

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

**FAO No.549 of 1992 (O&M)
Date of decision: 08.12.2015**

Punjab State through the Secretary Transport Department and
another

....Appellants

Versus

Parkash Kaur and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. P.S. Mattewal, Advocate
for the appellants.

Mr. M.L. Saggar, Sr. Advocate
with Mr. Gaurav Grover, Advocate
for respondents No.1 and 2.

RITU BAHRI J. (Oral)

The present appeal has been filed by the appellant-
Punjab State through the Secretary, Transport Department, against
the award dated 31.10.1991, passed by Motor Accident Claims
Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'),
whereby the claimants have been awarded a compensation of
Rs.6,36,120/-, on account of the death of Sukhdev Singh in a
motor vehicular accident, which took place on 08.05.1989.

On 08.05.1989 at 06:30 a.m., Sukhdev Singh left the
village Ramgarh Nangal on tractor driven by Kashmira Singh. He

was sitting on the left mudguard of the tractor whereas Baljit Singh was sitting on the right mudguard. The tractor was hooked to trolley loaded with fodder upon which Amarjit Singh was sitting. They were to go to Fodder Market, Ludhiana. The tractor-trolley was proceeding on G.T. Road and when at about 07:00 a.m., it was about eight kilometers short of Ludhiana from where a kacha pathway bifurcated for village Manj Phaguwal, Punjab. A Punjab Roadways bus bearing No.PJG-4018 of Amritsar Depot driven by Kirpal Singh, came from the side of Jalandhar. It was being driven rashly and negligently at a high speed. The driver of the tractor-trolley tried to take the vehicle on the left hand side kacha portion of the road, but in the meanwhile, the bus hit against the tractor-trolley from behind. As a result of said impact of collision, Sukhdev Singh fell from the tractor and died at the spot.

Consequently, the claimants-respondents filed a claim petition before the Tribunal.

Upon notice, respondent No.1, filed the written statement. He did not admit the collision of the bus with the tractor-trolley and pleaded that the accident had in fact taken place due to negligence of Kashmira Singh, the driver of the tractor-trolley. The tractor-trolley was overloaded. The driver of the tractor-trolley tried to overtake the vehicle going ahead of it without noticing the traffic flowing from behind. When the tractor-trolley reached the turning of village Mang Phaguwal, its driver

applied brakes as a result of which, Sukhdev Singh fell down and received injuries.

Respondents No.2 and 3 filed their separate joint written statement. They also denied that bus was being driven rashly and negligently. They pleaded that the accident took place due to negligence of the tractor-trolley's driver who tried to overtake a vehicle in a rash and negligent manner and in this process, the driver of the tractor-trolley did not care the traffic coming from behind and as a result of which, right side back portion of the trolley struck against the left side of the bus. The deceased who was sitting on the mudguard fell down and was crushed under the wheels of the trolley.

From the pleadings of the parties, following Issues were framed:-

- 1. Did Sukhdev Singh died as a result of rash and /or negligent driving of bus No.PJG-4018 by Kirpal Singh, respondent No.1?***
- 2. Did accident take place on account of negligence of the tractor driver as alleged in the written statement filed by the respondents?***
- 3. Is the claim petition bad for non-joinder of necessary parties?***
- 4. Are the petitioners the legal representatives of Sukhdev Singh deceased?***
- 5. To what amount of compensation, if any, the applicants are entitled?***
- 6. Relief.***

The claim petition was partly accepted by the Tribunal and a sum of Rs.6,36,120/- was awarded as compensation on account of death of Sukhdev Singh along with future interest at the rate of 12% per annum from the date of filing of the petition till its realization.

Before the Tribunal, Kashmira Singh-driver of the tractor-trolley appeared as PW-1 and deposed that on the day of accident at about 07:00 a.m., when their tractor-trolley loaded with fodder reached near the place from where a pathway leading to village Manj Phaguwal bifurcates from the G.T. Road, a bus bearing No.PJG-4018 of Punjab Roadways came there at a high speed. It being not under control of the driver struck against the trolley of their tractor. As a result of which, Sukhdev Singh fell down and the trolley was pushed forward. Sukhdev Singh attempted to stand up, but in the meanwhile, the bus hit him and it again struck on the back of the trolley. Sukhdev Singh sustained multiple injuries and died at the spot. He has further stated that at the time of accident, their tractor-trolley was proceeding on the left hand side of the road. This witness is author of FIR and the copy of which is Ex.A-1. This witness, though, admitted that fodder was stocked about 1 ½ ft. higher than the body of the trolley, but he further stated that he had seen the approaching bus in the mirror which was attached to the silencer of the tractor.

Baljit Singh appeared as PW-2 and has corroborated

the statement of Amarjit Singh. He too has stated that the offending bus was being driven rashly and negligently by Kirpal Singh. As a result of which, the bus struck the trolley from behind. It has appeared in his cross-examination that the bus had hit in the middle of the trolley from behind. He too has stated after his fall, Sukhdev Singh tried to get up, but the bus again hit the trolley and as a result of which, Sukhdev Singh died.

The case of the respondents was that the trolley was overloaded and the driver of the tractor was not in a position to notice the bus coming from behind. He all of the sudden while trying to overtake another vehicle brought tractor-trolley in the middle of the road, without noticing the traffic coming from behind and as such, the accident took place due to negligence on the part of the tractor-trolley's driver.

The written statement and deposition of Kirpal Singh-RW-1, were totally different from each other. In the written statement, it was stated that the tractor's driver had tried to overtake the vehicle in a rash and negligent manner and in this process, the driver of the tractor-trolley did not care for the traffic coming from behind and as a result of which, the bus hit the back portion of the trolley. While appearing as RW-1, he has stated that when the bus came near Ladowal bridge, he noticed that the tractor-trolley was approaching G.T. Road, from the kacha pathway. While taking to the G.T. Road, the driver of the tractor

did not care to see right and left. He accelerated the speed of the tractor and when it came upon G.T. Road, it jolted and suddenly, the person sitting on the left side mudguard fell down and was run-over by the trolley. On this the tractor-trolley's driver brought the tractor-trolley to a sudden halt. According to him, he himself applied the brakes but since, it was raining at that time, the road was slippery and the left side of his bus grazed against the right side of the tractor-trolley. He further admitted that he noticed the tractor-trolley entering G.T. Road from a distance of 200 yards and his bus grazed against the tractor-trolley, when it had covered about 50 yards on the G.T. Road.

The Tribunal has discarded the version of RW-1 in view of the contradictions made in the written statement and at the same time accepted the version of both the witnesses i.e. PW-1 and PW-2. Hence, the Tribunal has returned the finding on Issues No.1 and 2 in favour of the claimants-respondents.

Learned State Counsel has tried to make out a case that the tractor-trolley was overloaded and the driver of the tractor-trolley tried to overtake the vehicle going ahead of it without noticing the traffic coming from behind. When the tractor-trolley reached the turning of village Mang Phaguwal, its driver applied brakes as a result of which, Sukhdev Singh fell down and received injuries.

This argument will not hold good as the driver of the

bus i.e. RW-1, himself has admitted that he had seen that the tractor-trolley was approaching G.T. Road, from the kacha pathway from a distance of 200 yards. Once, the driver had noticed the tractor-trolley was approaching G.T. Road, then he was required to be more careful and slow down his speed. The version of RW-1 that when the tractor-trolley jolted with, then the person sitting on the left side of the mudguard fell down cannot be accepted as the other witness i.e. PW-2 has categorically stated that when Sukhdev Singh fell down he tried to get up, but the bus again hit the trolley and as a result of which, Sukhdev Singh died. Thus, the finding recorded by the Tribunal on Issues No.1 and 2 does not require any interference.

Dismissed.

(RITU BAHRI)
JUDGE

08.12.2015

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