



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
217 **FAO-7545-2014 (O&M)**
Date of decision: 18.02.2025

Neha Chhibber & Others

...Petitioner(s)

Vs.

Sanjiv Kumar & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- None for the appellants.

Mr. Amit Jaiswal, Advocate
for respondent No.2.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants against dismissal of their claim petition bearing MACT Case No.97 of 2012 filed under Section 166 of the Motor Vehicles Act, 1988, by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri vide Award dated 05.05.2014. The 4 claimants are the 52-year-old widow, 24-year-old son, 21-year-old daughter, and mother, of the deceased-Sunil Kumar Chhibber.

2. At the very outset, it may be pointed out that the order sheets shows that there has been no representation on behalf of the appellants for the last three dates of hearing i.e. 27.04.2017, 20.03.2023 and 16.05.2023. Today, also no one appears on behalf of the appellants. As such, as the appeal pertains to the year 2014, the same is being decided in the absence of the appellants.

3. Learned counsel for respondent No.2/owner of the alleged offending vehicle, submits that there is no evidence on record to



implicate the respondents. The learned Tribunal has rightly passed the Award. No interference of this Court is called for. It is accordingly prayed that the present appeal be dismissed.

4. Heard.

5. I have perused the case file in minute detail. Brief facts of the case as set out in the claim petition are that the deceased was a bank employee. On the date of accident, that is 27.12.2010 he was going to attend his duties and had boarded a bus of UP Roadways, which had a defect. Thus, in order to change the bus the deceased alighted from the bus and was standing on the side of the road waiting for another bus. In the meanwhile, bus bearing registration No.UA-07H-8698 (referred to herein as "the offending vehicle") being driven by respondent No.1 and owned by respondent No.2 came in a rash and negligent manner and hit the deceased. Due to the impact, the deceased sustained multiple grievous injuries all over his body including head injury. One of his colleagues namely Virender Kumar took the injured to Narender Mohan Hospital at Mohan Nagar. Registration number of the offending vehicle was noted down by two more persons namely Ankit Bhatia of Delhi and Ayush Mittal of Navalpura Khurja (UP). However, the deceased succumbed to his injuries on 30.12.2010. FIR No.603 dated 28.12.2010 under Sections 279 and 338 IPC was registered in Police Station Murad Nagar, Ghaziabad (UP) against respondent No.1 on the statement of claimant No.2/son of the deceased.



6. FIR no. 603 was registered on 28.12.2010 i.e. on the next day after the accident. However, the registration number of the offending vehicle nor name of the driver of offending vehicle/respondent No.1 was mentioned. In fact, it is mentioned in the FIR that the accident took place when the deceased was in process of changing the bus since the previous bus in which the deceased was travelling had become out of order. On the other hand, in the claim petition it has been averred that the number of the offending vehicle was noted by two more persons, namely Ankit Bhatia of Delhi and Ayush Mittal of UP, however, in the FIR, names of Ankit Bhatia and Ayush Mittal have not been mentioned. Only name of Virender Kumar who had taken the deceased to the Hospital, is mentioned.

7. After investigation by the UP Police, cancellation report dated 14.03.2011 (Ex.P4) was filed in the FIR. Thereafter, the protest petition filed by the claimants was accepted Vide order dated 03.12.2011, and Report dated 14.03.2011 (Ex.P4) was set aside and matter was sent for further investigation vide report (Ex.P10). Chargesheet (Ex.P5) was filed in the matter and respondent No.1 was facing criminal trial.

8. Even in the protest petition, names of Ankit Bhatia and Ayush Mittal were mentioned as eyewitnesses of the accident. But Ayush Mittal was not examined. Ankit Bhatia/PW2 had filed his affidavit (Ex.PW2/A) and had deposed claiming to be an eyewitness and had deposed along the same lines as the averments made in the claim



petition. Ankit Bhatia/PW2 stated that he had moved an application before the Police in which he had mentioned the registration number of the offending vehicle, however, the said application was not brought on record. He even had no copy of the said application which had been signed by him. He further deposed that he was at a distance of 5-7 metres from the offending vehicle and was driving a car at a speed of 60 kmph when he noted the registration number of the offending vehicle. He admitted that he did not stop at the spot nor did he accompany the injured to the hospital. He further stated that he had told the registration number of the offending vehicle to the claimant No.2 on the same day. In view of this, it is not clear as to why the complainant/claimant No.2/son of the deceased, did not mention the number of the offending vehicle in the FIR. From the above facts, it would appear that the presence of alleged eyewitnesses, Ankit Bhatia is doubtful. It is also not clear as to how Ankit Bhatia could note the number of the offending vehicle while he was admittedly driving his car at a speed of 60 km/h. What is most odd is that Virender Kumar whose name is mentioned as an eyewitness has not come forward, neither in the criminal trial nor before the Tribunal.

9. It is my view that in view of the above facts the impugned Award dismissing the claim petition suffers from no infirmity.

10. Relevant part of the impugned Award is as under:-

“20. From the testimony of PW2 Ankit Bhatia it can be said that he had moved an application before the police but no copy of the said application has been summoned by the police



nor the same has been brought before this Court. He was never joined by the UP Police during investigation of the case. This does not necessarily mean that he was not joined because of any lackness on the part of the police. The question which is also involved is whether he was an eye witness that he was required to be joined by the police. Nothing has been brought on record by the claimants at any point of time prior to filing of protest petition in the Court whether it was case of the claimants or even before the police that Ankit Bhatia was an eye witness to the accident in question. The said Ankit Bhatia has stated to the extent that registration number of the offending vehicle was mentioned in the FIR whereas his statement is contradictory to the actual position. It is also quite unbelievable that when he was driving his car at the speed of 60 kmph then he could have noted down the registration number of the offending vehicle and that he himself did not stop at the spot.

21. While appreciating the evidence of PW4 Shalabh Chhibber also many discrepancies can be pointed out. According to him, the information disclosed by him at the time of lodging protest petition was disclosed to him by Virender Kumar and Ankit Bhatia. The said Virender Kumar has not been examined either by the police or before this Tribunal. PW2 Ankit Bhatia has stated that he had disclosed the registration number of the offending vehicle to the son of the claimant on the same day. Meaning thereby that once particulars of the offending vehicle were in the knowledge of PW4 Shalabh Chhibber, son of the deceased/victim, on the same day as per testimony of PW4 Ankit Bhatia, there could have been no reason as to why the same were not mentioned in the FIR. It could only be so



when particulars were not in the knowledge of Shalabh Chhibber.

22. Respondent no. 1 has totally denied the accident and has stated on oath that he has been falsely implicated. Rather, he has stated that he was not driving the bus in question on 27.12.2010, the date of accident on the said route. Once a specific statement of Sanjeev Kumar. i.e. respondent no. 1 had come on record in this manner, then as it is it was upon the claimants to rebut this material evidence. As it is, as per version of Shalabh Chhibber, the offending vehicle was a bus of UP Roadways. It was certainly not a difficult task to prove that the said bus was involved in the accident or not. It could have been verified by summoning the record from the concerned depot of UP Roadways as to whether the said bus was on the said route at that particular time or not. There were still other ways with which it could be find out whether this vehicle was involved in the accident. The vehicle must have passed through many toll tax barriers. Evidence could have been collected from the said toll tax barriers if the vehicle had passed through them at that particular time. It is not the case of involvement of a private bus that evidence in the afore discussed form could not be collected and the claimant was required to merely rely upon the testimony of private witnesses. Absolutely no effort has been made on the part of the claimants to collect evidence in this regard. Oral evidence collected by the claimants in the form of Ankit Bhatia is totally unreliable and it cannot be said that he was an eye witness to the occurrence or that he had noted down registration number of the offending vehicle and disclosed the same to Shalabh Chhibber on the same day. Had there been any truth in this, registration number of the offending vehicle



would have definitely come in the contents of the FIR. It can only be said that cancellation report had been filed because there was no witness available who could point out the particulars of the vehicle which had caused the accident, that names of Ankit Bhatia and Ayush Mittal were introduced on behalf of the complainant/one of the claimants in this case. One does not understand as to why the best evidence in the form of Virender Kumar has been withheld by the claimants. Moreover, it is difficult to digest that a bus could have fled from the spot so easily and immediately after the occurrence that none could not noted down its particulars. As per case of the claimants, already another bus was standing at the spot which had gone out of order. Thus, it was not difficult to know the particulars of the offending vehicle. Had the vehicle implicated in this case been involved, then its registration number would have come in the investigation of the police. Had UP Roadways bus been involved in the accident, it could have been easily identified at the nearest bus stop as in this case it could have been even more probable that according to version of PW2 Ankit Bansal, he had not stopped at the spot and was driving his car at a similar speed of the offending vehicle and thus, he could have been in a position to chase the offending bus and to get the same stopped.

23. It is also worth while to mention here that the alleged accident had taken place in the jurisdiction of the State of UP and criminal trial is also pending there. The claimants have also been shown to be permanent residents of UP, then as to why this petition has been filed before the Tribunal of Yamuna Nagar jurisdiction by showing the claimants to be presently residing at Yamuna Nagar.”

(emphasis supplied)



11. In view of the above facts, present appeal is **dismissed**.
12. Pending application(s) if any also stand(s) disposed of.

18.02.2025

Sunena

(Nidhi Gupta)
Judge

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