

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****207****FAO-3389-2009(O&M)****Date of decision: 12.11.2025****Sukhwinder Kaur & Others****...Appellant(s)****Vs.****Tarjit Singh @ Kala & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ravinder Gill, Advocate
for the appellants.

Mr. Pardeep Kumar, Advocate
for respondent No.3.

*********NIDHI GUPTA, J.****CM-7888-CII-2018**

Present application under Order 41 Rule 27 CPC read with Section 151 CPC is filed for producing additional evidence in respect of copy of Challan report dated 30.10.2005 (Annexure A5).

Rule 27(1)(aa) of the provision stipulates that additional evidence can be permitted only if the party requesting it is able to prove that despite best efforts, they were unable to introduce the additional evidence in the initial proceeding. The basic principle for admitting additional evidence is that the party appealing is able to establish that there was a valid reason for not submitting such evidence at the trial stage;



and that the additional evidence is relevant and material for deciding the rights of the parties to the lis.

In Para 3 of the present application, it is stated that the aforesaid evidence in the shape of Challan could not be produced before the learned Tribunal *“due to inadvertency and lapse on the part of the counsel for the appellant...”*. The same constitutes no ground for producing Challan as additional evidence before this Court. The abovesaid averment does not satisfy the requirement of the provision, inasmuch as does not constitute ‘due diligence’ within the meaning of Rule 27(1)(aa). ‘Inadvertence’, on part of a party, cannot be construed as sufficient cause within the provision. The Hon’ble Supreme Court in **CA 16899 of 1996 “Karnataka Board of Wakf Vs. Government of India”** Law Finder Doc ID # 71670, has categorically held that parties to an appeal shall not be entitled to produce additional evidence, unless they have shown that despite due diligence, they were unable to produce such evidence. In the present case, petitioner has admittedly, not shown due diligence.

Reference is also be made to judgment of the Hon’ble Supreme Court in **C.A. No.10195 of 2013** titled as **“Govt. of Karnataka and Another Vs. K.C. Subramanya & Others”** wherein Their Lordships have held as follows:-

“6. On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in



spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

7. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will."

Clearly, the applicants failed to exercise due diligence, as the said Challan was available to be presented before the learned Tribunal, during the course of trial. Present application accordingly stands **dismissed**.

CM-15150-CII-2009

Present application under Order 41 Rule 27 CPC read with Section 151 CPC is filed for producing additional evidence in respect of Supplementary Statement of Hira Singh dated 11.07.2005 as Annexure P4.

In Para 3 of the application, it is stated that the aforesaid evidence in the shape of supplementary statement could not be produced before the learned Tribunal "*due to inadvertency and lapse on the part of the counsel for the appellant...*". As already noted above, the same constitutes no ground for permitting producing Supplementary Statement of Hira Singh dated 11.07.2005 as additional evidence before this Court. Present application accordingly stands **dismissed**.

CM-3990-CII-2019

Present application under Section 151 CPC is filed for placing on record Judgment dated 26.08.2009 (Annexure A6).



After going through the contents of the application, which is supported by affidavit of the applicant, the same is **allowed** subject to all just exceptions and Judgment dated 26.08.2009 (Annexure A6) is taken on record.

MAIN CASE

Present appeal has been filed by claimants seeking setting aside of the Award dated 19.02.2009 passed by the Motor Accident Claims Tribunal, Amritsar (hereinafter 'the learned Tribunal') whereby MACT No.137 of 23.12.2006 filed by the claimants/appellants under Section 166 of the Motor Vehicles Act (hereinafter "the Act"), has been dismissed. The 8 claimants are the widow, 4 minor children, and sister of deceased Chanchal Singh, who was 26 years old at the time of accident.

2. The pleaded case of the appellants in the Claim Petition before the Tribunal as recorded in Paras 2 and 3 of the Award is that: -

"2. As per the case of the claimants, on 11-7-2005 at about 6 AM Heera Singh being the driver of vehicle no. PB-02-AM-9807 along with cleaner Chanchal Singh deceased started from their school to bring the children to school from their houses. At about 6 AM when they reached at the bridge of Guntala Bypass Ajnala Road Amritsar one bus no. PB-02-U-9997 came at a very high speed in a rash and negligent manner being driven by respondent no. 1 and struck against the front side of driver of the bus, as a result of which, Hira Singh sustained serious injuries whereas Chanchal Singh who was sitting on his back seat fell on the road. Chanchal Singh also received serious injuries and died on the way to the hospital. The accident was



caused due to sole rash and negligent driving of respondent no.1. The accused was witnessed by Hira Singh and other persons present at the spot. The matter was reported to Police Station Sadar, Amritsar where FIR no. 243 dated 11-7-2005 under section 304-A/279/337/338/427 of IPC was registered. 3. The deceased was of the age of 26 years at the time of his death. He was working as conductor/bus cleaner and his monthly income was Rs. 2150/-. The claimants are the only legal heirs of the deceased and they were fully dependent upon the income of the deceased.”

(Emphasis added)

3. Vide the impugned Award, Claim Petition of the appellants has been dismissed as the issue No.1 was decided against the appellants.

4. It is inter alia submitted by learned counsel for the appellants that the learned Tribunal was in error in dismissing the Claim Petition as it has misread the evidence on record. The impugned Award is passed on surmises and conjectures. Passing of the impugned Award shows lack of application of judicious mind by the learned Tribunal, which has caused manifest injustice to the appellants.

5. It is submitted that the bus number was wrongly mentioned as “PB-02-U-9907” in the Claim Petition due to typographical mistake and the same was rectified. However, it has to be seen that supplementary statement dated 11.07.2005 (sought to be produced by way of additional evidence before this Court as Annexure P4), of the complainant Hira Singh PW2 was also recorded by the Police on the spot in which it has been clarified that on



account of accidental injuries, the complainant was suffering from pain and therefore, he was not able to read the registration number of the offending bus and had incorrectly narrated the number of the bus as “PB-02-U-9907” instead of “PB-02-U-9997”. It is submitted that on the basis of the said supplementary statement dated 11.07.2005 challan was issued against the present respondent No.1/driver of bus No. PB-02-U-9997.

6. It is contended that the Tribunal has failed to consider that Hira Singh was eyewitness and in his evidence by way of affidavit (Ex.PW2/A) Hira Singh has again reiterated the number of the offending bus as PB-02-U-9997. Therefore, Claim Petition of the appellants could not have been dismissed on this ground. The appellants had proved their case but due to inadvertence and oversight of correct bus number by Hira Singh PW2, the Id. Tribunal has dismissed the Claim Petition. Ld. counsel accordingly prays for setting aside of the impugned Award.

7. Ld. counsel for respondent No.3 vehemently opposes the submissions made on behalf of the appellants and submits that the impugned Award suffers from no error; and prays for dismissal of the appeal. Ld. Counsel takes this Court through the record of the case to establish the correctness of the impugned Award.

8. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit whatsoever in the submissions advanced on behalf of the appellants.



9. The argument of the appellant is that due to an inadvertent oversight, registration number of the offending bus was incorrectly mentioned in the claim petition as PB-02U-9907, instead of PB-02U-9997. It is further contented that the said mistake was subsequently corrected. Moreover, complainant/eyewitness Hira Singh in his Affidavit Ex. PW2/A has mentioned the number of the offending bus as PB-02U-9997.

10. However, it is to be noted that in the complaint-statement made by alleged eyewitness Hira Singh in the first instance after the accident, on the basis of which FIR No.243 dated 11.07.2005 (Ex.PW3/A) was registered, the number of the offending bus is mentioned as PB-02U-9907. Thereafter, Claim Petition was instituted on 23.12.2006. Even in the Claim Petition, number of the offending bus is mentioned as PB-02U-9907. It has been stated that this was subsequently rectified. This Court has gone through the LCR. However, a perusal of the Claim Petition (available at pages 29 to 35 of the LCR), shows that initially the number of the offending vehicle was mentioned as PB-02U-9907; upon which overwriting with black pen, has been done and the number “9907” has been changed to “9997”.

11. Much reliance has been placed by the appellants upon the affidavit (Ex.PW2/A) of the eyewitness PW2 Hira Singh, wherein the number is stated to be mentioned as PB-02-U-9997. However, a perusal of the said affidavit (Ex.PW2/A) (at page 107 to 110 of the LCR) shows that in Para 2 thereof, it is mentioned as follows:-



“2. That it is stated that it was on 11-7-2005 at about 6,00 AM when I was driving said school bus no. PB-02-AM-9807 and deceased was also with me as cleander on said vehicle of school and we started journey for bringing the children to school from their houses/residence and when we went to Village Thande, I was driving the vehicle in very limited speed on my correct hand side of road with all precautions and as per traffic rules, at about 6.00AM when we reached at Guntala Bye-Pass Pull, Ajnala Road, Amritsar one bus no.PB-02-U-9907 of respondent no.2 Distt.Transport Co. came driven by its driver respondent no.1 Tarjit Singh at very high speed in a rash and negligent manner and struck against front side of my said vehicle, due to which accident took place and Chanchal Singh deceased who was sitting on the seat of cleander near door of bus, door was automati-cally opened and due to jerk, deceased fell down from the bus on road and sustained various greivous injuries on his left hand side chest and other parts of body and I also sustained greivous injuries and disability in said accident...”

12. Thus, the learned counsel for the appellant has incorrectly stated that number of the offending vehicle has been mentioned as PB-02U-9997 in the Affidavit Ex.PW2/A. Rather, the supplementary statement made by eyewitness Hira Singh is rendered negatory as even in his Affidavit of Evidence (Ex.PW2/A) number of the offending vehicle is mentioned as PB-02U-9907. Moreover, no cogent reason has been given as to why the supplementary statement was not produced by the claimants before the



Tribunal. In the application for additional evidence, it is stated that the same was not produced only due to 'inadvertence'; which forms no ground. As already discussed above, additional evidence is to be permitted only upon due diligence.

13. Furthermore, most importantly, respondent no.1/Driver has been acquitted in the FIR No.243 dated 11.07.2005 by the learned Additional Chief Judicial Magistrate, Amritsar vide judgment dated 26.08.2009 (Annexure A6). The entire controversy at hand is laid to rest from the findings recorded by the learned Additional Chief Judicial Magistrate, Amritsar in its judgment dated 26.08.2009 (Annexure A6) whereby respondent No.1/driver of the bus No. PB-02-U-9997 has been acquitted. Relevant findings as contained in Paras 11 to 13 of the said judgment of acquittal read as follows:-

“11. I have given careful thought to the submissions made by the learned APP for the State and the learned defence counsel and I am of the considered view that in this case the doctor has not been examined, therefore, cause of death cannot be termed to have been proved. Accordingly, the accused cannot be convicted under the provisions of section 304-A IPC. It is the case of the prosecution that the accused ran away from the spot immediately after the accident. Statement of complainant recorded before the police reveals that he came to know afterward the name of the accused who was driving the bus in question, in other words complainant Heera Singh had not seen the accused at the spot. This witness Heera Singh PW2



has categorically stated in his cross examination that he did not see the accused earlier to the accident and he also did not see the accused even after the accident. This witness PW2 Heera Singh has further stated that he did not know the accused personally. In such circumstances, identity of the accused is disputed one. Under these circumstances, it was incumbent on the part of the prosecution to conduct the identification parade and to engage the complainant to recognise the accused, but the prosecution has not done its duty, therefore, this fact creates doubt in the case of the prosecution.

12. Prosecution has failed to bring on record even a single document to show that the accused was on duty on the said bus bearing No.PB02-U-9997. This fact further creates doubt in the case of the prosecution. It is admitted by PW2 Heera Singh that he did not see the bus in the Court Complex with which the accident took place, therefore, this is also a fact which creates doubt in the case of the prosecution.

13. PW2 Heera Singh has stated in his cross examination that he gave the bus number with which the accident was caused, at the instance of the police and he has further stated that he had never seen the bus after the accident till the day on which he was examined. This fact also creates doubt in the case of the prosecution. (Emphasis added)

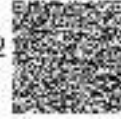
14. From the above, it is clear that the eyewitness PW2 has given a different version of events before the learned Tribunal; and a different version before the learned Additional Chief Judicial Magistrate, Amritsar. In the claim petition reproduced above, claimants have clearly stated that “The accused was witnessed by Hira Singh and other persons present at the



spot.” Whereas, in the criminal trial, Hira Singh has stated that he came to know the name of the accused afterwards i.e. Hira Singh had not seen the accused at the spot.

15. Further, the complainant Hira Singh has clearly stated in the criminal Trial of respondent no.1/Driver, that the bus bearing registration No. PB-02U-9997 is not the bus with which the accident was caused. Heera Singh has further stated before the judicial magistrate that he had given the said number of the bus as PB-02U-9997 *“at the instance of the police.”* Whereas, before the learned Tribunal, claimants and Heera Singh are at great pains to prove that the offending bus is bearing number PB-02U-9997.

16. In this situation, reliance may be placed upon plethora of following case law, including judgment of Hon’ble Supreme Court in **Rajamma v. M/s Reliance General Insurance Co. Ltd. (SC) : Law Finder Doc ID # 2784588; Surender Kumar Arora v. Dr. Manoj Bisla (SC) : Law Finder Doc ID # 356890; judgments of this Court in The Oriental Insurance Co. Ltd. v. Kamla, (Punjab and Haryana) : Law Finder Doc ID # 778163; Magma HDI General Insurance Co. Ltd. v. Mukesh Devi, (P&H) : Law Finder Doc ID # 980787; Vidya Devi v. Shyam Sunder Nisad, (Punjab And Haryana) : Law Finder Doc ID # 2708343; Balbir alias Leela v. Vikas (Punjab And Haryana) : Law Finder Doc ID # 520565; United India Insurance Co. Ltd. v. Gurmeet Singh (P&H) : Law Finder Doc ID # 1895306; National Insurance Company Limited v. Babloo (P&H) : Law Finder Doc ID # 695809; Smt. Sheela v.**



Ravinder, (Punjab And Haryana) : Law Finder Doc ID # 965348; Reliance General Insurance Co. Ltd. v. Munshi Singh (Punjab And Haryana) : Law Finder Doc ID # 674394; Anguri Devi v. Lakhvinder Singh alias Lakha, (Punjab and Haryana) : Law Finder Doc ID # 875760; and judgment of High Court of Madras in Cholamandalam Ms General Insurance Company Ltd Vs. Director General of Police & Others CRL OP No.2302-2021 and CRL OP No.4174 of 2021 decided on 12.09.2025, wherein in similar circumstances, where there was contradiction in statements of material witnesses, and as a result of which the offending driver had been acquitted in the criminal trial, the claimants were held not entitled to compensation.

17. The relevant findings of the learned Tribunal are as follows: –
- “13. The claimant has alleged in para no.15 of the claim petition that respondent was the driver and respondent was the owner of offending vehicle. In the written statement, in reply to this para, it has been pleaded by respondent nos. 1 & 2 that no accident ever took place with the bus of the replying respondents. It has also been pleaded in para no. 14 of the written statement that no accident ever took place with bus no. PB-02-U-9997. The perusal of the claim petition shows that originally number of the offending vehicle was mentioned as PB-02-&-9907 but at some stage, number of the offending vehicle was changed to PB-02-U-9997. In the claim petition, the said correction in the school last digit of the bus has been made with black pen. The purpose of the said correction is that the Insurance Policy Ex.R1 relates to bus no. PB-02-U-9997. The FIR says the offending vehicle to b PB-02-U-9907. There is no*



evidence on the file that number of the offending vehicle was wrongly given in the FIR. There is hence discrepancy in the registration number of the offending vehicle, between the FIR and the claim petition. Meaning thereby, Insurance Policy Ex.R-1 does not relate to the registration number of the offending vehicle. Hence the Insurance Company is not liable to pay the amount of compensation. The claim petition refers to the registration number of the offending, which never caused the accident. It has been held under issue no.1 above that the respondent no.1 was driving the bus no. PB-02-U-9907 at the time of accident in a rash and negligent manner. Since the respondent no. 1 was not driving the bus no. PB-02-U-9997 and no accident ever took place with bus no. Pb-02-U-9907, so the respondent nos. 1 & 2 are not liable to pay any compensation. There is a variance between the claim petition and the statement of the claimant in respect of the registration number of the offending vehicle. The claimant 1, as such, is not entitled for any amount of compensation.”

18. Learned counsel for the appellants is unable to dispute or controvert the aforesaid factual and legal position.

19. Present appeal accordingly stands **dismissed**.

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

12.11.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No