

UNREPORTED

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO No. 654/2002

M/S HARYANA ROADWAYS Appellant
Through: Mr. Yashpal Rangi, Advocate
versus
PREM PRAKASH SURI AND OTHERS Respondents
Through: None

% Date of Decision : September 13, 2011

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T (ORAL)

: REVA KHETRAPAL, J.

1. This appeal filed by M/s. Haryana Roadways seeks to impugn the judgment of the Motor Accidents Claims Tribunal dated 27.04.2002 whereby an award in the sum of ₹ 6,15,000/- (inclusive of interim compensation) with interest at the rate of 9% per annum from the date of the filing of the petition till the date of the award was passed in Petition No.90/94 in favour of the respondents No.1 to 4 and against the appellant.

2. The aforesaid petition pertained to a road accident which took place on 08.11.1993 within the jurisdiction of Police Station Mangol Puri, involving vehicle No.HR-12-8618 belonging to the Haryana Roadways. The offending vehicle allegedly hit the two-wheeler scooter on which one Prem Prakash Suri was travelling with his wife. While the husband sustained injuries, the wife succumbed to the injuries sustained by her. Two Claim Petitions were filed claiming compensation for the injuries sustained by Shri Prem Prakash Suri and for the untimely demise of his wife, which culminated in the passing of the aforesaid judgment and award dated 27.04.2002.

3. It also deserves to be mentioned at the outset that though initially the claimants/respondents No.1 to 4 entered appearance and contested the petition, subsequently for reasons best known to them the said respondents chose to absent themselves from the proceedings. Notice to the respondent No.5-driver was dispensed with on February 24, 2009 and thus this Court did not have the opportunity to hear the respondents.

4. The sole contention of Mr. Yashpal Rangi, the learned counsel for the appellant-M/s. Haryana Roadways, is that the judgment of the Motor Accidents Claims Tribunal deserves to be set aside for the reason that the respondents No.1 to 4, who were the claimants in the said petition, have failed to establish on record that the accident was the outcome of the rash and negligent driving of the respondent No.5, the driver of the Haryana Roadways bus, which caused the accident. The learned counsel has heavily relied upon the testimony of RW1 Banwari Lal, the driver of the bus in question and RW2 Mahabir Singh, the conductor of the said bus, to contend that the testimonies of the aforesaid two witnesses deserve to be believed while the testimony of the respondent No.1, the husband of the deceased, who had also sustained injuries in the accident, is unworthy of credence. I pause at this juncture to note that the testimonies of the aforesaid witnesses are not available on the record of the learned Tribunal which was requisitioned by this Court for the purpose of deciding the present appeal. It is, therefore, deemed expedient to reproduce the

portion of the judgment which deals with the testimonies of the said witnesses:-

*“3. The first thing to be decided in these two petitions is whether Banwari Lal the driver of the respondents no.2 was rash and negligent and caused the accident by his driving. Prem Prakash Suri injured is an eye witness in these cases. He makes a statement in the witness box, saying that he along with his wife was going Peera Garhi Flyover on his two wheeler scooter when bus bearing No.HR-12-8618 belonging to respondent No.2 **came from behind and hit his scooter** on account of which his wife fell down on the road side and he also fell down along with his scooter towards the pavement and the wheel of the bus ran over his wife. He has deposed that the vehicle was being driven rashly and negligently, that the bus was stopped a little ahead, that till the bus stopped the body of his wife was dragged along with bus, that the bus stopped a little before the police barrier, that his wife was lifted by the members of the public, that he immediately took his wife in a three wheeler scooter to Jaipur Golden Hospital where his wife was declared dead. The First Information Report in the case and the rukka on the basis of which F.I.R. was recorded have also been placed on record. The rukka is Ex.PW1/13 and the charge-sheet is Ex.PW1/11. The rukka was recorded on the statement of Prem Prakash Suri himself. There is no contradiction between his statement given at that time and his statement given in the court.*

4. The witnesses of the respondents, however, have a different story to tell. RW1 Banwari Lal says that the accident took place when his bus was passing through the police barricade. There were two barricades put in such a manner that each vehicle had to pass slowly and in a zig-zig fashion to cross both of them. The driver says that when he had crossed the first barricade the two wheeler scooter of the petitioner Prem Prakash Suri tried to overtake his bus and since there was not enough space for the scooter to overtake, the scooter hit against barricade and fell down. He also says that the police removed the barricade and asked the bus to move ahead and thereafter stopped the bus and took him in custody. His version is corroborated by respondent no.2 (sic. RW2) Mahabir Singh. The testimonies of RW1 and RW2 are difficult to accept. If the accident had taken place, the way as depicted by respondent no.1 and 2, there could be no occasion for the wife of Prem Prakash Suri to be run over by the bus. Neither the rukka nor the site plan Ex.PW1/15 show that there was any barricade where the accident took place. The post mortem report Ex.PW1/27 shows severe head injury and various other injuries in the body. May be no part of the body was actually crushed under the wheel but the number of injuries in the body do suggest that the deceased was dragged for quite some distance. If there had been no impact between the scooter and the bus, there could not have been so many injuries on the body of the deceased. Nor could she have been dragged by the bus. I am convinced that the accident took

place in the manner depicted by the petitioner Prem Prakash Suri. The bus had to stop because of the barricade at some distance from the spot of the accident. I hold that the accident was caused on account of rash and negligent driving of respondent no.1. Both the respondents are liable to compensate the petitioner Prem Prakash Suri for injuries caused to him and to petitioners Prem Prakash Suri and his children for causing death of Anand Pyari Suri. These issues are decided accordingly.”

5. After perusal of the aforesaid portion of the award, I find no merit in the contention of the learned counsel for the appellant that the accident was not the result of the rash and negligent driving of the respondent No.5-driver, but was in fact the outcome of the negligence of the husband of the deceased. I say so for the reason that while the version of the accident given by the claimants as set out in the Claim Petition is corroborated by the testimony of PW1 Prem Prakash Suri (the husband of the deceased), the pleadings of M/s. Haryana Roadways, the appellant, are at variance with the pleadings of the respondent No.5-driver as also the evidence adduced by the appellant, as is clear from the following.

6. The version of the accident as set out in the Claim Petition is that, on the fateful day, *the bus driven by the respondent No.5 in a very rash, negligent and careless manner, had hit the scooter of the respondent No.1* from the right side, as a result of which both the riders, viz., the respondent No.1 and his deceased wife, along with the scooter, fell down on the left side, and the deceased was dragged by the said bus for some distance before the bus was eventually stopped by the respondent No.5-driver. The aforesaid version of the accident as set out in the Claim Petition is *in tandem* with the version of the accident given by PW1 Prem Prakash Suri in the witness-box as reproduced hereinabove.

7. A look now at the version of the accident given by the respondent No.5, the driver of the vehicle, in the written statement filed by him, which, for the sake of convenience, is reproduced hereunder:-

“It is submitted that at the alleged place of accident on 8.11.1993 the Police personnel has placed the barricade on the road for checking and the distance between the barricade was about 8-9 feet. Without realizing the paucity of space and against the rules of overtaking, the

*petitioner tried to take forcible entry into the barricade. When the bus in question has already entered into the barricade and half way of crossing it (sic.), **the petitioner entered the barricade and hit the corner of the left barricade** placed by the Police and fall on right-side (sic.) and the pillion rider of the said scooter No.DDI-4947 came under the rear left wheels of the bus No.HR-12-8618 and sustained fatal injury alongwith the petitioner. Hence the alleged accident occurred purely due to the own fault and negligence of the petitioner himself.”*

8. Interestingly, an altogether different version is given by the appellant-M/s. Haryana Roadways in the written statement filed by it, wherein it is stated that *the driver of the scooter in his anxiety to cross the barrier alongwith the bus hit the bus in question*, as a result of which the woman riding pillion on the scooter fell down and sustained injuries and died due to those injuries. Thus, the appellant (Haryana Roadways) and the respondent No.5 (driver of Haryana Roadways) have given two different versions of the accident. It has been rightly observed by the learned Tribunal that if the accident had taken place as delineated by the appellant, there would have been no occasion for the deceased to be run over by the bus in question. The

fact that the deceased came under the rear left wheel of the bus is admitted in the written statement filed by the respondent No.5.-driver (Banwari Lal), who appeared in the witness box as RW1. The said witness as well as RW2 Mahabir Singh, the conductor of the bus in question, altogether failed to substantiate the version of the accident delineated in the pleadings of the appellant. What RW1 stated in the witness box was that since there was not enough space for the two-wheeler scooter to overtake the bus, *the scooter hit against the barricade and fell down.* A bare glance at the site plan Exhibit PW1/15, however, does not show any barricade having been placed at the spot of the accident.

9. From the aforesaid, it is amply clear that there are three different versions of the accident on the record. The first version is the version of the accident given by the respondents No.1 to 4/claimants in their pleadings that the bus came from behind and hit the scooter, which version has been corroborated by PW1 Prem Prakash Suri, the husband of the deceased. The second version of the accident is the version given by the driver of the bus (the respondent

No.5), who has stated in his pleadings as well as in his evidence that the bus in question was ahead of the scooter, the petitioner entered the barricade placed by the Police and hit the left corner of the barricade in the process of attempting to overtake the bus. The third version of the accident is the version given by the appellant-M/s. Haryana Roadways, which, in its written statement, has stated that the driver of the scooter hit the bus in question, as a result of which the woman riding pillion on the scooter fell down. The inescapable conclusion is that the version of the accident given by the driver of the bus and the owner of the bus are not only contradictory to the version of the accident given by the husband of the deceased, who was driving the scooter, PW1 Prem Prakash Suri, but both the aforesaid versions are also at variance with each other nor in fact do they tally with the version of the accident given in the testimonies of RW1 and RW2, the driver and the conductor of the offending bus respectively.

10. In view of the aforesaid, I am not able to find any cogent justification for differing with the findings of the learned Tribunal, which has held that the testimonies of RW1 and RW2 are difficult to

accept. Further, as noticed by the learned Tribunal, the injuries sustained by the deceased corroborate the version given by the respondent No.1, the husband of the deceased, in that the said injuries are suggestive of the fact that the deceased was dragged for quite some distance by the offending bus.

11. There is, thus, no merit in the present appeal. The appeal is accordingly dismissed. There shall be no order as to costs.

12. The records of the Claims Tribunal shall be sent back forthwith.

**REVA KHETRAPAL
(JUDGE)**

September 13, 2011
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