

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

225

FAO-364-2007 (O&M)

Date of Decision: April 29, 2025

Jitender

.....Appellant

Vs.

Dharambir Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Tushar Garg, Advocate
for the appellant.

Mr. Shivendra Swaroop, DAG, Haryana
for respondents No.1 to 3.

Mr. Sandeep Suri, Advocate
for respondent No.4-Insurance Company.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 09.09.2006 passed in the claim petition filed under Sections 166 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Hisar (for short 'The Tribunal') vide which the claim petition filed by the appellant/claimant for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 23.02.2003, appellant-Jitender alongwith his servant-Om Parkash had gone to Jind for some business in a car bearing registration No.HR-20F-9081. They were returning to Hisar and had reached the bye-pass road. At about 4.30 p.m. a Haryana Roadways bus bearing registration No. HR-39-8330 overtook



their car at a high speed and after overtaking the car, it suddenly applied the brakes and car of the petitioner went underneath the bus. The appellant-claimant sustained injuries on his nose and Om Parkash his servant died on the spot on account of injuries sustained by him.

3. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the accident took place due to rash and negligent driving of Bus bearing No. HR-39-8330 by respondent No.1 Dharmbir Singh in MACT Case No. 73 of 2003? OPP.

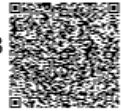
2. Whether the accident took place due to rash and negligent driving of Bus bearing No. HR-39-8330 by respondent No.1 Dharambir Singh or by Maruti Car bearing No.HR-20E-9081 by petitioner-respondent No.5 Jitender? OPP.

3. Whether the petitioner of MACT case No.73 of 2003 is entitled to any compensation on account of injuries sustained by him, if so how much and from whom? OPP.

4. Whether the petitioner of MACT Case No. 121 of 2003 is entitled to compensation on account of death of Om Parkash, if so how much and from whom? OPP.

5. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence, the claimant/appellant filed the present appeal for grant of compensation.



SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant contends that the claim petition filed by the appellant was dismissed without appreciating the fact that disability suffered by the appellant to the extent of 10 per cent was proved. He further contends that learned Tribunal has not appreciated the evidence on record and dismissed the claim petition. He prays for allowing the appeal and grant of compensation.

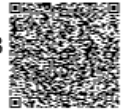
7. *Per contra*, Ld. Counsel for the respondents argue on the lines of the award and contends that the claim petition has rightly been dismissed by the Ld. Tribunal. Therefore, he prays for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

“Issue No.1

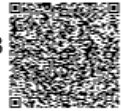
*7. The claimant had examined Amit Sharma PW4 Ahlmad in the Court of Judicial Magistrate 1st Class, Hisar, who brought the file relating to case titled **State Versus Dharmbir** and proved the copy of the FIR Ex. P4 and report under Section 173 Cr.P.C. He stated that the charge had been framed against Dharambir on 25.8.2003. The claimant tendered in evidence his affidavit Ex. PW5/A and gave the same statement as revealed in the claim petition. It was stated that the Haryana Roadways Bus overtook his car and then applied brakes and the car went under the bus and the claimant sustained injuries. It was also stated that the accident was witnessed by his father Hari Charan, who was returning on his scooter. It was also stated that an FIR was registered against respondent No.1 on the same day. Hari Charan-PW6 tendered in*



evidence his affidavit Ex. PW6. A supporting his son's statement. He stated that his son was ahead of him by about 200/300 meters. He stated that he was driving the scooter at the speed of 30 Km. P.H and the bus was driven at the speed of 50/60 Km. P.H. He could not tell the portion of the bus, the car had struck. He then stated that the major portion of the left side of the car had struck behind the bus. He stated that 10/15 passengers were inside the bus. He also stated that the police had taken the injured to the hospital.

8. *It may be mentioned here that another claim petition had been filed seeking compensation for the death of Om Parkash. The claim petition was filed by Chander Kalan sister of the deceased but that claim petition was withdrawn on 10.1.2006. The statement of Chander Kalan PW7 is, therefore, not relevant as she is not eye witness.*

9. *The respondents had summoned the Ahlmad, who was examined as RW1, who brought the file and proved the report of the mechanic and the site plan Ex.R3 to Ex.R5. He stated that there were six photographs on the file and Ex.R6 and Ex. R11 were its photocopies. Dhraminder RW2 stated that he was driver on the bus and had started from Delhi for Hanumangarh and at 3.50 p.m. he had reached near the Airport Road on Hisar bye-pass when the bus developed a fault and he took the bus on the left side of the road and placed stones on both sides of the bus and the passengers got down and he went back to the work-shop and the Officer on duty gave him another bus and he left for Hanumangarh with the passenger at 4.30 p.m. and the accident had not taken place and he had been falsely implicated. He stated that he had informed the General Manager, who had written a D.O. letter to Superintendent of Police, Hisar. He introduced in evidence the copy of the letter Mark-D and photocopy of the Yard Master Register Mark-E. He admitted that he was facing trial.*



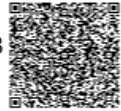
10. *Satbir Singh Yard Master brought the Duty register in which the entry was made with respect to the buses leaving Hisar Depot. He stated that the bus No. HR-39-8330 left Hisar at 6.20 a.m. and Dharambir was the driver and it was bound for Delhi and the bus did not reach Hisar and another bus No.HR-39-8361 was given to Dharambir for Hanumangarh at 4.30 p.m. and the entry in this regard was made in the register at Sr. No. 123. He proved the copies Ex.R13 and Ex.R14. He stated that this register was maintained in the regular course of duty and entries were in a serial.*

11. *Sajjan Singh Conductor RW4 stated that he was a conductor on the bus No. HR-39-8330 and they were on return journey when the bus broke down on the Hisar-Hansi bye-pass and the bus was parked on the kacha portion and they requested the passengers to get down and took another bus for the bus stand and he along with the driver went to the Duty Inspector and another bus was given to them and they had taken the passengers on Bus No. HR-39-8361 at 4.30 p.m. and no accident had taken place and the accident was caused with a stationary bus.*

12. *Suraj Bhan Sub Inspector RW5 brought the summoned letter written on 25.2.2003 by General Manager Haryana Roadways to Superintendent of Police, Hisar seeking cancellation of the FIR. He identified the signatures of G.M and proved its copy Ex. R15.*

13. *The case put forward by the claimant was that the offending bus overtook his car and then the driver suddenly applied brakes and there was no time to apply brakes and the claimant's car struck against the bus and the claimant sustained injuries. It is his case that his father was coming on a scooter behind him and was an eye-witness to the accident.*

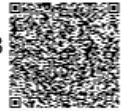
14. *On the other hand the position taken by the respondent was that the bus had developed a fault and it was stationary and had been parked on the left side of the road and the car struck behind*



the bus. They had led evidence to show that the driver on this bus was given another duty and he had left for Hanumangarh at 4.30 p.m. Since the FIR had been registered on the statement of the claimant, the matter was reported to the General Manager, who in turn wrote a letter to the Superintendent of Police, Hisar seeking cancellation of the FIR. Those letters were produced on record.

15. It was urged on behalf of the respondent that Hari Charan was not present on the spot and he was not an eye-witness and his son has been injured in the accident he would have been the person, who would have taken his son to the hospital and the MLR shows that the injured was brought to the hospital by the police. A perusal of the MLR Ex. P3 shows that Jitender was brought to the hospital at 5.10 p.m. by Balbir Singh ASI of Traffic Police. The presence of Hari Charan is doubtful.

16. The car had struck behind the bus and it is now to be seen from the evidence available on record as to in what manner the accident had occurred. The record produced by the respondents who stated that this bus had left Hisar at 6.20 p.m. with Dharambir as its driver and the bus was bound for Delhi. Another bus was given to Dharambir at 4.30 p.m. for Hanumangarh. According to the claimant the accident took place at 4.30 p.m. The driver had left the Yard along with another bus at 4.30 p.m., therefore, the version given by the claimant is false. The photocopies of the photographs available in the criminal file were produced, which show that one tyre is on the kacha portion. The mechanical report of the bus shows that the right side Bumper has been broken and rest of the bus body was clear. The mechanical report of the car shows that front portion of the car is smashed. The portion below the bumper is not affected. The number plate and the tyres are intact, which goes to show that the car went under the bus. The register produced by the respondent clearly shows that the driver was not driving this bus at the time indicated by the claimant and the bus was stationary when the accident took



place. It cannot be said to be a case of contributory negligence as the accident occurred during the day. Half of the bus body was on the kacha portion. It is not the case of the claimant that the bus was standing in the middle of the road. The driver was not vigilant. It appears that he had not seen the bus and dashed into the rear portion of the bus. The accident clearly is on account of his own fault. It is held that the accident occurred on account of his own negligence. The issue is answered against the claimant.”

10. A careful perusal of the impugned award reveals that the learned Tribunal has rightly dismissed the claim petition filed by the claimant/appellant-Jitender on the ground that he failed to establish that the accident occurred due to the rash and negligent driving of respondent No.1-Dharambir Singh.

11. A perusal of the record further shows that the appellant examined himself as PW5 and tendered his affidavit as Ex. PW5/A reiterating the averments made in the claim petition. Further Hari Charan was examined as PW6, who is stated to be an eye-witness to the accident who is father of the appellant. PW6-Hari Charan deposed that he was riding on motor cycle behind the appellant-Jitender at a distance of approximately 200 to 300 meters and witnessed the accident. However, a perusal of the Medico Legal Report (Ex. P3) reveals that the appellant was brought to the hospital by ASI Balbir Singh, and not by Hari Charan-PW6. This discrepancy casts a serious doubt on the actual presence of PW6-Hari Charan at the site of the accident.

12. Further Ahlmad was examined as RW1, who brought the relevant documents of the criminal case record including the mechanical inspection report and site plan (Ex. R3 to R5), and photocopies of photographs (Ex. R6 to



R11). Dharambir Singh, the driver of the bus was examined as RW2, who deposed that the bus had developed a mechanical fault near the Airport Road on Hisar bye pass at around 3:50 p.m. Due to the defect, he parked the bus on the left-side kacha portion of the road, placed warning stones around it, and arranged for the passengers to deboard. Thereafter, he reported to the workshop and was assigned another bus at 4:30 p.m. for Hanumangarh route. RW2-Dharambir Singh denied any accident involving him and his bus and stated that he had been falsely implicated. In support of this version, a letter (Mark D) written by the General Manager, Haryana Roadways, to the Superintendent of Police, Hisar, seeking cancellation of the FIR, was brought on record. A photocopy of the Yard Master's Register (Mark E) was also produced.

13. The Yard Master-Satbir Singh was examined as RW3, who brought the Duty Register and confirmed that bus No. HR-39-8330 left Hisar at 6:20 AM with Dharambir Singh as driver and was bound for Delhi. Owing to mechanical failure, the bus did not return. At 4:30 p.m., another bus bearing No. HR-39-8361 was assigned to Dharambir Singh for a different route. Entries to this effect were proved by RW3-Satbir Singh as Ex. R13 and Ex. R14. The register was stated to be maintained in regular course of duty and entries were made in chronological order, thus lending credibility.

14. The version of RW2- Dharambir Singh was further corroborated by RW4-Sajjan Singh who was the conductor on bus No. HR-39-8330. He confirmed that the bus developed a fault and was parked on the left-side kacha portion of the road. Passengers were requested to disembark, and he along with the driver reported the matter to the depot, whereupon, another bus was provided at 4:30 p.m. to complete the journey. RW4-Sajjan Singh categorically

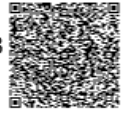


stated that no accident occurred while the bus was in motion. His testimony was found to be consistent, reliable, and in conformity with the documentary record. RW5-Suraj Bhan, Sub-Inspector, also brought on record a copy of the letter dated 25.02.2003 (Ex. R15), written by the General Manager to the Superintendent of Police, seeking cancellation of the FIR on the basis of false implication.

15. Moreover, the mechanical inspection report of the bus revealed damage to the right-side bumper only, whereas the mechanical report of the car indicated that the upper portion of the front of the vehicle was smashed, with no damage sustained to the lower part, including the tyres and number plate. This kind of damage is more consistent with a collision involving a stationary object, rather than a moving vehicle abruptly braking after overtaking.

16. The photographic evidence and site plan also confirm that the bus was parked with half of its body on the kacha portion of the road and not obstructing the main thoroughfare. The appellant/claimant has not adduced any credible evidence to suggest that the bus was parked in the middle of the road or that the respondent engaged in any act of rash or negligent driving.

17. In light of the foregoing discussions, the learned Tribunal has rightly concluded that the appellant-Jitender failed to establish rash or negligent driving on the part of respondent No. 1-Dharambir Singh (driver). The oral testimonies of RW2-Dharambir Singh (driver), RW3-Satbir Singh (Yard Master), and RW4-Sajjan Singh (Conductor) are consistent, credible, and duly supported by contemporaneous documentary evidence.



18. Accordingly, this Court finds no infirmity in the findings recorded by the learned Tribunal in its award dated 09.09.2006 and the same are hereby affirmed. The present appeal being devoid of any merit, is dismissed.

19. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

April 29, 2025
sonia arora

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