

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

FAO (MVA) No. 140 of 1995.

Date of Decision: 28th July, 2006.

Himachal Road Transport Corporation
and another. Appellants.

Versus

Davinder Singh. Respondent.

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting¹?

For the appellants: Mr. Rakesh Jaswal, Advocate.

For the respondent: Mr. S.R. Sharma, Advocate.

V.K.Gupta, C.J. (Oral).

This appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the appellants against the judgment and award dated 29th November, 1994 passed by the Motor Accidents Claims Tribunal, Shimla in MACC No.16-S/2 of 1992 whereby an award of Rs.4,34,860/- with 12% interest has been passed in favour of the respondent and against the appellants.

On 11th October, 1991 the respondent-claimant boarded HRTC bus No.HPS-7743 belonging to appellant No.1 and being driven on that date by its driver, appellant No.2. It is the case of the respondent

¹Whether the reporters of Local Papers are allowed to see the Judgment?

that he purchased a ticket and at the instance of the conductor of the bus boarded the bus and sat on its roof top. The respondent's case also before the Tribunal was that 25 to 30 other passengers were also sitting on the roof top. The bus was being driven in a rash and negligent manner. During the course of journey, the respondent was hit by hill rocks while the bus was moving and while he along with other passengers were traveling on its roof top. As a result of this mishap, the respondent fell down from the roof of the bus and suffered serious injuries. The factum of the mishap has not been denied by the appellants, but the case set up by them in the written statement filed in the Tribunal was that after the purchase of the ticket, the respondent sat on the roof top of the bus despite the objection raised by the driver. The following Issues were framed by the Tribunal for adjudication:-

- "1. Whether the petitioner suffered injuries on account of rash and negligent driving of driver employed by respondent-H.R.T.C., who caused the accident on 11.10.1991, at place Taranda Mandir near Sungra while plying bus No.HPS-7743? OPP.
2. If issue No.1 is proved in the affirmative, to what amount of

compensation, the petitioner is entitled to? OPP.

3. Relief."

Various witnesses were examined by the respondent in support of his contention about his being asked by the conductor of the bus to sit on the roof top of the bus, after he had purchased the ticket and the manner in which the bus was being driven rashly and negligently. PW-1 Davinder Singh, the respondent himself, and PW-2 Rajinder Singh are the eye witnesses to the occurrence of the accident and the fact of the respondent having purchased the ticket and boarded the bus as well as being asked by the conductor to sit on its roof top. Various other witnesses appeared in the case to prove the fact regarding the injuries sustained by the respondent, including PW-5 Dr. M.K. Tiwari, Assistant Professor, PGI Chandigarh.

No evidence was produced by the appellants before the Tribunal. The evidence of the respondent went totally un rebutted.

During the course of hearing today, Mr. Jaswal, learned counsel appearing for the appellants mainly argued about the absence of any fault as far as the driver of the bus is concerned, even though by way

of a passing reference he did assail the judgment on the question of quantum of compensation as well.

The un rebutted evidence of the respondent before the Tribunal was that it was at the instance of the conductor of the bus, after the respondent had purchased the ticket that the respondent was made to sit on the roof top of the bus. This has not at all been rebutted by the appellants. If, therefore, the conductor of the bus himself had suggested to the respondent to sit on the roof top of the bus as a passenger, after purchasing the ticket, there is no manner of doubt that the respondent sitting on the roof top of the bus was a situation which had not only the acquiescence of the crew of the bus, but the crew of the bus including the driver as well as conductor facilitated the sitting of the respondent on the roof top of the bus. Undoubtedly in law it is not permissible to carry the passengers on the roof top of a bus and if the crew of the bus does so, they do so with the full knowledge that it is very risky and dangerous to do so. I cannot agree with the contention of Mr. Jaswal that the respondent should be held guilty of contributory negligence because I am firmly of the view that it was open to the crew of the bus not to permit the respondent to travel on the roof top of

the bus. Not only did they permit him to do so, they actually facilitated this arrangement for the reasons best known to them. Therefore, there is no manner of doubt that the respondent suffered injuries in the aforesaid mishap because of the rash and negligent act of the driver as well as the conductor of the bus in carrying the respondent on the roof top of the bus.

Coming to the question of quantum of compensation, the evidence on record clearly suggests that the respondent received serious injuries. He was first admitted in Rampur Hospital for treatment after he had become unconscious and thereafter was shifted to Snowdon Hospital, Shimla and finally he was taken to PGI, Chandigarh where he was operated upon by a Neuron-surgeon. There were injuries on the skull of the respondent. He was kept in the intensive care unit and one hole was made in his throat to keep him alive. After discharge he was again readmitted on 15th March, 1992. C.T. scan was done and once again his skull was operated upon. The disability has been mentioned in the Certificate Ex.PW-5/E. The treatment given to the respondent is prescribed in Ex.PW-5/D. The respondent has suffered permanent disability to the extent of 85%. As on the date of

passing of the award, he was 22 years old. As on the date of the accident, he was a student of plus one. It has been established that huge amount was spent by him on his treatment. The respondent cannot work physically any more, for the rest of his life, and is completely a disabled man and he has lost his sight and one side of his body has been completely paralysed. His normal life has been affected adversely because of this accident and he cannot do any work.

In the face of the aforesaid grim situation which occurred because of this mishap, it cannot be said that the compensation amount awarded is on the higher side or it is excessive or unreasonable.

The appeal is dismissed.

Whatever amount is lying in deposit shall be made over to the respondent along with interest accrued thereupon upto date on his making an application in this regard.

Interim order passed on 5th July, 1995 and confirmed on 6th March, 1996 shall stand vacated.

28th July, 2006.
(tr)

(V.K. Gupta), C.J.

