

(2006) 08 P&H CK 0277
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 1100 of 1988

Surjit Singh

APPELLANT

Vs

The State of Haryana and Karamvir Singh

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 166(3), 92A, 92B

Citation : (2006) 08 P&H CK 0277

Hon'ble Judges : R.S. Madan, J

Bench : Single Bench

Advocate : Ashok Khubbar, for the Appellant; S.S. Goripuria, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

R.S. Madan, J.—This order of mine shall dispose of the present appeal which has arisen out of the judgment dated 30.7.1988 rendered by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter to be referred to as the "Tribunal"), in MACT Case No. 47 of 1987, vide which the petition filed by the claimant u/s 110-A read with Section 92-A and 92-B of the Motor Vehicle Act, for grant of compensation was dismissed.

2. In brief, the facts of the case are that on 25.12.1986, Surjit Singh was driving the Haryana Roadways Bus bearing No. HRQ 4463 from Shahbad to Ladwa, at about 6.50 AM and reached Babain at about 8.05 AM. He then left Babain for Ladwa and had hardly covered a distance of 1/1-2 furlong when another Haryana Roadways Bus bearing No. HRL-9217 was seen coming from the front side, which was being driven by Karamvir Singh, respondent No. 3. There was fog at that time. So the other bus became visible to the petitioner when it was hardly 70-80 yards from his bus. One cyclist suddenly came in front of the bus of respondent No. 3 and in order to save the cyclist, respondent No. 3 took his bus slightly towards the wrong side and it hit the bus of the petitioner. In the accident the petitioner sustained injuries on his right leg and was immediately shifted to Civil

Hospital, Babain by the passengers and from there he was referred to Civil Hospital, Kurukshetra, where he was operated upon for the fracture suffered by him in the accident. The petitioner, thus, claimed that he remained admitted in the Hospital for few days but his treatment continued for three months. Through the instant claim petition, the petitioner claimed an amount of Rs. 5000/- as compensation.

3. No written statement was filed by respondents No. 1 and 2 despite opportunity given to the respondents. The respondent No. 3 upon notice contested the claim petition by setting up the plea that the petitioner is estopped from filing the claim petition by his own act and conduct because the accident in question had taken place due to his own negligence and carelessness. It was also pleaded that the expenses incurred by him on his medical treatment has already been claimed by him from the office of General Manager, Haryana Roadways, as reimbursement of medical charges as are admissible to the Haryana Government Employees. It was also pleaded that admittedly an inquiry is pending against him regarding this occurrence. He, thus, prayed for the dismissal of the petition.

4. The parties went to trial on the following issues:

1) Whether Surjit Singh claimant-petitioner injured sustained injuries in a motor accident which occurred due to the rash and negligent driving of respondent-driver, if so, to what effect?

2) If issue No. 1 is proved, to what amount of compensation the claimant is entitled to and from whom? Onus on claimant.

3) Whether the claim petition is time barred? Onus on respondent.

5. To prove its case, the petitioner examined PW-1, Dr. N.K. Gandhi, Medical Practitioner (Private), Kurukshetra; PW-2 Rameshwar Dayal son of Sadhu Ram, Photographer, Saini Studio, Babain, who prove the photographs of the scene of accident; PW-3 Ramesh Kumar son of Inder Nath, a shopkeeper resident of Village Babain, who was a passenger in Haryana Roadways Bus bearing No. HRQ-4463 driven by the petitioner at the relevant time. PW4, Surjit Singh appeared in the witness box and reiterated the averments made in the petition. He also produced the medical bills Ex.P-7 to Ex.P-14.

6. The respondent in order to controvert the case of the petitioner, examined Karamvir Singh as RW-1, driving of Haryana Roadways Bus No. HRL-9217.

7. After going through the evidence led by the parties, the learned trial court returned the finding on all the issues against the petitioner.

8. The learned Tribunal while disposing of issue No. 1 observed that the accident is not the outcome of rash and negligent driving of respondent No. 3 for the reason that no first information report was lodged against him. So, it could be termed as an accident occurred due to no fault of either of the drivers.

9. While disposing of issue No. 2, the learned Tribunal held that the claimant has

placed on the record the bills Ex.P-7 to Ex.P-14 for an amount of Rs. 288/- vide which he purchased the medicines and this amount was reimbursable to him being Haryana Government employee. At the same time, there are variations in the statement of the petitioner. In the petition he stated that he had spent an amount of Rs. 5000/- whereas in the witness box he stated that he had spent an amount of Rs. 6000/- on his treatment, which shows that he had given the amount spent on his treatment by approximation. It is also proved from the statement of the petitioner that he has not suffered any permanent disability in the accident. Therefore, he was held not to be entitled to any compensation.

10. While disposing of issue No. 3, the court observed that the claim petition was not preferred within a period of six months, as per the provisions of the old Motor Vehicle Act and as a corollary of the same, the petition was dismissed.

11. Aggrieved by the impugned judgment of the learned Tribunal, the appellant has knocked the door of this Court by filing the present appeal.

12. I have heard the learned Counsel for the parties and have gone through the evidence brought on the file of the trial court.

13. It has come on the record in the statement of Surjit Singh PW-4, as well as RW-1 Karamvir Singh,(respondent No. 1), that the accident did take place between Bus No. HRQ- 4463 driven by the petitioner and Bus No. HRL- 9217 driven by him (respondent No. 3). PW-2 Rameshwar Dayal, Photographer took the photographs of the accident on 25.12.1986, at the request of the police. According to this witness the accident had taken place on the left side of the road which leads from Babain to Ladwa. Bus bearing No. HRQ- 4463 was on half of the kacha portion of the road, whereas the other bus was on the road. The photographs merely suggest that the driver of Bus No. HRL-9217 respondent No. 3, was responsible for causing the accident by taking his bus on the wrong side. Hence, the case of the claimant is covered by the doctrine of Res-ipsa locator which suggests that respondent No. 3 was rash and negligent in driving the bus at the relevant time and caused the accident. It is also not disputed that both the petitioner and driver respondent No. 3 are the employees of the Haryana Roadways and being colleagues, no first information report was lodged. The observation of the Tribunal that non-lodging of the first information report is fatal to the case of the petitioner, appears to be not sustainable because it is not a pre-requisite to lodge FIR in every case arising out of the accident. Sometimes the accident is caused by a near dear against whom one does not want to bring criminal proceedings but at the same time the victim would not like to forgive his civil remedy . Taking into consideration the testimony of PW-4 Surjit Singh coupled with the testimony of RW-1 Karamvir Singh, driver of Bus bearing No. HRL-9217, it is Crystal clear that respondent No. 3, the driver of bus No. HRL 9217 was responsible for causing the accident in question. The finding recorded by the learned tribunal on issue No. 1, being devoid of merit, is set aside and the issue is decided in favour of the claimant.

14. On behalf of the petitioner, on issue No. 2, it is contended that the claim of the petitioner has simply been rejected on the ground that the petitioner being an employee of the Haryana Roadways, is entitled to medical reimbursement and the petitioner must have secured medical reimbursement from his office. Therefore, he is not entitled to any amount of compensation. The act of causing injuries to the petitioner by respondent No. 3 is a separate event and cannot be connected with the reimbursement by the department. It has come in the testimony of PW-1 Dr. N.K. Gandhi that the patient remained admitted in LNJP Hospital, Kurukshetra from 25.12.1986 to 30.12.1986. He had suffered fracture of torsel bone on the right foot. The plaster boot for a period of six weeks was applied. This witness further stated that normally the patient complaints of pain for some days after the removal of the shoes. There can be limping for a temporary period on account of pain. Besides this, there is the statement of Surjit Singh PW-4, to the effect that he remained under treatment for a period of three months and spent a sum of Rs. 6000/- including the amount spent on transportation charges, purchase of medicines and special diets etc. This witness was cross-examined by the respondent on the ground that Haryana Government employees are entitled to medical reimbursement which includes roadways staff as well. It was not suggested to Surjit Singh that he had not suffered any injury in the said accident and has not suffered any kind of permanent disability.

15. Hence, this Court is of the view that the petitioner is entitled to a sum of Rs. 288/- plus Rs. 5000/-, on account fracture of torsal bone of right foot as well as for pain and sufferings which the claimant has to undergo during the period of his treatment. The finding on issue No. 2 recorded by the learned Tribunal is accordingly set aside and the issue is decided in favour of the claimant.

16. Now coming to the question of limitation, according to the observation made by the Tribunal, the claim petition has been preferred beyond the period of six months from the date of accident and has been filed after 8 months of the accident., is also not sustainable in view of the observation made by the Hon''ble Supreme Court in Dhannalal Vs. D.P. Vijayvargiya and Others, where the provisions of the Amending Act has been made applicable to all the petitioners, whose claim petition had been pending before the Tribunal as well as in appeal before the High Court or before the Supreme Court and their claim cannot be rejected on the ground of limitation. This amendment has come into force with effect from 14.11.1994. While dealing with this proposition of law, the Hon''ble Supreme Court has observed as under:

From the Amending Act, it does not appear that the said Sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the Amending Act to show that benefit of deletion of subsection (3) of Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of Sub-section (3) from Section 166 of the Act can be tested by an illustration. Suppose, an accident had taken place two years before 14.11.1994 when Sub-section (3) was omitted from Section 166. For one

reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of such accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when Sub-section (3) of Section 166 was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of Sub section (3) of Section 166 w.e.f. 14.11.1994? According to us, the answer should be in negative. When Sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when Sub-section (3) of Section 166 was in force.... If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, High Court or the Supreme Court.... It need not be impressed that Parliament from time to time has introduced amendments in the old Act as well as in the next Act in order to protect the interest of the victims of the accidents and their heirs if the victims die.

17. In the light of the observation made by the Hon"ble Supreme Court mentioned above, the finding on issue No. 3 holding the petition to be time barred is set aside and the finding on this issue is returned in favour of the claimant.

18. In view of the above discussion, this appeal is accepted. The order of the Tribunal in dismissing the claim petition filed by the appellant, is set aside and an award for a sum of Rs. 5288/- is passed in favour of the appellant, against respondents No. 1 to 3, who shall be jointly and severally responsible to pay the compensation to the claimant. The amount of award be paid within a period of three months from the date of passing of the order by this Court, failing which the claimant would be entitled to receive interest at the rate of 6 per cent per annum from the date of award passed by this Court till the realization of the same.