

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5966 of 2002

Date of Decision: 17.09.2015

Mahesh and Others

.....Petitioners

Vs.

Kailash Bhargava and Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Prithviraj Yadav, Advocate for the appellants.

Mr.Anil Kumar Gahlawat, Advocate for respondent No.3.

RITU BAHRI, J. (ORAL)

The appellants have come in the appeal against the order dated 18.10.2002, whereby, they have been awarded compensation of Rs.1,00,000/- on account of damage caused to their three shops by the bus belonging to respondents No.2 and 3.

The brief facts of the case are that on the intervening night of 21/22/02/1998 at about 1:30 am, the three shops of the claimants, situated in front of KLP College, Rewari on the Rewari-Delhi Road, were damaged on account of rash and negligent driving of Rajasthan State Roadways Transport Corporation, Bus No.RJ-23-P/0814, which was on enroute from Delhi to Rewari; that the said bus was being driven in a rash and negligent manner and at a very high speed by its driver/respondent No.1, who while driving the said bus when reached in front of the shops of the claimants, did not bother for the speed breaker, so he lost control over the bus due to high speed and it rammed into the shops of the appellants and damaged the same badly.

The learned Tribunal framed the issues on 04.10.2001 and on

Paragraph 9 on the issue No.1, learned tribunal found that accident took place on

account of rash and negligent driving of the said vehicle which was being driven by by the driver-respondent No.1. had rammed into the three shops of the claimants and then it has turned turtle. This finding was returned on the basis of deposition of PW-1 Kailash Chand, Record Keeper, DC Office Rewari, who brought the summoned record of Case No.126 dated 22.04.1999 titled as **State Vs. Kailash** under Sections 279/336/427 IPC, decided on 09.04.2001. The photographer PW-2 Vinay Kumar went to the shop on 24.02.1998 and took six photographs Ex.P1 to Ex.P6. Coupled with the fact that the claimants also placed on record, copy of the report under Section 173 Cr.P.C., copy of judgment Ex.10, Copy of chargesheet Ex.P-11 and Copy of amended charge sheet Ex.P12. The driver did not appear in the witness box. Hence, the Tribunal has rightly assessed that the damage to the shop of the claimants was caused by the Driver on account of his rash and negligent driving.

On issue No.2, two reports i.e. Ex.PW-7 and PW4/A have been examined. As per Ex.P7, damage to the shops were assessed at Rs.1,95,000/-. This report was given by PW3 Gopal Sharma, Architect. In his cross-examination, he admitted that the damaged shops were not constructed by RCC and was not a A-class construction. However, the proposed site plan Ex.P8 for construction of three shops and a Varandah, was A-Class construction. Hence, the cost of construction as per report Ex.P7 was Rs.1,95,000/- As per deposition of PW4 B.R.Gupta, Building Expert and his report Ex.PW4/A, damaged shops were built in 1995 having an area 38.43 sqm. These shops were situated in front of KLP College Rewari on Delhi-Rewari Road and in Shiv Nagar Colony in Tehsil and Distt. Rewari and he assessed the damage to the shops to the tune of Rs.1,65,000/-. In his cross-examination, he deposed that no RCC work in the roof of the building and there was no pillar. He further submitted that no plaster on the walls and there were rolling shutters on two shops and one wooden door.

A perusal of deposition of PW3 and PW4 and perusal of their reports show that the damaged shops were not A-class construction and a proposal was made for reconstruction for A-class construction. Thus, total compensation awarded by the learned Tribunal at Rs.1 Lac.

Keeping in view the damage to all the three shops, appeal is partly allowed and the compensation of Rs.1 Lac is being enhanced to Rs.1,30,000/- . In addition to this Rs.10,000/- is being awarded to the appellants towards loss of income. The enhanced amount be paid with 9% from the date of claim of the petitioner. This payment will also be made within 45 days from the receipt of this order.

(RITU BAHRI)
JUDGE

17.09.2015
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