

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**FAO No. 349 of 2019**

**Judgment Reserved on 22<sup>nd</sup> April, 2021**

**Date of Decision 13<sup>th</sup> May, 2021**

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**Sahil Kumar**

**...Appellant**

**Versus**

**HRTC and another**

**....Respondents**

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*Coram*

**The Hon'ble Mr. Justice Vivek Singh Thakur, J.**

Whether approved for reporting?<sup>1</sup> Yes

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For the Appellant:

Mr. P.M. Negi, Advocate, through Video Conferencing.

For the Respondents:

Mr. Vikas Rajput, Advocate, for respondent No.1 through Video Conferencing.

Mr. Arun Raj, Advocate for respondent No.2, through Video Conferencing.

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**Vivek Singh Thakur, J.**

In this appeal, challenge has been laid to award passed by Motor Accident Claims Tribunal (hereinafter in short 'MACT') in MAC Petition No. 102 of 2017, titled as Sahil Kumar vs. Himachal Road Transport Corporation (HRTC) and another

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<sup>1</sup> *Whether Reporters of Local Papers may be allowed to see the judgment? Yes*

whereby claim petition preferred by appellant has been dismissed.

2 Appellant had preferred the claim petition for recovery of damages caused to his scooty by debris of wall, which collapsed with hit of bus being driven by respondent No.2 on 30.3.2017 at Bus Stand Hamirpur when it dashed with wall while respondent No.2 was reversing it.

3 It is the case of appellant that Bus Stand Hamirpur is adjacent to his house and is separated by brick wall over a retaining wall and on 30.3.2017 at about 8 AM his scooty was parked in his courtyard adjacent to retaining wall whereupon brick wall of Bus Stand was existing and at that time when respondent No. 2 was parking his bus towards petrol pump of HRTC located at Bus Stand Hamirpur, the bus had hit the wall and with its impact wall collapsed and debris had fallen on scooty of appellant.

4 According to appellant, incident was informed to Police Post, Hamirpur and Insurance Company. However, respondent No.2, in the Police Post, situated at Bus Stand Hamirpur, had entered into a compromise and therefore, report with police was not recorded formally, rather a compromise deed was reduced into writing as Ext.PW1/A, which was signed by respondent No.2 and appellant and also by witnesses.

5 Defence of respondents is denial simplicitor. The occurrence as well as causing of damage to scooty and compromise in the matter by respondent No.2 vide writing Ext.PW1/A have been denied.

6 Appellant, including himself, has examined four witnesses, whereas, respondent No.2 has examined himself as a defence witness.

7 The High Court of Andhra Pradesh in ***National Insurance Co. Ltd. vs. Syeda Najmunnissa and others***, reported in ***2011 ACJ 1222***, referring judgment of Punjab and Haryana High Court in case ***United India Assurance Company Ltd. vs. Kamla Rani***, reported in ***1997 ACJ 1081 (P&H)***, has reiterated that Motor Vehicles Act is not governed by Rules or procedure envisaged by the Civil Procedure Code and Evidence Act and Tribunal is entitled to evolve its own procedure to meet the ends of justice based on principles of justice, equity and good conscience.

8 The Punjab and Haryana High Court in another pronouncement in case ***Sona and others vs. Haryana Roadways***, reported in ***1996 ACJ 421***, has observed that Motor Vehicles Act is legislation which was enacted for the benefit of claimants and therefore, the rule of strict compliance of

provisions of Civil Procedure Code is not to be applied to the accident cases.

9. It is settled legal position that strict principles of Civil Procedure Code and Evidence Act are not applicable to the enquiries to be made in the claim petition. It is also settled that in claim case, evidence is to be evaluated on the basis of principle of preponderance of probability.

10 Appellant, in his examination-in-chief, has reiterated the incident and has stated that he intended to lodge report in Police Chowki, but, respondent No.2 had entered into the compromise by stating that he would indemnify the loss caused to the scooty, whereupon, compromise deed Ext.PW1/A was reduced into writing, which, apart from him, was signed by respondent No.2 Ashok Kumar and witnesses Surender Kumar, Varun Kumar and Nilaksh Chopra. He has further stated that he got his scooty repaired from agency. To substantiate his claim, he had produced the bill Ext.PW1/B on record to prove the expenditure incurred by him for repairing his scooty from the Agency. He has further stated that on refusal of Ashok Kumar to make the payment as agreed, he was constrained to file claim petition.

11 PW2 Varun Kumar, whose signatures are on agreement and compromise deed Ext.PW1/A, which he has

admitted, has stated that he did not remember where the compromise was reduced in writing and he has refused to identify the signatures of respondent No.2 on compromise deed. In his cross-examination, he has stated that agreement was already prepared before his arrival and he was only asked to put his signatures thereon. According to him, he had put his signatures in Police Chowki. He is friend of the appellant but he has deposed in most natural manner and without making any attempt to help the appellant out of the way, he has narrated the facts and circumstances in which he had put signatures on the compromise.

12 PW3 Nilaksh, another witness to the agreement, has identified his signatures in red encircle 'C' and has also identified the signatures of appellant Sahil, respondent No.2 Ashok Kumar and he has reiterated that respondent No.2 had admitted his guilt and had agreed to indemnify the appellant. He has also stated that agreement was reduced into writing in Lady Police Chowki located on the Bus Stand, but, no Lady Constable had signed thereon. According to him, he had arrived on spot after hearing the sound of collapse of wall.

13 Respondent No.2 appearing as RW1, has refuted the compromise arrived at between him and appellant, and has also not admitted his signatures on Ext.PW1/A. However, in

examination-in-chief as well as in cross examination, he has admitted that on 30.3.2017 he was on duty on Bus No. HP-67-1840 which was parked at Bus Stand Hamirpur and he was present at Bus Stand on duty at 8 AM. He has also admitted that mobile number mentioned on agreement below his name belonged to him. Though, he has denied his signatures on agreement, however, it is evident on comparison with naked eye that signatures put on compromise and signatures put by respondent No.2 in his statement recorded in the Court, while appearing as RW1, are having identical strokes leading to clear inference that both signatures have been put by one and the same person.

14 It is also noticeable that at the time of production of compromise on record and exhibiting it as Ext.PW1/A, no objection with respect to its admissibility or mode of proof was ever taken. Denial of execution of a document is one thing, whereas, objection with respect to admissibility or mode of proof is another thing. Even where execution of a document has been denied, a party has a right to raise objection with respect to admissibility as well as mode of proof at the time of its production and exhibition. Undoubtedly, even if a document is admitted in evidence and its mode of proof has not been questioned, then also, it does not mean that contents thereof

have been proved to be genuine. Admissibility of a document in evidence and correctness and/or genuineness of contents thereof are two separate things. Even after admitting a document in evidence, its genuineness as well as relevance can be determined either way on the basis of material on record.

15 As held by the Supreme Court in **P.C. Purushothama Reddiar vs. S. Perumal**, reported in **AIR 1972 SC 608**, that when no objection is raised regarding the admissibility of documents, the documents shall be deemed to have been duly proved in accordance with law and can be read in evidence. This principle has again been reiterated by the Supreme Court in **P.C. Thomas vs. P.M. Ismail and others**, reported in **AIR 2010 SC 905**, observing that once a document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that mode adopted for proving the documents is irregular, cannot be allowed to be raised at any stage subsequent to marking of document as exhibit. This principle has also been followed by Division Bench of this High Court in **Oriental Insurance Company Ltd. vs. Gian Chand and others**, reported in **III(2002) ACC 168 (DB)**.

16 In the present case, at the time of accepting the documents i.e. compromise Ext.PW1/A and bills Ext.PW1/B no

objection with respect to admissibility of these documents and mode of proof was raised. Therefore, these documents are to be considered to have been placed on record in accordance with law and are to be admitted in evidence. However, genuineness, correctness of contents and relevancy thereof may be determined by Court by taking into consideration the contents thereof or other material on record.

17 To prove the quantum of damage suffered by appellant is concerned, he has examined PW4 Lekh Raj as a motor mechanic, who had repaired his scooty. In his examination-in-chief, the said witness has stated that after repairing of scooty, he had issued bill Ext.PW1/C, however, there is no such bill on record. The appellant as PW1, in his statement has stated that bills of repair are Ext.PW1/B. As a matter of fact, invoice Nos. 322, 323 and 324 issued by/on behalf of Ms/ Narainder Motors Hamirpur have been placed on record by appellant as Ext.PW1/B. Leaving this apart, even if it is considered that bills referred as Ext.PW1/C in statement of PW4 are the bills referred in statement of PW1 as Ext.PW1/B then also I find that these bills are of no help to appellant for reasons enumerated hereinafter.

18 These bills, in fact, are not bills, but invoices issued by or on behalf of M/s Narainder Motors Hamirpur. PW4 in his statement nowhere stated that how he is linked with M/s

Narainder Motors. In his examination-in-chief, he has stated that these bills were issued by him, whereas, in his cross-examination, he has stated that these bills were prepared by Manager Pankaj, who has left the job. With whom Pankaj was Manager and from which concern, he had left the job is not clear from statement of PW4. Further PW4 has also not stated that in which capacity he had issued these bills. He, in his statement, has nowhere stated that he is working as an employee or otherwise associated with M/s Narainder Motors. He has simply stated that he is motor mechanic and he had repaired the scooty of appellant and had issued the bills to appellant and appellant had made payment thereof.

19 Further, it is also not clear that to whom payment was made, either to M/s Narainder Motors or to PW4 and if to PW4 in which capacity he had received the payment whether it was received as an individual or an employee of M/s Narainder Motors and in case, he had repaired the scooty as an individual motor mechanic then how and why he had issued the bills on behalf of M/s Narainder Motors. All these questions raise doubt about genuineness of these bills and amount claimed to have been spent for repair of scooty as mentioned in these bills.

20 In his cross-examination, appellant has stated that he had purchased the scooty for a consideration of Rs.50-55

thousand 3-4 years ago. Appellant has not produced registration certificate as well as insurance of vehicle on record. In compromise deed, it is stated that matter was also reported to Insurance Company, but, appellant is completely silent as to whether any claim was submitted to Insurance Company or not and if so, whether any claim was received by him from Insurance Company or not. Even if it is considered that he has not claimed anything from Insurance Company, then, also there is no cogent and reliable evidence on record to establish the actual expenditure incurred by appellant for repairing the scooty as bills placed on record have been issued by and on behalf of M/s Narainder Motors, whereas, PW4 is completely silent about his link or association with M/s Narainder Motors. No person from M/s Narainder Motors has been examined. Though, it is claimed that amount mentioned in these bills has been paid by appellant, but, to whom or through which mode is not clear as these bills Ext.PW1/B are not bills or cash memos but the invoices without indication as to whether these were issued after receipt of payment or before that. No proof of mode of payment against the invoices placed on record has been produced and proved.

21 As scooty was bought about four years ago for a consideration of Rs.50-55 thousand and therefore, after four years its value must have decreased. As per norms adopted by

Insurance Company, within a period of 3 to 4 years, value of vehicle is assessed after depreciating 40% value thereof. Though no proof has been placed on record with respect to actual purchase value of scooty, however, taking it as Rs.55,000/-, as claimed by appellant, after four years its value by applying 40% depreciation would have been Rs.33,000/-; whereas, appellant has placed on record invoices Ext.PW1/B for Rs. 34571/- as a cost of repair of scooty. It is also pertinent to note that in claim petition a claim of Rs.1,00,000/- has been putforth.

22 For evidence on record, referred supra, I find that appellant has failed to establish on record the actual quantum of expenditure incurred by him for repairing the scooty. Therefore, in absence of cogent and reliable evidence, it is not possible to determine the quantum of damages suffered by appellant.

23 In view of discussion herein-above, I find that all grounds in reference regarding damage probability caused to scooty and compromise arrived at between appellant and respondent No.2 has been established on record. However, evidence to quantify the damage for which appellant is entitled has not been established by leading cogent and reliable evidence.

24 However, it stands proved on record that incident had occurred wherein debris of wall, collapsed with hit of bus

owned and possessed by respondent No.1 being driven by its employee respondent No.2, had damaged the scooty of appellant. But, respondent No.2 despite having been entered into compromise has denied the occurrence and his undertaking to indemnify the appellant. Respondent No.1 Corporation has also followed the same suit. Therefore, respondent No.2 and its employer, respondent No.1, are liable to compensate appellant. It is also matter of record that quantum of loss has not been proved by leading cogent, reliable and satisfactory evidence. At the same, it is also a hard fact that because of false denial on the part of respondents, appellant has been relegated to the MACT as well as this Court and thus, appellant, deserves to be compensated, at least for that and therefore, respondents are held liable to pay Rs.15,000/- in lump sum to appellant on this count. Accident had occurred during course of employment of respondent No.1 while he was performing his official duty. Therefore, being employer respondent No.1 Corporation is directed to pay Rs.15,000/- to the appellant on or before 15<sup>th</sup> June, 2021.

Appeal is allowed partly in aforesaid terms.

**May 13, 2021**  
**(ms)**

**(Vivek Singh Thakur)**  
**Judge**