

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CIMA No.388/2012

Date of Decision: 30/8/2013

Vijay Kumar Vs. J&K SRTC and anr.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing Counsel:

For the Appellant(s) :Mr. Prem Sadotra, Advocate
For the Respondent(s) :Mr.Kamal Gupta, Advocate.

1. Whether approved for reporting in law journals? : Yes/No
 2. Whether approved for publishing in Press/Media? : Yes/No/Optional
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1. Aggrieved of the dismissal of claim petition by Motor Accident Claims Tribunal, Jammu, the claimant (hereinafter to be referred to as “the appellant”) has filed the appeal on hand assailing the findings recorded by Tribunal.
2. Briefly put, the appellant’s case before the Tribunal was that on 12.07.2007, while he was travelling in bus bearing Registration No.JK02Y-362 from Haridwar towards Jammu, the bus collided with an unknown truck coming from the opposite direction. This is stated to have happened at about 6.30 am near Shiver Military Gate, Samba allegedly in

consequence of the bus driver having lost control with the vehicle. Thus, rash and negligent driving was attributed to respondent no.2 during the course of his employment under respondent No.1 – J&K SRTC – the owner of bus. Appellant, alleged to have sustained grievous injuries to his right arm resulting in its amputation, sought compensation to the tune of Rs.23.00 lac from respondents. Respondents in their replies pleaded that the accident was not caused due to fault of respondent No.2 but the same was the result of negligence of the driver of the unknown truck. Parties joined the following issues;

- i) *Whether an accident occurred on 12.07.2007 near Shiver Military Gate Samba by the rash and negligent driving of offending vehicle No.JKO2Y-0362 in the hands of erring driver in which petitioner Vijay Kumar Suffered grievous injuries? OPP*
- ii) *If issue No.1 is proved in affirmative, whether petitioner is entitled to the compensation, if so to what amount and from whom? OPP*
- iii) *Relief.*

3. Upon consideration of the evidence brought on record by the parties during inquiry, the Tribunal found that the appellant has failed to establish that the accident was caused due to negligence of bus driver though it was established that the appellant had suffered injuries due to motor vehicular

accident involving the bus in question and an unknown truck. Thus, holding that since appellant had failed to prove negligence of respondent No.2 in causing the accident, the claim petition was dismissed.

4. The impugned award dated 02.07.2012 has been assailed by challenging the finding, on Issue No.1. It is contended that oral evidence adduced by the appellant sufficiently establishes that the accident was caused due to negligence of bus driver. Learned counsel for respondents has, on the other hand, invited attention of the Court to FIR lodged at the instance of appellant wherein he has admitted that the accident was caused due to rash and negligent driving of an unknown truck which collided with the bus in which appellant was travelling and in view of this piece of contemporary record of occurrence, the appellant could not be heard to turn around and implicate respondent No.2 as the author of accident in question.

5. Heard the rival sides and perused the Record.

6. While appellant appears to have led oral evidence before the Tribunal attributing the accident to rash and negligent driving of the bus in the hands of respondent no.2, the respondents appeared to have examined ASI-Ahmed Din Chouhan besides respondent No.2 to establish the defence plea that the accident was caused by the negligently driven truck coming from opposite direction from the wrong side which caused injuries to appellant as he had kept his arm out of the window which was hit by the offending truck. RW ASI-Ahmed Din Chouhan is the Investigating Officer of the case FIR No.120/2007 for offences under Section 279/338 RPC of Police Station Samba which, according to him, was recorded on the basis of statement made by the appellant to the effect that the accident was caused due to negligence of driver of an unknown truck that came from the opposite direction. He concluded the investigation and on the basis of statements of appellant, his father and other relatives travelling by the same bus came to conclusion that the accident had been caused by the unknown truck. His testimony establishes that he

had prepared the final report bearing Mark-A closing the investigation. The appellant had also placed on record copy of FIR. On the weight of evidence and bearing in mind the fact that the appellant was the maker of FIR wherein the unknown truck coming from opposite direction and being plied negligently was blamed for causing the accident by hitting the bus, in which the appellant and his relatives were travelling, on aside resulting in injuries to the arm of the appellant which he was holding out of the body of bus. The Tribunal decided Issue No.1 against the appellant and dismissed the claim petition in the light of evidence brought on record. The FIR bearing Mark-A and the statement of appellant recorded by ASI-Ahmed Din Chouhan have been duly proved at the inquiry before the Tribunal. Viewed thus, the finding cannot be termed erroneous.

7. Perusal of the FIR reveals that the same was registered on the basis of statement of appellant. Same is the contemporary record of the event giving a clean chit to respondent no.2 and attributing the

accident to the driver of unknown truck. The appellant, in the face of this documentary evidence brought on record by him, is estopped from denying veracity of the first version regarding authorship of crime/accident more particularly when he chose to rely on the same in support of his claim petition. It is not open to the appellant to rely on the FIR, based on his statement made before Investigating Officer, to prove the factum of accident but dispute the veracity of its contents in regard to authorship of accident inconsistent with the version disclosed in FIR. The Tribunal has placed reliance on law laid down by the Hon'ble Apex Court in **2007(5) Supreme 370** and **2009 ACJ 925** to hold that once the allegation made in the FIR has been made a part of claim petition, the Tribunal would be entitled to look into the same and that it was not open for the claimant to rely on one part of the FIR relied upon by him and dispute the other part of it.

8. FIR No.120/2007 having been registered on the basis of statement of appellant and the appellant having relied upon the same in support of his claim

petition, the inevitable conclusion derived by the Tribunal that the accident in which the appellant suffered injuries was not attributable to the rash and negligent driving of the bus, in which the appellant was travelling, in the hands of respondent no.2 and consequently respondents could not be saddled with the liability to pay compensation to appellant for the injuries suffered in the accident, has to be supported.

9. The findings recorded by the Tribunal being justified on evidence and the award passed by the Tribunal not being shown to suffer from any legal infirmity or factual frailty, the appeal is devoid of merit and the same is **dismissed**.

(Bansi Lal Bhat)
Judge

Jammu
30/08/2013

Varun Bedi