

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 40 of 2004.

And

FAO No.223 of 2004

Judgment reserved on: 23.11.2007

Decided on: 30th November, 2007.

FAO No.40 of 2004:

Dharam Dev

.....Appellant

VERSUS

Mohinder Singh and others

.....Respondents

FAO No.223 of 2004:

Mohinder Singh

.....Appellant

VERSUS

Managing Director, HRTC and others

.....Respondents

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The Hon'ble Mr. Justice Deepak Gupta, ACJ.

Whether approved for reporting?' Yes

For the Appellant : Mr. G.R.Palsra, Advocate in FAO No.40 of 2004.
Mr.Lovneesh Kanwar, Advocate in FAO No.223 of 2004.

For the Respondents : Mr.Lovneesh Kanwar counsel for R-1 in FAO 40 of 2004.
Mr.H.S.Rawat, counsel for R-2&3 in FAO No.40 of 2004 & for respondents 1&2 in FAO No.223 of 2004.
Mr.G.R.Palsra, counsel for R-3 in FAO No.223 of 2004.

Deepak Gupta, ACJ

This judgment shall dispose of two cross appeals as they arise out of the same award.

Mohinder Singh (hereinafter referred to as the petitioner) filed a claim petition under Section 166 of the Motor Vehicles Act with the Motor Accident Claims Tribunal, Mandi. In this claim petition it was alleged that on 13.1.2000 he had purchased ration from a shop at

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Village Tilli. It was about 6.15 p.m. He was waiting for a bus to go back to his village. Bus No.HP-33-5409 owned by the HRTC and driven by Dharam Dev came. The claimant gave a signal that the bus be stopped. The bus was stopped by the driver and the petitioner was getting on to the bus when the driver of the bus without waiting for any signal from the conductor started the bus as a result of which the petitioner fell down and suffered injuries. The respondent No.3 did not stop and drove the bus towards Mandi. The petitioner was taken to the Zonal Hospital at Mandi and remained under treatment as indoor patient and has suffered 5% permanent disability. It was alleged that he used to work as mason and carpenter and claimed compensation of Rs.5 lakhs.

The claim petition was contested on various grounds. It was contended that the petitioner had not met with an accident with the bus at all and that he had fallen down from the stairs in his own house and had filed a false and vexatious claim.

The learned Tribunal has held that the claimant suffered injuries in an accident with the bus which occurred due to the negligence of the driver of the bus and therefore the claimant was held entitled to compensation amounting to Rs.46,000/-.

Appeal No.40 of 2004 has been filed by the driver of the bus and Appeal No.223 of 2004 has been filed by the petitioner claiming enhanced compensation.

I have heard Sh.G.R.Palsra, learned counsel for the driver and Sh.Lovneesh Kanwar, learned counsel for the petitioner.

The first question to be decided is whether the claimant suffered any injuries in a Motor Vehicles accident or not. In this regard it would be pertinent to mention that according to the petitioner the

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accident took place on 13.1.2000. FIR in this respect was not lodged till 13.7.2000 i.e. exactly 6 months after the accident took place. The FIR was lodged by Sh.Gopi Chand father of the petitioner in which it was alleged that the claimant had suffered injuries in an accident involving the HRTC bus and that after the accident the driver did not stop the bus and the petitioner was taken to Sanjivan Hospital at Mandi by Prahalad Singh, Kashmir Singh, Pinku, Roshan Lal and Shiv Singh in a taxi. It was further stated that the petitioner was not admitted in Sanjivan Hospital and was then taken to the Government hospital.

The petitioner in support of his case examined Krishan Gopal (PW-1) who produced the record of the Zonal Hospital, Mandi and Dr. Harish Behal (PW-2), Medical Officer, Zonal Hospital, Mandi who had treated the petitioner and had also issued disability certificate in favour of the petitioner. According to this witness the petitioner was admitted in Zonal Hospital, Mandi on 13.1.2000 and was found to have compound fracture in his right leg. The petitioner remained in Hospital from 13.1.2000 till 2.2.2000. Thereafter, plaster was re-applied on 26.4.2000 and removed on 17.6.2000. In cross examination this witness has clearly stated that the hospital record produced in the Court does not contain any medico legal certificate. The witness has also clearly admitted the suggestion that whenever an accidental or injury case is brought to the Hospital the police is informed. He has also admitted the suggestion that the injury could have been caused by a fall on the stairs. The most damaging evidence of this witness as far as the petitioner is concerned is, that he has stated in cross examination that in the record brought by him it is nowhere stated that the petitioner suffered the injury in a motor vehicle accident. The witness has in fact stated that in the OPD slip it is mentioned that the

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petitioner fell from the stairs. Copy of the OPD slip was exhibited as Ext.RX. The witness further explains that the OPD slip was filled by the Medical Officer when the patient was admitted and thereafter the patient was admitted in the ward.

The aforesaid statement of the Doctor leaves me in no manner of doubt that in fact the petitioner had fallen from the stairs in his house. I have seen the OPD slip Ext.RX. In this it is clearly mentioned "history of fall from stairs".

The petitioner examined himself as PW-3 and repeated what was stated by him in the claim petition. He has however denied that he was taken to Sanjivan Hospital and he also denied that he had made any mention to the Medical Officer that he had received injury by fall from the stairs. According to him he was unconscious at that time. This averment that he was unconscious is not supported by the OPD slip where there is no such mention.

Now coming to the evidence of the so called eye-witnesses examined by the petitioner. Prahalad Singh, PW-4 is the first eye-witness. According to him the accident occurred when the petitioner tried to board the bus and the driver suddenly started the bus. He further states that he took the petitioner in an injured condition to Zonal Hospital, Mandi. In cross examination he has admitted that he is the President of the Panchayat. He also admits in cross examination that he was on the opposite side of the road and the door of the bus in which the petitioner was allegedly entering was not visible from his shop where he was sitting. He further states that he arranged to transport the petitioner in a vehicle No.HIS-4242.

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To the similar effect is the statement of Tilak Raj, PW-5 who stated that he and Prahalad Singh took the petitioner to Mandi in a fiat car.

PW-6 Devinder Singh is the owner of Car No.HIS 4242. According to him he also saw the accident and after the accident the witness took the petitioner to Mandi in his own car. This witness states that only Shiv Singh younger brother of the petitioner and he (the witness) had gone with the petitioner to the hospital and they were the only 3 persons who went to Mandi. He has clearly stated in cross examination that Tilak Raj and Prahalad Singh did not accompany them in hospital. The statement of this witness virtually shatters the statements of the claimant and the other witnesses. According to PWs 4 & 5 it was they who took the petitioner to the Hospital whereas PW-6 states that he and Shiv Singh, younger brother of the petitioner only accompanied the petitioner to the Hospital. This clearly shows that a false story has been set up.

In case the petitioner had suffered injuries in an accident and the driver of the bus had fled from the spot the natural reaction of the petitioner and the witnesses would have been to inform the Doctors at the Hospital that the petitioner met with an accident with a bus. In case they had done so this would have been recorded by the Doctor and report would have been made to the police. A medico legal report was bound to be drawn up and FIR would also have been lodged. The Doctor in the OPD slip has specifically recorded that there is a history of fall from the stairs. There is no reason why the Doctor could have recorded something false in the first version given at the Hospital when the claimant was being admitted. The version of PWs 4&5 is totally contrary to the version of PW-6.

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PW-4 is a Pradhan and PW-6 is obviously a well of person since he owns a car. No explanation has come from the claimant or any of the witnesses as to why no FIR was lodged especially when the driver had fled away. It would also not be possible to believe that no passenger of the bus would have reported the matter to the police. Even assuming, that the driver or the conductor would have tried to hide the accident, at least some passengers in the bus would have reported the matter to the police or to the authorities.

The driver of the bus had denied the accident. He had also produced RW-2 Dharam Chand who had clearly stated that he was travelling in the bus and no accident had taken place.

Keeping in view the aforesaid discussion I am clearly of the view that the petitioner has miserably failed to prove that he suffered any injuries in an accident with Bus No.HP-33-5409. The learned Tribunal has not at all appreciated the evidence led on record. In fact the learned Tribunal gravely erred in holding that RW-2 Dharam Chand was a procured witness.

In view of the above discussion the appeal No.40 of 2004 filed by the driver of the bus is allowed and the award of the learned Tribunal is set-aside and the claim petition filed by the claimant is dismissed. The appeal No.223 of 2004 filed by the petitioner is also dismissed. Since the petitioner has filed a totally false and vexatious claim petition he is liable to pay costs assessed at Rs.5000/-.

On a perusal of the evidence and the discussion above, I am of the prima facie opinion that the petitioner Mahinder Singh s/o Shri Gopal Ram, R/o of Village Manyana, P.O. Tilli, Tehsil Sadar, District Mandi, HP, PW-4 Prahalad Singh son of Sh.Basant Singh, R/o

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of Village Tilli, Tehsil Sadar, District Mandi, HP, and PW-5 Tilak Raj son of Shri Harnam Singh, R/o of Village Manyana, P.O. Tilli, Tehsil Sadar, District Mandi, HP, and PW-6 Devinder Singh son of Hoshiar Singh, R/o Village Chhanwari, Tehsil Sadar, District Mandi, HP, have intentionally given false evidence in judicial proceedings before the MACT, Mandi and have committed offences under Sections 191 & 193 of the Indian Penal Code.

However, before taking any further action in the matter I deem it proper that the said persons may also be heard. The Registry is accordingly directed to issue notices to S/Shri Mahinder Singh, Prahalad Singh, Tilak Raj and Devinder Singh as to why prosecution for having committed offences under Sections 191 and 193 of the Indian penal Code be not initiated against them. The notices be made returnable for 11th January, 2008. These notices shall be registered separately and listed before this Bench on 11th January, 2008.

November 30, 2007.
PV

(Deepak Gupta)
Acting Chief Justice.