

ITEM NO.1 COURT NO.12 SECTION IVB

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2010  
CC 5778/2010

(From the judgement and order dated 26/11/2009 in FAO No. 5211/2006  
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

UNITED INDIA INSURANCE CO. LTD. Petitioner(s)

VERSUS

RASHMI DHIR AND ORS. Respondent(s)

IA NO.1(c/delay in filing SLP)

Date: 21/04/2010 This Petition was called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. K.L. Nandwani, Adv.  
Mr. Shakil Ahmed Syed, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

Delay condoned.

This petition is directed against the judgment of the learned Single Judge of Punjab and Haryana High Court, who declined to interfere with award dated 2.8.2006 passed by Motor Accident Claims Tribunal, Ropar (for short "the Tribunal"), whereby meagre compensation of Rs.10,000/- was awarded to respondent No.1 in lieu of injuries suffered by her in an accident which occurred on 7.7.2002.

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In the claim petition filed by her, respondent No.1 pleaded that the accident was caused due to rash and negligent driving of the bus belonging to Rajdeep Bus Service by its driver and, as a result of accident, her husband died and she suffered injuries. In the written statement filed on behalf of the petitioner, it was claimed that the drivers of bus No. PB-10 T 9533 and scooter No. CH01-Z-8898 did not have valid driving licence. It was also averred that vehicle No.PB-10-T-9533 was not involved in the accident and the claim is based on false averments.

On the pleadings of the parties, the Tribunal framed the following issues:

"1. Whether Rashmi Dhir has received injuries in an accident dated 07.07.2002 at about 10 a.m. near Phase-V, Mohali caused by respondent No.2 while driving bus No. PB-10-T-9533 rashly and

negligently? OPP.

2.Is the petition not maintainable?OPR.

3.Whether respondent No.2 driver was not having a valid driving licence at the time of alleged accident? OPR.

4.Whether the claimant has filed the petition in collusion with respondents No.1 and 2? OPR.

5.Is the petition bad for non-joinder and mis-joinder of necessary parties? OPR.

6.To what amount of compensation, the claimant is entitled to recover? If so, from whom? OPP.

7.Relief."

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After considering the evidence produced by the parties, the Tribunal held that the accident was caused due to rash and negligent driving of bus bearing No.PB-10-T-9533. The Tribunal noted that the insurance company had not produced any evidence to show that Rajdeep Bus Service also owns a bus bearing No. PB-10-F-9333. The findings recorded by the Tribunal on this issue are contained in paragraphs 14 and 17 of the award, which are extracted below:-

"14. Respondent No.1 in the written statement has admitted that bus No. PB-10-T-9533 was involved in this accident. Not only this, this respondent moved an application for deleting the number of Bus No. PB-10-F-9333 and to implead bus No. PB-10-T-9533 in the claim petition with the allegations that no accident as alleged has taken place with bus No. PB-10-F-9333 and accident had taken place with bus No. PB-10-T-9533. The said application filed by respondent No.1 was allowed by this Tribunal vide order dated 27.7.2004 and as a result thereof an amended title containing the number of the offending vehicle as PB-10-T-9533 was filed on the record. Since respondent No.1 has itself admitted the happening of the accident with Bus No. PB-10-T-9533, no such contention of the counsel for the insurance company can be accepted that keeping in view this discrepancy with regard to the registration particulars of the offending vehicle in the F.I.R. and in the amended title filed by the claimant, the claimant has not been able to discharge the onus to prove that respondent No.2 was responsible for causing this accident while driving bus No. PB-10-T-9533. The Insurance Company has not examined any witness to prove on

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record that Rajdeep Bus Service also owns a bus bearing registration No. PB-10-F-9333 in order to raise any such contention before the court that since the said bus was not insured and for that reason respondent No.1 got deleted number of the said bus which was actually involved in the accident and got impleaded another bus of that company so that the liability towards the claimant can be met by the Insurance company. There is no rebuttal to the statement of Rashmi Dhir by the respondents. Keeping in view all these facts and circumstances, I am of the considered opinion that the claimant has been successful in proving on the record that accident in question took place because of the rash and negligent driving of Bus No. PB-10-T-9533 by its driver respondent Satwindser Singh. This issue is therefore, decided in favour of the claimant and against the respondents.

17. No evidence has been led by the Insurance company that present claim petition is the result of collusion between the claimant and respondents No. 1 and 2. Even otherwise, the insurance company was allowed permission under section 170 of the Motor Vehicles Act to contest this petition on all the grounds available to the insured. However, the insurance company could not led any evidence in order to counter and rebut the statement of claimant Rashmi Dhir. Therefore, this issue is also determined against respondent No.3 and in favour of the claimant with the aforesaid observations."

The Tribunal then referred to the evidence of respondent No.1 and Dr. Rana Sandeep Singh who had treated her and awarded compensation of Rs.10,000/-

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with interest at the rate of 9% per annum.

The petitioner challenged the award of the Tribunal in FAO No. 5211/2006, but could not persuade the learned Single Judge of the High Court to entertain its prayer for permission to lead evidence under Order 41 Rule 27 of the Code of Civil Procedure (C.P.C.) or to overturn the finding of fact recorded by the Tribunal.

Learned counsel for the petitioner argued that his client could not produce evidence to prove collusion between claimant - respondent No.1 and the owner of the bus because the advocate appearing on its behalf did not prosecute the matter diligently. He submitted that application filed in the High Court under Order 41 Rule 27 C.P.C. was supported by cogent reasons but the learned Single Judge declined the petitioner's prayer for permission to lead additional evidence and dismissed the appeal.

In our opinion, there is no merit in the petitioner's challenge to the award passed by the Tribunal and the impugned judgment. If there was any

grain of truth in the assertion of learned counsel before this Court that there was negligence on the part of the advocate engaged by his client before the Tribunal, the minimum which the petitioner would have done was to file a complaint against the concerned advocate before the Bar Council of the State or sue him for recovery of the loss suffered by it by the award of compensation. However, the fact of the matter is that no such step was taken by the petitioner. Therefore, the submission that the advocate was negligent in performing his duty has to be treated as figment of

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imagination and an argument based on such imagination cannot be accepted for setting aside the award of the Tribunal.

We are further of the view that the finding recorded by the Tribunal, which has been confirmed by the High Court, does not suffer from any legal infirmity warranting interference under Article 136 of the Constitution and the special leave petition is liable to be dismissed. Ordered accordingly.

For filing frivolous petition to question the award of meager compensation of Rs.10,000/-, the petitioner is saddled with costs of Rs.50,000/- by way of compensation, which shall be paid to respondent no.1 in addition to the compensation already awarded by the Tribunal.

The additional amount of compensation shall be paid to the respondent within a period of six weeks.

The registry is directed to send a copy of this order to respondent No.1 by post.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master