

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

FAO-5959-2011(O&M)

Date of decision:-28.2.2023

Om Parkash alias Oma

...Appellant

Versus

Satpal (deceased) through his LRs

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. Kanwar Abhay Singh Advocate,
for the appellant.

Mr.Karan Jindal, AAG, Haryana
for respondents No.2 and 3.

Mr.Rajbir Singh, Advocate
for respondent No.4.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner Om Parkash alias Oma had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Satpal – driver, Haryana Roadways, Hisar Depot, Hisar through its General Manager, State of Haryana, through Collector, Hisar – owner and ICICI Lombard Motor Insurance Company Ltd. Hisar – insurer of bus bearing registration No.HR39-A-8496 (hereinafter referred to as the offending bus), claiming compensation on account of suffering injuries in a motor vehicular accident, before the Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as the Tribunal).

2. As per the version of the claimant Om Parkash alias Oma on 30.10.2008, he along with his brother Partap Singh – complainant were going to Kaithal from their agricultural land after loading paddy in the tractor trolley, which was being driven by him, whereas Partap Singh was sitting on the paddy loaded in the trolley; the tractor trolley was brought to a halt and Om Parkash @ Oma was checking air pressure in the tyre of the trolley, in the meanwhile the offending bus came from Kalayat side being driven by respondent No.1 in a rash and negligent manner and it struck against the trolley from back side, resultantly though Partap Singh had escaped narrowly, Om Parkash @ Oma, who was sitting on the driver seat of the tractor fell on the road and received serious multiple injuries on his mouth, head waist etc.; the tractor trolley fell in the pits and got badly damaged; after the accident respondent No.1 ran away from the spot; Partap Singh – complainant had noticed that the bus belonged to Haryana Roadways Hisar Depot and noted down its registration number partly as HR39; Partap Singh had removed Om Parkash @ Oma to hospital at Kaithal from where he was referred to PGI, Chandigarh keeping in view his serious condition and the fact that he was unconscious; Partap Singh had got his statement recorded with police of Police Station Kalayat, which formed basis for registration of the FIR.

Om Parkash @ Oma injured got treatment from the medical institute, however he is said to have become 100% disabled unable to do any work, bed ridden and unable to walk by his own.

3. On being put to notice, all the four respondents appeared. Respondents No.1 and 4 had filed a separate written statements, whereas

respondents No.2 and 3 come up with a joint written statement contesting the claim petition.

4. On the pleadings of the parties following issues were framed:

1. Whether the claimant had sustained injuries in a Motor Vehicular Accident which took place on 30.10.2008 on account of rash and negligent driving of respondent No.1 while driving Bus No.HR39-A/8496? OPP.
2. If issue No.1 is proved, to what amount of compensation the claimant is entitled to and from whom? OPP.
3. Whether there is any violation of terms and conditions of Insurance Policy? OPR.
4. Relief.

5. Both the parties were afforded adequate opportunities to lead evidence in respect of their respective claims.

During the course of evidence of claimant, the claimants examined his brother Partap Singh as PW1, who provided the eye-witness account of the accident deposing in consonance with the case of the claimant.

The petitioner/claimant got his statement recorded as PW2 deposing as per his case set up in the claim petition. Whereas PW3 Dr.Sunil Godara, Medical Officer, Shah Hospital, Kaithal stated that on 30.10.2008 while he was working as such, on that date patient namely Om Parkash was examined by him in the hospital; he had been brought with alleged history of road side accident; the condition of the patient was

critical and he was unconscious, accordingly he was referred to PGI, Chandigarh vide reference slip Ex.PW3/A.

PW4 Dr.Rajesh Chhabra, Additional Professor, Department of Neuro Surgery, PGI, Chandigarh had brought the original case record and disability record of patient namely Om Parkash, who had been brought to PGI Emergency with alleged history of road side accident on 30.10.2008 vide CR No.498479. The relevant portion of his deposition is as follows:

On examination patient was unconscious and was on endotracheal tube. On investigation CT Scan showed traumatic sub arachanoid haemorrhage. Patient was treated conservatively. On examination the patient was not moving his left side. There was associated multiple rib fractures on left side. Patient was shifted to ICU(intensive care unit). Patient was discharged on 3.1.2009 in improved state with left side upper and lower limb weakness. Discharge summary is Ex.P2. Ex.P2/A to Ex.P2/G are the medical record of patient and medical bills are Ex.P3 to Ex.P99.

Disability certificate is Ex.P100 which bears my signatures as a member of disability board and I identify the signatures of other doctors of the board namely Convenor Kishor Kumar and Chairman Dr.D. Basu. As per disability certificate, the patient has 90 percent permanent physical and mental impairment which is not likely to improve. I identify the handwriting in the emergency record file of Dr.Priyamdha and Dr.Parveen.

The petitioner/claimant relied upon documents as under:

- Ex.P1 : Copy of FIR.
- Ex.P2 : Discharge summary of the claimant.
- Ex.P3/A : Reference slip of claimant.
- Ex.P2/A to Ex.P2/G: Medical record.
- Ex.P3 to Ex.P99 : Medical bills.
- Ex.P100 : Disability certificate of the claimant.
- Mark-A : Copy of receipt issued by Market Committee,
Kalayat.
- Mark B & C : Treatment record of the claimant.
- Mark D & E : Outdoor tickets of the claimant.

6. In rebuttal the respondents did not lead any oral evidence through following documents had been tendered:

- Ex.R1 : Copy of driving licence of respondent No.1.
- Ex.R2 : Copy of Insurance policy.
- Ex.R3 : Copy of registration certificate of Bus No.HR39-
A-8496.
- Ex.R4 : Copy of Route Permit.
- Mark R-1 : Copy of statement of Om Parkash claimant.
- Mark R-2 : Copy of mechanical report of Bus No.HR39-
A-8496.

7. After hearing learned counsel for the parties, the Tribunal decided issue No.1 against the petitioner/claimant in favour of the respondents. No finding was given on issue No.2 holding that since under issue No.1, it has been observed that on 30.10.2008, the accident had not

been caused because of rash and negligent driving of respondent No.1 while driving Haryana Roadways Hisar Depot bus bearing registration No.No.HR39A-8496, there was no need to determine the amount of compensation to be paid to the claimant and liability of respondents to do so. Issue No.3 was decided against respondent No.4 and in favour of respondent No.1. Resultantly, the claim petition was dismissed by the Tribunal vide Award dated 30.7.2011, which left the claimant aggrieved and he has filed an appeal before this Court, notice of which was issued to the respondents. Respondents No.2 to 4 have put in appearance through counsel, whereas respondent No.1 did not appear despite service and had been proceeded against ex-parte.

8. I have heard learned counsel for the parties besides going through the record and I find that the impugned award cannot stand judicial scrutiny and is liable to be set aside.

9. The claimant had brought enough cogent and convincing evidence both oral as well as documentary to show that the accident in question had been caused by respondent No.1 by his rash and negligent driving of bus bearing registration No.No.HR39-A-8496 of Hisar Depot belonging to respondents No.2 and 3 and insured with respondent No.4 insurance company but the Tribunal by total misappraisal of evidence and wrong interpretation of law came to the conclusion otherwise. The reasoning given by the Tribunal to reach an inference that accident had not been caused on account of rash and negligent driving of the offending bus by respondent No.1 is least convincing and is rather untenable.

10. The matter has been dealt with as if a criminal case was being

decided rather than being alive to the situation that the claim petition under Section 166 of the Motor Vehicles Act was being dealt with.

11. Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there unlike a criminal case where the prosecution is required to prove its case against the accused beyond a shadow of reasonable doubt and such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts.

12. The brother of petitioner/claimant Partap Singh had come forward getting his statement recorded as PW1 categorically stating that the accident had been caused on account of rash and negligent driving of the offending bus by respondent No.1. He was subjected to lengthy cross-examination but he remained unshattered. It was Partap Singh, who had set the criminal machinery in motion by reporting the matter to the police and removing the injured to the hospital. His presence at the spot at the relevant time is natural and probable and the version given by him is worthy of reliance. Similarly the petitioner had got his own statement recorded as PW2 supporting his version as given in the claim petition. He having suffered injuries in the accident is a stamped witness and his presence at the spot cannot be doubted. As against that, the respondent No.1 could not summon courage to step into the witness box and to deny on oath the rashness and negligence attributed to him and further the

involvement of the bus driven by him in the accident. Similarly no person from the side of respondents No.2 and 3 had got his statement recorded denying the involvement of the bus in question in the accident and its rash and negligent driving by respondent No.1 being the reason for the mishap.

13. Further FIR in that regard had been lodged. All that evidence was more than sufficient so as to make the Tribunal decide issue No.1 in favour of the petitioner/claimant against respondents but by adopting a totally wrong and erroneous approach this issue was adjudged against the petitioner and in favour of the respondents. The reasons for doubting the case of petitioner/claimant given were that Om Parkash @ Oma petitioner had made supplementary statement after more than 2 months of the accident giving name of the driver and registration number of the bus and that PW1 Partap Singh had admitted in his cross-examination that after 1-2 days of alleged accident, he came to know about the number of bus from the police officials; there being no supplementary statement of Partap Singh being available on record etc. Those are totally irrelevant factors while appreciating evidence of the parties to adjudicate a claim petition. Therefore, the finding on issue No.1 is reversed and issue is decided in favour of the petitioner/claimant and against respondents.

14. Coming to issue No.2, the Tribunal has not bothered to give any finding on such issue when it was required to give verdict on all the issues.

15. Nevertheless since the case has got delayed considerably with date of accident being 30.10.2008, the claim petition having been filed on 30.3.2009, dismissed by the Tribunal on 29.7.2011 and the appeal in hand

having been filed in the year 2011 pending for more than 11 years, I do not find it proper and appropriate to send the case back to the Tribunal to pass a fresh order and rather proceed to decide the matter on the basis of evidence available on the record.

16. The petitioner/claimant has claimed compensation of 10 lakhs. Keeping in view the age of the deceased, his stated occupation, the probable income, which he might have earned and the extent of disability suffered by him, I find that the compensation so claimed by him is not on the higher side considering that the claimant is entitled to get compensation under various heads i.e. for medical expenses, special diet, travelling expenses, expenses for hiring some attendant as well as non-peculiar damages under heads pain and suffering undergone, loss of amenities due to suffering injuries, loss of longevity as a result of the injuries received in the accident.

17. Thus issue No.2 is decided in favour of the claimant and against the respondents and the appellant/petitioner/claimant is entitled to compensation of Rs.10,00,000/-.

18. The finding recorded by the Tribunal on issue No.3 is correct and does not call for any interference.

19. Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.10,00,000/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimant payable by all the respondents jointly and severally.

Since the main appeal stands accepted, the miscellaneous

application(s), if any, stand disposed of accordingly.

28.2.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No