

**FAO-6055-2015 (O&M) and
FAO-6127-2015 (O&M)**

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

**FAO-6055-2015 (O&M)
Date of Decision: September 25, 2019**

Panni Devi Appellants(s)

Versus

Maksood and others Respondent(s)

with

FAO- 6127-2015 (O&M)

Maha Devi Appellants(s)

Versus

Maksood and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajender Kumar, Advocate for
Mr. M.S. Tewatia, Advocate
for the appellant(s).

LISA GILL, J.

This judgment shall dispose of FAO-6055-2015 (Panni Devi Vs. Maksood and others) as well as FAO-6127-2015 (Maha Devi Vs. Maksood and others) as both the above noted appeals arise out of award dated 05.03.2014, passed by the learned Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal).

Brief facts as pleaded in the claim petitions, necessary for the adjudication of the matter are that, the claimants along with other persons were travelling on the offending bus bearing registration No. HR-38G/8383 on 28.01.2011. They were coming from village Pinagwan to Palwal. The

offending bus, it is stated, was being driven in a rash and negligent manner at a high speed by its driver Maksood – respondent no.1. The driver did not pay any heed to the request of passengers to drive the bus carefully. At about 12:00 noon, the rear tyre of the bus burst and due to the impact, the mudguard and the sheet of the bus got broken. Resultantly the claimants sustained fractures in their legs and other injuries on their body.

Claimants filed two petitions under Section 166/140 of the Motor Vehicles Act, 1988, seeking compensation on account of injuries received by them in the accident in question.

The claim petitions were resisted by the respondents. Respondents no.1 and 2 in their combined written statement claimed the accident in question to be an act of God and denied that there was any negligence on the part of the driver. The FIR in question was stated to have been lodged after about four months in collusion with the police. Dismissal of the petitions was sought.

Following consolidated issues were framed by the learned Tribunal on the basis of the pleadings:-

1. Whether the accident in question took place due to rash and negligent driving of bus No. HR-38-G-8383 by respondent no.1?
2. Whether the petitioners are entitled to compensation if so how much and from whom? OPP
3. Whether respondent no.1 and 2 have violated the terms and conditions of insurance policy, if so to what effect?
OPR3
4. Relief.

Learned Tribunal on considering the evidence on record, referred to the statements of the claimants themselves wherein they have admitted the bursting of the rear tyre of the bus, to be an act of God. Learned Tribunal dismissed both the petitions while concluding that rash and negligent act on the part of the driver of the offending bus was not proved. Hence aggrieved, the present appeals have been filed by the claimants.

Learned counsel for the appellants vehemently argues that the learned Tribunal has erred in law and on facts in dismissing the claim petitions. It is submitted that as per the evidence on record, it is due to the rash and negligent driving of the offending bus itself, which led to the bursting of the tyre. Mere delay in lodging of the FIR cannot be a ground to dismiss the claim set up by the present appellants. It is, thus, prayed that both these appeals be allowed and impugned award dated 05.03.2014 be set aside and just compensation be awarded to the claimants.

I have heard learned counsel for the appellants and have gone through the record with his able assistance.

The accident in question undeniably took place due to the bursting of the rear tyre of the bus. Out of all the passengers travelling in the bus, PW-1 (Panni Devi) and PW-2 (Maha Devi) are the only passengers who are stated to have suffered injuries. PW-3 Amar Chand, a passenger who is stated to be travelling along with the claimants, has been examined by the claimants to prove their case. PW-3 has testified that the accident took place due to the bursting of the rear tyre of the bus and none was at fault. PW-3 Amar Chand did not suffer any injury in the accident. Learned counsel for the

appellants is unable to deny that all the witnesses have admitted in their cross-examination that the accident in question took place due to the bursting of the rear tyre of the bus and none was at fault and the same was an act of God.

At this stage, it is relevant to note that the accident in question is claimed to have taken place on 28.01.2011. However, the FIR was lodged on 26.05.2011 while stating that the police officials were not taking any action against the driver of the bus. However, this plea is not substantiated by any specific evidence on record. Doubtlessly, mere delay in lodging of an FIR cannot by itself be sufficient to negate the claim set up by the appellants. However, the entire factual matrix of this case justifies the conclusion reached by the learned Tribunal. Delay in lodging of the FIR is only one of the contributory factors leading to this conclusion. The claimants in this case have indeed failed to prove their case on the touchstone of preponderance of probabilities.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in the impugned award dated 05.03.2014, passed by the learned Motor Accidents Claims Tribunal, Palwal, which calls for any interference by this Court.

There is a delay 286 days in refiling and 57 days in filing of FAO No.6055 of 2015 and 276 days in refiling and 54 days in filing of FAO Nos. 6127 of 2015. As the appeals have been adjudicated upon on merits, decision on the applications for condonation of delay in refiling and filing the appeals is rendered academic. Applications are disposed of accordingly.

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No other argument has been addressed.

In view of the discussion as above, both the appeals are
dismissed without any order as to costs.

September 25, 2019.

Sunil

**(LISA GILL)
JUDGE**

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