are there that the accident took place due to negligent driving of the vehicle Mini Bus No.PB-02A-9921. Claimants have also produced FIR Ex.P1, according to which the accident took place due to negligence of the respondent No.1. As per defence evidence produced by respondent No.1, after the investigation respondent No.4 was challaned. As such, the accident took place either due to negligence of respondent No.1 or respondent No.4. Respondent No.1 in his cross-examination has stated that he was not driving the vehicle. Respondent No.4 in the reply has denied that he was driving vehicle but he did not step into the witness box. According to the witnesses examined by the claimants, the vehicle was being driven by respondent No.1 and the accident took place due to his negligence. Evidence is sufficient to prove that the bus was being driven in rash and negligent manner. As far as the evidence of RW/1 is concerned that three wheeler is registered at registration No. given in this case and not bus. It appears that the vehicle involved in the accident is not duly registered. RW/3 Nirvail Singh in his cross-examination has stated that he does not know if FIR was got registered against him, but he admitted that he has given application to Sr. Police

Officers that he had not caused the accident and accident was caused by Davinder Singh and that Davinder Singh was driving the bus at the time of accident. He has also stated that after enquiry Davinder Singh was challaned. He has stated that Davinder Singh was driver of Roshan Lal. It has been admitted by him that he had also been driver of Roshan Lal and that Roshan Lal owns 12/14 buses, which are plying on the roads and bus involved in the accident was ownership of Roshan Lal and he had shown his licence when he was employed by Roshan Lal. Davinder Singh was driver of bus No.PB-02A-9921, which was owned by Roshan Lal and that bus had caused accident. Bus plies in between Bhikhiwind and V.Mari Komal Ke. The said bus is still lying in the police station and is owned by Roshan Lal. This shows that the respondent No.1 who has been working as driver with the respondent No.2 admits that the bus involved in the accident was of Roshan Lal and the bus actually existed and the same is with the police. Police also after enquiry found that the bus bearing No.PB-02A-9921 was involved. This shows that the bus was having registered No.PB-02A-9921. It appears that the said registration was wrongly displayed on the bus. Possibly the bus was not got registered and was being plied under forged registration No. Any how the evidence shows that the bus was involved in the accident and deceased Judge Masih died as a result of accident.”

When this point was raised in this appeal, my learned brother Justice Harinder Singh Sidhu asked Ajaib Singh, Additional Advocate General, Punjab to get particulars regarding the investigation in the case and about ownership of the bus involved in the accident. He produced police report that the ownership of the Mini Bus displaying the registration No.PB-

02A-9921 could not be traced, however, the appellant in his statement to the police had admitted that the bus was owned by him and he was ready to pay the compensation as awarded to the claimants. He had admitted that he had paid ₹2,90,000/- to Tarsem Masih @ Sama. Deputy Superintendent of Police, Sub Division, Valtoha on inquiry found that that Roshan Lal purchased old bus of Ashoka Leyland, got its Chassis cut to convert it into Mini Bus and was plying it with a fake number plate on it. He concluded that the offending vehicle was owned by Roshan Lal.

As per report called from the Sessions Judge, Tarn Taran, Nirvail Singh driver of the offending vehicle was convicted and sentenced for death of Judge Masih and Raja Masih due to his rash and negligent driving of offending vehicle vide judgment dated 16.08.2011 and his sentence was affirmed by Additional Sessions Judge, Tarn Taran while dismissing his appeal on 21.05.2014.

The appellant filed objections against the police report, stating therein that the police inquiry was tainted.

I have gone through the statement of Nirvail Singh, who appeared as RW3, has categorically stated as follows:-

“On the day of accident, Davinder Singh, who was driver of the offending bus owned by respondent Roshan Lal, was driving the vehicle. I have also remained driver of Roshan Lal on the other buses. Respondent Roshal Lal have 12/14 buses, which is (sic are) plying on different routes . The bus, which have (sic had) caused the accident, was in the ownership of respondent Roshan Lal. I have shown my licence to Roshan Lal-respondent, when I have been employed by Roshan Lal. Davinder Singh was driver of bus No.PB-02A-9921, which was

owned by respondent-Roshan Lal and this bus has caused accident. The bus bearing No.PB-02A-9921 owned by respondent-Roshan Lal was running from Bhikhiwind to Kamhoke. The registration number of the buses including bus in question was placed by Roshan Lal-respondent. The bus of respondent No.2 in question is still lying in police station Bhikhiwind. Bus No.PB-02A-9921 owned by Roshan Lal has caused the death and injuries to the other.”

The question, which arises for consideration is as to why the testimony of Nirvail Singh be disbelieved. He has come up with denial of accident by him and has attributed the same to some other driver namely Davinder Singh. His version was found to be incorrect and he suffered conviction for causing death of Judge Masih and Raja Masih due to his rash and negligent driving of the offending vehicle. He has categorically stated that the bus was owned by Roshan Lal appellant and he is employee of Roshan Lal, who owned 12/14 buses.

In view of the above evidence on record, the appellant cannot be allowed to escape his liability because he has played very smart and was using a scrap bus by displaying a fake number plate on it. He had not only cheated the State Exchequer but had also posed danger to the life and liberty of persons travelling in his bus and to users of route of this bus. The finding of the tribunal that he is proved to be owner of the offending vehicle calls for no interference even if no notice of the police report submitted to this Court be taken. The appellant cannot escape his liability merely because he has not got his vehicle registered and ply it as a commercial transport vehicle by using fake number plate.

As a sequel of my above discussion, I find no merits in the submissions of learned counsel for the appellant and the same are discarded.

It is required to take note of the fact that as per inquiry conducted by Deputy Superintendent of Police, Sub Division, Valtaha camp at Bhikhiwind and affidavit of Sulakhan Singh, Deputy Superintendent of Police, Sub Division, Valtaha, the appellant was using the bus without its registration and had also placed a fake number plate on it. Police report calls for taking action against the appellant as per the relevant Penal provisions.

While dismissing both the appeals, the direction is issued to Senior Superintendent of Police, Tarn Taran to look into the affidavit of Sulakhan Singh, Deputy Superintendent of Police, Sub Division, Valtaha and the report dated 23.03.2018 submitted in this Court by Deputy Superintendent of Police, Sub Division, Valtaha and initiate required action against the appellant including the registration of FIR in accordance with law.

Copy of this judgment along with complete status report dated 02.04.2018 be conveyed to the Senior Superintendent of Police, Tarn Taran.

April 30, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No