

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

FAO No.2695 of 2001 (O&M)

Date of decision: 22nd January, 2015

Surjit Kaur and another

... Appellants

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vinay Saini, Advocate for
Mr. G.S. Nagra, Advocate
for the appellants.

Mr. Vikas Chatrath, Advocate for
Mr. Abhay Pal Singh Gill, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

The appellant/claimants having been unsuccessful before the learned Motor Accident Claims Tribunal, Rupnagar by virtue of Award dated 03.11.2000 have come up in this appeal.

Upon hearing Mr. Vinay Saini, Advocate appearing on behalf of Mr. G.S. Nagra, Advocate for the appellants and Mr. Vikas Chatrath, Advocate on behalf of Mr. Abhay Pal Singh Gill, Advocate for respondent No.2.

It is well established case of both sides that on 15.11.1997, a bus owned by Chandigarh Transport Undertaking bearing registration No.CHD-1G-5523 being driven by Ajaib Singh respondent met with an accident near Morinda Power House with a tractor-trolley on account of rash and negligent driving by the driver of tractor-trolley which being laden with pipes struck its side on the driver side of the bus as a consequence of which one of the pipes entered the bus body and hit the passengers resulting in death of deceased Bahadur Singh. It is also the stand of the respondents and thus, on account of findings of the learned Tribunal pertaining to the mode of the accident has led to denying of compensation under Section 166 of the Motor Vehicles Act, 1988 as only "no fault" compensation has been awarded.

The lone point that is sought to be assailed by the appellants is that failure of the claimant/appellants to array owner, driver and insurer of the tractor-trolley has led to this finding. The Tribunal has concluded in its findings that from the evidence led on the record, rashness and negligence on the part of driver of the tractor-trolley is proved but who have not been impleaded as party to this case. It is further proved on the record that a similar claim petition of another claimant Neelam had been allowed through Award dated 01.09.1999 by the Motor Accident Claims Tribunal, Chandigarh. Even in that claim petition though there were allegations of collusion between a tractor-trolley and the bus in question and the learned Tribunal while giving its findings in that Award on issue No.1 has held that it was the bus driver who was at fault and therefore, these two

divergent expressions of opinion pertaining to the same very accident has led to an innocuous situation. Keeping in view that the Act is a welfare statute for the betterment of the claimants and such a finding certainly undermines the administration of justice. What is apparent is that there has been misinterpretation of the evidence by the Tribunal and by applying the principle of *res ipsa loquitur*, it is abundantly clear and much established that the tractor-trolley laden with pipes and the bus in question have hit each other head-on and therefore, it is clearly apparent a case of negligence. It is expected of driver of a vehicle to ensure what is coming in front of his vehicle and thus, being on a highway it was expected of the driver of the bus as well as that of the tractor-trolley in question to be vigilant enough to thwart any such eventuality of any mishap. The determination of the question as to who was at fault is within the domain of the Court. Thus the Tribunal could not comprehensively and judiciously adjudicate which of the drivers/vehicles was at fault in the absence of the driver/owner of the tractor trolley who have not been arrayed as a party in spite of being very essential and necessary which is also abundantly established from the evidence. The Tribunal remained a mute spectator to this and has miserably failed even to exercise its powers and could have ordered arraying of them as so. Thus, this has not only prejudiced the rights but has also resulted in miscarriage of justice.

In view of these discussions and holding that there has been gross miscarriage of justice by the Court below, it would suffice the ends of justice if the matter is remanded back to the Tribunal to

decide it afresh. Parties through their counsel are directed to appear before the Motor Accident Claims Tribunal, Rupnagar on 23.03.2015.

**(FATEH DEEP SINGH)
JUDGE**

January 22, 2015
rps