

(2012) 02 SC CK 0034

In the Supreme Court Of India

Case No : C.A. No. 2618 of 2012 (Arising out of SLP (C) No. 14513 of 2009)

Gurdeep Singh

APPELLANT

Vs

Bhim Singh and Others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Citation : (2012) 4 SCALE 149

Hon'ble Judges : K.S. Radhakrishnan, J;Deepak Verma, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted. Appellant was Claimant before the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'Claims Tribunal') in Claim Petition No. 134 of 20.2.1995/30.7.1997, claiming compensation against the Respondents on account of injuries said to have been suffered by him in a motor road accident that had taken place on the intervening night of 28th and 29th September, 1994, near Hansi.

2. According to Appellant, he was travelling in a bus bearing Registration No. DL-1-P-1521, belonging to Respondent No. 4 M/s Kataria Tours and Travellers, driven by Respondent No. 5. He was proceeding from Sri Ganganagar to Delhi in the said bus driven by Amar Singh. When the bus reached at some distance, ahead of Hansi at about 2.30 A.M., a bus of Haryana Roadways, driven by Respondent No. 1 Bhim Singh, was going ahead of the bus at high speed. The Driver of the bus in which the Appellant was travelling, was also driving the bus at high speed, in a rash and negligent manner. All passengers of the bus had requested the driver to drive it slowly and cautiously, but their requests were of no avail. The driver of Haryana Roadways applied the brakes all of a sudden probably with an intention to save an animal (Neel Gai) which was crossing the road at night. On account of it, there was a collision between the two buses.

3. In the said road accident, the Appellant suffered multiple grievous injuries. He

was immediately taken to a nearby hospital for treatment and from where, he was referred to Kolmet Hospital and Medical Research Centre, Pusa Road, New Delhi for further treatment. Two-three operations were performed on the person of the Appellant on account of the multiple injuries said to have been suffered by him in the said road accident. According to him, he had already spent more than Rs. 2 lacs for his treatment.

4. He was, therefore, constrained to file a Claim Petition, as mentioned hereinabove, before the Claims Tribunal, claiming a total amount of Rs. 5 lacs from the Respondents for the pain, sufferings, treatment, loss of earning capacity and other such factors, jointly and severally. On notices being issued to Respondents, Respondent Nos. 5 and 6 were proceeded ex parte, the name of Respondent No. 4 was deleted and matter was contested by Respondents 1 to 3 and Respondent No. 7/the United India Insurance Company Ltd.

5. On consideration of the evidence available on record, the Claims Tribunal vide its Award dated 31.3.2001, came to the conclusion that no relief can be granted to the Appellant as he has not been able to prove that he was travelling in the bus which had actually met with the accident.

6. Initially in the Claim Petition filed by Appellant, he had mentioned that he was travelling in a bus bearing Registration No. DL-1-P-1521, but there was no accident of this bus. The accident was with a bus bearing Registration No. DL-1-P-1529. There appears to be some confusion with regard to the actual Registration number of the bus belonging to M/s Kataria Tours and Travellers.

7. In the evidence of RW-1 - Bhim Singh (Driver of the bus owned by Haryana Roadways), it has come on record that accident had actually occurred with the bus bearing Registration No. DL-1-P-1529 and there was no accident with bus bearing Registration No. DL-1-P-1521. Similar is the evidence of RW-2 - Suresh Kumar, Conductor of the bus owned by Haryana Roadways, who has also deposed in the same manner in which RW-1 Bhim Singh had deposed, that the accident had taken place between the bus bearing Registration No. DL-1-P-1529 and the bus of Haryana Roadways, but it was on account of rash and negligent driving of the driver of the bus owned by M/s Kataria Tours and Travellers.

8. Initially, the Appellant had given correct Registration number of the bus owned by M/s Kataria Tours and Travellers, but, later on, by way of amended Claim Petition filed by Appellant on 22.12.1997, he changed the bus Registration number and averred that bus bearing Registration No. DL-1-P-1521 was involved in the accident and not the bus bearing Registration No. DL-1-P-1529.

9. We do not find the reason what prompted the Appellant to change the Registration number of the offending vehicle. It is not in dispute that soon after the accident, a report was lodged by the Appellant at the Police Station, Sadar Hansi, with regard to the said accident but the Registration number of the bus in which the Appellant was travelling, was not mentioned in the said Report. On the strength of the Report, no formal First Information Report (for short 'FIR') was

registered, maybe for want of details.

10. It also cannot be disputed, which is even otherwise borne out from the record, that the Appellant had suffered grievous injuries in the accident as after First-Aid, he was referred to the aforesaid hospital. His permanent disability certificate is on record, issued by Dr. A.K. Singh, Consultant, Central Institute of Orthopaedics, Safdarjung Hospital, New Delhi. He has certified that his permanent disability is to the extent of 40% physical impairment and loss of function of right lower limb. He has also given the details of the surgeries performed on the Appellant.

11. From the aforesaid facts, it cannot be disputed that Appellant did suffer injuries which he had sustained in a motor road accident but only on account of technicalities, his Claim Petition has been defeated by the Claims Tribunal.

12. Learned Single Judge of the High Court of Punjab & Haryana at Chandigarh vide order dated 24.12.2008 in FAO No. 3716 of 2001, also considered this aspect of the matter but recorded a finding against the Appellant on the ground that Appellant has not been able to prove that he had been travelling in the bus which had actually met with the accident. This finding has been 5 recorded by learned Single Judge of the High Court on the strength of the Registration number of bus given by Appellant in his Claim Petition filed in the Claims Tribunal as well as in the evidence. Thus, the learned Single Judge of the High Court also dismissed the Appeal of the Appellant. Hence, this Appeal on variety of grounds before us.

13. We have, accordingly, heard the Learned Counsel for the parties at length and perused the record.

14. Learned Counsel appearing for Respondent No. 6 United India Insurance Company Ltd. (for short 'Insurance Company') submitted that in the light of the admission made by Appellant that he was travelling in bus bearing Registration No. DL-1-P-1521 and not in the bus bearing Registration No. DL-1-P-1529 said to have been involved in the accident, the Claims Tribunal and the High 25 Court committed no error in dismissing the Appellant's Claim Petition as well as his Appeal. On the other hand, Learned Counsel appearing for Appellant contended that on such technicalities, the Claim Petition filed by the Appellant should not have been dismissed by the Claims Tribunal.

15. The finding of the Claims Tribunal is that, in fact, the accident had taken place between the bus owned by Haryana Roadways and the bus bearing Registration No. DL-1-P-1529 of M/s Kataria Tours and Travellers. However, finding of High Court is that bus bearing Registration No. DL-1-P-1529 was not insured with the Insurance Company (Respondent No. 6 herein) and therefore, no liability could be fastened on the Insurance Company. The case of the Insurance Company was that it was the bus bearing Registration No. DL-1-P-1521 that was insured with it. But in view of the pleadings and the evidence of Appellant, he was not travelling in said bus and was travelling in bus bearing

Registration No. DL-1-P-1529 which was not insured by the Insurance Company.

16. It is a matter of common knowledge that in motor road accident's claim cases, it is very difficult to get witnesses. The eyewitnesses are also not readily available. Even if available, they are not easily ready and willing to come and depose in court of law for many reasons. Thus, we have to go by the oath of the Claimant only. From the materials available on record, it is established and crystal clear that Appellant had definitely met with the accident. He was also travelling in the bus, operated by M/s Kataria Tours and Travellers. It is also proved that the accident was between two buses on the intervening night of 28th and 29th September, 1994.

17. At the time of accident, Appellant was aged about 48 years. He was engaged in a touring job and doing a business in Tractor spare-parts. He was earning an income of Rs. 5,500/- per month out of this business. He had three college going children and wife. He became disabled after the said accident.

18. Thus, looking to the facts and features of the case, we are of the considered opinion that Appellant deserves to be awarded just, proper and reasonable compensation keeping in view the medical evidence and his disability certificate.

19. In view of the above, we deem it fit and proper to award a reasonable and just compensation of Rs. 3 lacs (Rupees three lacs only) together with interest at the rate of 6% per annum, from the date of accident till its actual payment, to the Appellant and we order accordingly.

20. Liability to make the payment, as aforesaid, to Appellant, would be that of Respondent Nos. 4 and 5. No liability is fastened on any other Respondents. Respondents 4 & 5 would also bear the cost of litigation throughout. Counsel's fee Rs. 10,000/-. With the aforesaid directions, we hereby set aside and quash the order of the High Court and the Award of Claims Tribunal. This Appeal stands allowed to the above extent.