



FAO-1784-2007 (O&M)

-1-

233

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**FAO-1784-2007 (O&M)
Date of Decision : 20.11.2024**

National Insurance Co. Ltd.

....Appellant

VERSUS

Subhash and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Manu Loona, Advocate
for the appellant

Ms. Jyoti Choudhary, Sr. Penal Counsel with
Ms. Gaganpreet Kaur, Advocate for respondent No.2 (DTC).

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SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred by the Insurance Company against award dated 04.12.2006 passed in claim petition filed under Section 166 of the Motor Vehicles Act, 1988, by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') for setting aside the finding of the Tribunal regarding contributory negligence.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 08.02.2004 at about 2.30 P.M, Yash Sharma (since deceased) along with his brother Umesh were proceeding from DLF-Phase-III to Karan Petrol Pump, when he was driving scooter No.HR-26-E-0416 with Umesh as pillion rider. As the scooter reached near Chawla Chick-Inn situated on Mehrauli Road, Gurgaon, a DTC Bus bearing registration No.DL-1P-B-6553 came from behind being driven by respondent No.2 rashly and negligently and hit at the back of the scooter and as a result thereof, Yash Sharma (since



deceased) was crushed under the bus while Umesh jumped and fell aside. As a result of accident, Yash Sharma suffered injuries which proved fatal.

3. Upon notice of the claim petition, respondents appeared and filed written statement denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the impugned accident was caused by respondent No.2 by driving vehicle No.DL-1P-B-6553 rashly and/or negligently? OPP

2. If issue No.1 is proved whether the petitioner are entitled to any amount of compensation. If so, how much and from whom? OPP

3. Whether respondent No.3 is exonerated from the liability for the reasons indicated in the preliminary objections? OPR(3)

4. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.3,47,475/- alongwith interest @ 7% per annum. However, learned Tribunal held that case involves contributory negligence, attributing 75% liability on the driver of the offending vehicle and 25% liability on the deceased. Consequently, the claimants were awarded compensation of Rs.1,50,000/-. Hence, the insurance company filed the present appeal challenging the finding regarding contributory negligence.

**SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES**

6. The learned counsel for the insurance company contends that the learned Tribunal has erred in holding the case in hand as a case of contributory negligence. He, therefore, prays that the present appeal be allowed and finding of the Tribunal qua contributory negligence be set-aside.

7. Learned counsel appearing for respondent No.2 argues on the lines of the award dated 04.12.2006 and prays that the present appeal be dismissed.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant paragraph of the award dated 04.12.2006 is reproduced as under:-

“9. To prove this issue, claimants have examined Umesh Sharma as PW5 who was stated to be pillion rider and to corroborate him in the shape of pendency of criminal case against respondent no.2, claimants examined Surinder Kumar, Ahlmad as PW1 and constable Pavitar Kumar as PW2.

10. The evidence of Constable Pavitar Kumar is only regarding registration of FIR Ex.P3 against respondent no.2. The statement of PW1 Surinder Kumar is about pendency of criminal case against respondent no.2.

11. Umesh Sharma, who was the eye witness being pillion rider on the scooter of the deceased, deposed that on the date of accident i.e. 8.2.2004, at about 2.00 PM, he being pillion rider on scooter no.HR-



FAO-1784-2007 (O&M)

-4-

26-E-0416 being driven by deceased were proceeding from Sikanderpur Ghosi to Karan Petrol Pump situated opposite Sahara Mall, Gurgaon, and as they reached opposite Chawla Chick-inn, bus no. DL-1P-B-6553 coming from behind hit against the scooter and as a result Yash Sharma fell under right rear wheel of the bus and was crushed. He further stated that they had to take a right turn as such they were towards right side of the road. On being cross-examined, the witness stated that he had seen the bus after it had hit the scooter and stated its speed to be about 50 KMPH. He admitted that he did not see the bus approaching the scooter. He admitted that the place of accident is a crowded place as it is close to Sahara Mall. He further admitted that he learnt the name of driver after FIR was lodged and police had arrested him.

On the other hand, respondent no.2, bus driver, appeared as RW1 and gave version that he was driving the bus which was enroute Noida to Gurgaon and that as the bus reached near DLF, a scooterist came from behind driving it rashly and negligently and hit against divider and lost balance. On being cross-examined, witness denied that after being hit by the bus, scooterist was crushed under the rear right wheel. Admitting that he has been facing trial, further stated that he has been acquitted of the charge. He further stated that he represented the Department of his false implication and that as the bus was in city area, it could not be at fast speed.



RW3 Ranbir Singh, who was Conductor of the bus, was examined and deposed that on 8.2.2004 he was on duty as Conductor on the bus which was enroute Noida to Gurgaon and in the afternoon as the bus reached Chakarpur, scooterist coming from behind tried to over take the bus and in the process entangled himself between the bus and divider of the road and, thus, fell on the road and suffered head injuries. He deposed about the complaint book having been issued to him and proved certificate Ex.R3, duty slip Ex.R4 and that the passengers having mentioned the sequence of events in Ex.R1. He stated about the accident being due to rash and negligent driving of scooterist who was all alone. On being cross- examined, he stated that he was at the rear seat of the bus and was standing just near entrance of the door towards right side and had, thus, seen the scooter as it came parallel to the bus. He spoke about the copy of report Ex.R1 regarding incident submitted to the Department.

Respondents examined RW4 Pardeep, one of the passengers in the bus, who stated that he was travelling in DTC bus and that a scooterist who was trying to overtake the bus from right side came between the bus and the divider and in this process collided with the divider and due to which fell down and suffered injuries. He proved his writing Ex R1 in the complaint book of the bus.

RW2 Lal Singh, Assistant Traffic Inspector, has proved issuance of complaint book to the driver stating that a complaint book had been issued in the name of driver and not by bus number.



12. *The death of Yash Sharma has not been disputed even by the respondents. Only the manner has been disputed. While as per PW5 Umesh Sharma, who was pillion rider on scooter of deceased, bus hit against scooter from its backside and deceased was crushed under the right rear wheel, however, as per respondents, the deceased struck against divider of the road and suffered head injury of his own. Claimants examined Dr. Kuldeep Singh who conducted post mortem examination on the body of deceased. Though he did not state about crush injury but injury no.1 found on the dead body has been mentioned as a lacerated wound 25 x 10 cm. placed obliquely on the lower abdominal wall and pelvis including scrotum and perineum. Scrotum and penis crushed, urinary bladder ruptured and visible on the surface. PW5 Umesh Sharma has specifically deposed that they were to turn right. Taking the situation given by PW5 Umesh Sharma as admitted position that bus was coming from their back and they were to turn right and the deceased was crushed under rear right wheel, certainly indicates that negligence was contributory of scooter driver and bus driver. PW5 Umesh Sharma only states that they had brought the scooter towards right side. He does not state that the deceased had given a signal to turn right. That besides to take a right turn, scooterist was supposed to wait and see and be cautious that the road was clear to take right turn, before he negotiated to take right turn. The action on the part of deceased of taking right turn without seeing that the road was clear and the traffic following him and the*



FAO-1784-2007 (O&M)

-7-

point of impact being rear right side wheel, statement of Umesh Sharma that bus had struck the scooter at back, does not appear probable, as in that situation the point of impact would have been the front wheels or the front portion of the bus and not rear side wheel. Umesh Sharma is real brother of deceased and would certainly be an interested witness. But the fact situation that emerges that point of impact being the rear right wheel and PW5 Umesh Sharma admitting that they were processing turn towards right, certainly scooter driver was required to be cautious and see that road was clear before negotiating turn, thus, suggesting that the scooter driver as well as bus driver both have contributed in the causing of accident. Though RW1 Ram Mehar denied the total involvement of bus but injury no.1 as found on the dead body of deceased in the post mortem report, indicating crush injury, certainly suggests involvement of bus and was not possible due to fall. Although respondent no.2 may have been acquitted vide Judgment dated 15.4.2005 by criminal court, however, criminal case has to be decided prosecution proving the guilt of accused beyond reasonable shadow of doubt, while claim case has to be decided on probabilities and by preponderance of evidence. Although Judgment has not been exhibited but the procedure being summary, can be taken into consideration. That besides, mere acquittal is no ground to dismiss the claim petition. Similarly, even the deposition of RW3 Ranbir Singh, Conductor, would again be of interested witness being colleague of respondent no.2 and RW4



Pardeep is a passenger, who made entry in the complaint book, copy Ex.R1. Even his endorsement finds mention that scooter after striking with divider was hit with the bus. Therefore, in any case the involvement of bus does stand proved. Representation Ex.R2 is in the shape of self serving admission on behalf of respondent no.2. RW2 Lal Singh has only brought the complaint book and is not witness to the occurrence. In Andhra Pradesh State Road Transport Corporation versus Jayalakshmi and others, 2006 ACJ 2620, wherein also the accident occurred in the process of bus taking right turn without signal unmindful of the traffic from the rear, it was held to be a case of contributory negligence. Deposition of PW1 Surinder Kumar is about pendency of criminal case but since the case already stands disposed of, therefore, his evidence is immaterial. Although claimants relied upon Judgments New Majha Transport Co-operative Society Limited and another versus Surjit Kaur and another, 1[1984] ACC 237, Prem Kanwar and others versus Aadam and others, III [2006] ACJ 917, Dilip versus Director Nahru Bal Mandir and others, II [1992] ACC 81 and Sukhdev Singh and others versus Vinod Kumar and others, III [2003] ACC 710, but none of them has any applicability as Judgment in New Majha's case [supra] was on the point of motive of false implication; Judgment in Prem Kanwar's case [supra] was on the point that FIR and charge sheet proved the involvement of vehicle; Judgment in Sukhdev's case [supra] was on the point that Tribunal while deciding may not go into technicalities



and mystic maybes. The area where accident took place was a crowded area and bus was expected to be at a slow speed and had it been in a controllable speed, the impact would have certainly reduced. Taking all these factors into consideration, the contribution is assessed as 75% of bus driver and 25% of deceased himself. The issue is decided accordingly.”

ANALYSIS OF THE RECORD

11. Evidence by way of affidavit of PW5 Umesh Sharma, the pillion rider and brother of the deceased, testified that the bus hit the scooter from behind as the deceased attempted a right turn. He admitted that no signal was given while executing the turn. His testimony, while credible in establishing the sequence of events, reflects a degree of bias as he is an interested witness. Nevertheless, his account of the bus striking the scooter aligns with the medical evidence and the location of the injuries.

12. Evidence by way of affidavit of Dr. Kuldeep Singh who conducted the post-mortem examination, described the injuries sustained by the deceased, including a lacerated wound measuring 25 cm x 10 cm on the lower abdominal wall and pelvis, crushed scrotum and penis, and a ruptured urinary bladder. These injuries are consistent with a “crush injury,” decisively indicating the involvement of the bus. The nature and extent of injuries eliminate the possibility of the accident being caused solely by a fall after hitting the divider.

13. Evidence by way of affidavits of RW3 (Ranbir Singh) and RW4 (Pardeep), who are the conductor and one of the passengers of the offending bus, both asserted that the scooter struck the road divider before the bus made contact.



Their testimonies, while attempting to exonerate the bus driver, are self-serving and lack independent corroboration. RW4's entry in the complaint book mentions that the scooter struck the divider first; however, this assertion does not negate the established fact that the bus ultimately crushed the deceased.

14. Evidence by way of affidavit of RW1 (Ram Mehar), the bus driver, denied any involvement of the bus in the accident. However, his denial stands contradicted by the medical evidence, the post-mortem findings, and the corroborated testimony of PW5. His testimony, therefore, lacks credibility.

15. Further documentary evidence i.e. the complaint book entry (Ex.R1) mentions both the scooter striking the divider and the involvement of the bus. While it attempts to reduce the liability of the bus driver, the post-mortem findings and other testimonies substantiate the bus's direct involvement in the accident.

16. A perusal of the record shows that the deceased, while negotiating a right turn, failed to signal or ensure that the road was clear. The pillion rider's (PW5) admission that no signal was given further corroborates this lapse. The point of impact under the rear right wheel of the bus suggests that the deceased's maneuver was abrupt and lacked the necessary caution.

17. Perusal of the award further show that the accident occurred in a crowded area where the bus driver was expected to operate the vehicle at a controlable speed. The evidence indicates that the bus driver failed to adhere to this standard, resulting in a collision that could have been mitigated or avoided entirely, had the vehicle been operated with due care.

17. Upon thorough examination of the evidence and circumstances, this Court concurs with the Tribunal's findings that the deceased was partially at fault



for the accident due to a failure to signal and exercise due caution while making the turn. However, the predominant cause of the accident was the bus driver’s negligence, specifically in operating the vehicle at an excessive and unsafe speed. The apportionment of liability 75% to the bus driver and 25% to the deceased is equitable and supported by the evidence on record.

18. In view of the above, the present appeal is dismissed being devoid of any merit and the award dated 04.12.2006 passed by the learned Tribunal is upheld.

19. Pending applications, if any, also stand disposed of.

November 20, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No