

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

**FAO NO. 3664 OF 2001 (O&M)
DECIDED ON : 13.07.2015**

Krishna Devi and another

...Appellants

versus

PRTC and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Vikas Chatrah, Advocate,
for the appellants.

Mr. Nikunj Dhawan, Advocate for
Mr. Harsh Aggarwal, Advocate,
for the respondents.

K. C. PURI, J. (ORAL)

This is an appeal directed by the claimants against the
Award dated 09.05.2001 passed by Shri H. S. Bhalla, Motor
Accident Claims Tribunal, Chandigarh.

Briefly stated, Krishna Devi-widow and Joginder
Kumar-son of deceased Ram Lok, filed claim petition seeking
compensation on account of death of Ram Lok in a motor
vehicular accident.

The case of the claimants set forth in the claim petition is that on 24.08.1997, deceased Ram Lok was going on foot in the bus stand and when he was passing the Patiala counter, one bus bearing registration No. PB-11-F-9722 being driven by Karamjit Singh-respondent in a rash and negligent manner, hit the deceased from the front side due to which he suffered multiple greivous injuries. He was taken to government Hospital, Sector-16, Chandigarh, where he succumbed to his injuries.

The claim petition was contested by the respondents by filing written statement taking preliminary objections that the claim petition is not maintainable. On merits the factum of accident was admitted but it was pleaded that the accident took place due to the negligence of deceased.

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

- 1) Whether the claim petition is maintainable as alleged ? OPP
- 2) Whether the claim petition does not disclose any cause of action. If so its effect ? OPR
- 3) Whether the claimants are legal representative of Sh. Ram Lok deceased ? OPP
- 4) Whether Sh. Ram Lok deceased died in motor vehicle accident caused by rash and negligent driving of bus No. PB-11-F-9122 by Karamjit

Singh respondent ? OPP

- 5) Whether the claimants are entitled to claim compensation, if so, how much and from whom ? OPP
- 6) Whether Ram Lok himself was guilty of contributory negligence, if so, its effect ? OPP
- 7) Relief.

In order to prove their case, claimant herself stepped into the witness box as PW-3 and examined Dr.Gurinderjit Singh as PW-1, MHC Suresh Kumar as PW-2, Mohan Lal as PW-4 and closed the evidence.

On the other hand, respondent No.3 himself appeared as RW-1 and examined Sudarshan Kumar as RW-2 and closed the evidence.

The learned Tribunal, after adjudication, decided Issue No.4 and 6 against the claimants. However, the remaining issues were decided in favour of the claimants and against the respondents. Consequently, the claim petition was partly accepted to the extent of allowing ₹50,000/- under Section 140 of the Act.

Feeling dissatisfied with the above said Award dated 09.05.2001 passed by Motor Accident Claims Tribunal, Chandigarh, the claimants have preferred the present appeal.

Learned counsel for the appellants has submitted that the findings of Tribunal on Issues No.4 and 6 are wrong. The accident has taken place in the bus stand. The factum of accident was admitted by the respondents. The left side of the bus struck against the deceased resulting into his death. So, the negligence of bus driver is proved. It cannot be a case of contributory negligence. It is further submitted that FIR has been lodged by the police. Mere fact that the author of FIR has not been examined is not a ground to disallow the case of claimants. It is further submitted that in authority "**Girdhari Lal vs. Radhey Shyam and others**" **1994 (1) ACJ 168 (P&H)** has held that when there is FIR against the driver of the offending vehicle, the negligence stands proved. Otherwise also, it is submitted that in the bus stand the driver cannot drive the vehicle without assistance of the cleaner. If the driver had taken due precaution, the accident would not have taken place.

In reply to the above noted submissions, learned counsel for the respondents has supported the Award passed by the Tribunal and has contended that negligence has to be proved by the claimants. The author of FIR has not been examined and as such, the negligence is not proved.

Learned counsel for the respondents has relied upon authority "**Surinder Kumar Arora and another vs Dr. Manoj Bisla and others**" **2012 AIR (SC) 1918**.

I have considered the submissions made by both the sides and have gone through the records of the case.

The controversy in the present lis revolves around Issues No.4 and 6. There is no dispute to the proposition of law that in petition under Section 166 of the Act, the claimant has to prove the factum of negligence. The law laid down in ***Surender Kumar Arora and anothers' case (supra)***, is that the entire responsibility of proving the act of rash and negligent driving by the driver of vehicle is on claimants, but the negligence can sometime infer from the circumstantial evidence. No doubt the author of FIR has not been examined but the circumstances of case itself speaks volume that the accident had taken place due to negligence on the part of driver of the offending vehicle. The deceased was present in the bus stand and according to the case of respondents, the driver of the offending bus was reversing the bus in order to park the same at its counter and during that process, the left side of the bus hit the deceased which ultimately resulted into his death. It was the duty of the driver to take the help of cleaner of the bus while parking the bus.

Karamjit Singh-driver of the offending bus has also stated that he was parking the bus on the counter. He has not stated that he took the help of cleaner of the bus or anyone else while reversing the bus. No doubt, he could not see on the left side of the bus but since he has not taken due precaution and as such, I have no hesitation in holding that the accident has taken

place due to rash and negligent driving of bus which was being driven by Karamjit Singh-driver.

So far as authority ***Girdhari Lal's case (supra)*** is concerned, in that case it has been held by this Court that where FIR has been registered and the factum of negligence is mentioned against the driver of the offending vehicle, that is relevant piece of evidence.

So, the findings of Tribunal on Issues No.4 and 6 stand reversed and both these issues stand decided in favour of the claimants and against the respondents.

The Tribunal has held that widow is entitled to receive the amount of compensation. However, the amount of compensation has not been assessed. The occurrence relates to the year 1997 and as such, the amount of compensation is being assessed here on the evidence available.

According to Krishna Devi-widow, the deceased was aged 70 years. She has given her age as 60 years while appearing in the witness box. She has further stated that the deceased was a shoe maker and was earning Rs.5000/- per month. She has also stated that Joginder Kumar-her son was running the business of shoe making. The Tribunal has held that Joginder Kumar is not dependent as he has independent source of income. The age of deceased as mentioned by the claimants in the claim petition is 55 years but the claimant herself has given the age of her deceased husband as 70 years. The claimant-

widow has given her age as 60 years. So, the age of deceased has to be taken as 70 years. The income of deceased in the year 1997 can be taken as ₹3000/- per month. 1/3rd amount has to be deducted in respect of personal expenses. So, by deducting 1/3rd, the dependency comes to ₹2000/- per month. The yearly dependency comes to ₹24,000/-. The deceased was aged 70 years. As per authority "**Sarla Verma and others vs. Delhi Transport Corporation and anr.**" 2009 (3) RCR (Civil) 77, the multiplier applicable at the age of 70 is 5. So, by applying the multiplier of 5, the amount comes to ₹1,20,000/-. Another sum of ₹10,000/- stands allowed in respect of last rites and transportation of dead body. Keeping in view the price index of the year 1997, another sum of ₹20,000/- stands allowed to widow Krishna Devi in respect of consortium. In this manner, the widow is held entitle to claim ₹1,50,000/- as compensation. The claimant shall be further held entitle to claim interest @ 7.5% per annum from the date of application till its payment. The liability to pay the amount shall remain the same as ordered by the Tribunal. However, the amount paid under "no fault liability" shall be adjusted against the claim of claimant Krishna Devi.

In view of the above discussion, the appeal stands partly accepted. The respondents are jointly and severally liable to pay the amount.

JULY 13, 2015
shalini

(K. C. PURI)
JUDGE