

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

FAO No. 450 of 2015 (O&M)

Date of decision : July 10, 2019

Gurnam Singh

.....Appellant

Versus

Kawaljit Singh and another

....Respondents

FAO No. 451 of 2015 (O&M)

Gurnam Singh

.....Appellant

Versus

Amarjit Singh and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. L.S. Lakhanpal, Advocate
for the appellant.

LISA GILL, J.

This order shall dispose of FAO Nos. 450 and 451 of 2015.

FAO Nos. 450 and 451 of 2015 are taken up together for hearing and decision, as both of them arise out of the motor vehicle accident which took place on 23.03.2011.

Brief facts necessary for adjudication of the matter are that two claim petitions under Section 166 of the Motor Vehicle Act were filed by Amarjit Singh and Kawaljit Singh (father and son) with the averments that on 23.03.2011 at about 4.30 p.m., both of them were coming from Amritsar to their house at village Hassanpur Khurd, Tehsil Batala on their Bullet motorcycle, driven by Kawaljit Singh on his correct side and at a normal speed. When they reached a little ahead of village Said Mubarak on Amritsar-Batala G.T. road, the offending Mini bus bearing registration No.

PB-03-1282 came from behind, being driven in a rash and negligent manner

by respondent No. 1. The doors of the Mini bus were open and the open door of the Mini bus hit the motorcycle from behind. As a result thereof, both the claimants fell down and suffered grievous multiple injuries. Compensation was, thus, prayed for.

Claim petitions were contested by respondent No. 1/the present appellant – driver of the offending vehicle. Respondent No. 2 - the owner of the said vehicle did not appear despite publication and he was proceeded ex parte on 05.12.2011 (in MACT No. 8 of 2011) and on 16.08.2013 (in MACT No. 7 of 2011).

Following issues were framed on the basis of the pleadings by the learned Tribunal in MACT No. 8 of 2011:-

1. Whether claimant received the injury on 23.01.2011 at 4.30 p.m. in an accident caused by the driving of Mini Bus No. PB-03-1282 rashly and negligently by respondent No. 1? OPA.
2. Whether claimant is entitled to the compensation, if so, to what amount and from whom? OPA
3. Whether the claim application is not maintainable in the present form? OPR
4. Relief.

Following issues were framed on the basis of the pleadings by the learned Tribunal in MACT No. 7 of 2011:-

1. Whether Amarjit Singh son of Vasakha Singh claimant received the injuries on account of rash and negligent driving of Mini Bus bearing registration No. PB-03-1282? OPA
2. If issue No. 1 is proved, whether claimant is entitled to the grant of compensation? If so, how much and from whom? OPA
3. Whether the petition is not maintainable ?OPR

4. Relief.

Evidence was led by the claimants.

Present appellant stepped in the witness box as RW1 and furnished his affidavit (Ex.RW1/A) in the claim petition filed by Kawaljit Singh but did not step in the witness box to face cross examination. In the claim petition filed by Amarjit Singh, no such affidavit was also filed.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that the accident took place on 23.03.2011 due to rash and negligent driving of the offending Mini Bus No. PB-03-1282 by its driver – present appellant.

In MACT No. 7 of 2011, learned Tribunal vide award dated 10.04.2014 awarded a sum of Rs. 2,48,786/- detailed as hereunder:-

Medicines and Medical Treatment	: Rs. 1,48,786/-
Conveyance and special diet	: Rs. 20,000/-
Loss of amenities of life due to disability, pain and suffering	: Rs. 80,000/-
Total	: Rs. 2,48,786/-

In MACT No. 8 of 2011, learned Tribunal vide award dated 10.04.2014 awarded a sum of Rs. 4,17,015/- detailed as hereunder:-

Medicines and Medical Treatment	: Rs. 3,27,015/-
Conveyance and special diet	: Rs. 10,000/-
Loss of amenities of life due to disability, pain and suffering	: Rs. 80,000/-
Total	: Rs. 4,17,015/-

Aggrieved therefrom, the present appeals have been filed by the appellant – driver of the offending vehicle.

Application under Order 41 Rule 27 CPC was filed in FAO No.

451 of 2015 to place on record the copy of judgment dated 23.07.2015

passed by the learned Judicial Magistrate First Class, Batala whereby the appellant has been acquitted in the proceedings emanating from FIR No. 35 dated 30.03.2011 under Sections 279, 337, 338, 427 IPC.

Learned counsel for the appellant vehemently argues that the present appellant was not identified to be the driver of the offending vehicle in question. The appellant has been acquitted in the criminal proceedings by extending the benefit of doubt, therefore, in the present case too, the appellant be absolved of his liability. The liability, if any, is of the owner of the offending vehicle alone. In the alternate, it is contended that the compensation awarded by the learned Tribunal is highly excessive. The claimants have neither examined any doctor nor anybody from the hospital in question, to verify the expenses incurred upon the alleged medical treatment. The disability certificate tendered by the claimants has not been proved by any competent person. It is, thus, prayed that the present appeals be allowed and the appellant be absolved or exonerated of the liability to pay compensation and in the alternate the compensation awarded by the learned Tribunal be reduced.

Heard, learned counsel for the appellant and have gone through the record with his able assistance.

In order to prove their case, the claimants have testified before the learned Tribunal as CW1 and CW2. Both of them have clearly stated that they were proceeding on their motorcycle on 23.03.2011 to pay obeisance at Golden Temple, Amritsar at about 4.30 p.m. On their way back, when they reached a little ahead of village, Said Mubarak, on Amritsar-Batala G.T. road, the offending Mini bus came from behind being driven in a rash and negligent manner by the present appellant. The doors of

the Mini bus were open and the open door of the Mini bus hit the motorcycle from behind. Resultantly, both the claimants suffered injuries and FIR No. 35 dated 30.03.2011 (Ex.C2) was registered. It is further stated by CW2 that it was the present appellant - Gurnam Singh, who got released the offending mini bus on *superdari* being General Attorney of the owners vide order dated 05.04.2011 passed by the learned Judicial Magistrate First Class, Batala. It is further stated that in fact the present appellant is the owner-cum-driver of the offending Mini bus. Both CW1 and CW2 were subjected to searching cross examination but nothing favourable to the appellant could be illicit. There is, thus, no merit in the argument of learned counsel for the appellant that the appellant was not identified to be the driver of the offending vehicle. The finding of the learned Tribunal in this respect is upheld.

Similarly, there is no ground for reduction in the compensation awarded to the claimants. It is a matter of record that the claimants were initially admitted to Civil Hospital, Batala, from where, they were referred to Amritsar and admitted at Amandeep Hospital, Amritsar. The claimant – Amarjit Singh remained admitted at Amandeep Hospital Model Town, Amritsar from 23.03.2011 to 21.04.2011 as an indoor Patient in the Intensive Care Unit and he underwent various surgeries including plastic and orthopaedic surgery. Various bills showing the expenses incurred on his medical treatment were placed on record.

In respect to the claimant – Kawaljit Singh, it has come on record that he too was admitted at Amandeep Hospital, Amritsar from 23.03.2011 to 08.04.2011 as indoor patient in the Intensive Care Unit, after being initially admitted at Civil Hospital, Batala. He too underwent various

surgeries and ultimately his right foot had to be amputated. It is further noticed that learned Tribunal has specifically observed in both the impugned awards that no compensation is being afforded towards any loss of earning capacity as the disability certificates issued by the Senior Medical Officer, Civil Hospital, Batala have not been proved by any doctor or authority issuing the said certificates. Learned Tribunal has, however, afforded the compensation on account of expenses incurred on the medical treatment. A sum of ₹10,000/- each was afforded on account of conveyance and special diet in respect of Amarjit Singh in MACT No. 8 of 2011 and ₹20,000/- in respect of Kawaljit Singh in MACT No. 7 of 2011. A sum of ₹80,000/- was afforded to both the claimants on account of loss of amenities of life, pain and suffering.

Though learned counsel for the appellant has argued that medical bills on record do not stand proved, I do not find any ground whatsoever to interfere the impugned awards. There is indeed nothing on record to indicate that the said bills on record are forged, fabricated or incorrect. At this stage, it is pertinent to note that no such suggestion has even been put to the claimants, who have duly testified before the learned Tribunal. There is not even a suggestion to the effect that they did not suffer the injuries as claimed in the accident in question. Learned counsel for the appellant is unable to point out any ground whatsoever for reduction of the compensation awarded by the learned Tribunal in both the claim petitions.

An application under Order 41 Rule 27 CPC has been filed for placing on record judgment dated 23.07.2015 passed by the learned Judicial Magistrate First Class, Batala, wherein appellant has been acquitted of the charges against him. The acquittal of the appellant in the criminal

proceedings being extended the benefit of doubt, cannot be of any assistance or aid to the appellant as it is a settled position of law that acquittal of the accused in the criminal proceedings, cannot per se, be of any benefit in the proceedings before the learned Tribunal. The claimants have successfully proved their case on the basis of the evidence led by them before the learned Tribunal on the basis of preponderance of probabilities. Judgment dated 23.07.2015, thus, not necessary for the just and proper adjudication of the case at this stage. Application is, thus, dismissed.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 23.07.2015 passed by the learned Judicial Magistrate First Class, Batala.

Appeals are, accordingly, dismissed with no order as to costs.

July 10, 2019
rts

(Lisa Gill)
Judge

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