

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

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FAO No.365 of 2014 (O&M)

DATE OF DECISION: February 05, 2015

M/s Hero Bus Service

....Appellant.

VERSUS

Jasbir Kaur and others

....Respondents.

CORAM : HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Sandeep Arora, Advocate
for the appellant.

MAHAVIR S. CHAUHAN, J.(Oral)

This is an appeal brought by M/s Hero Bus Service, owner and Sarwan Singh driver of the bus bearing registration No.PB-08-BK-9651, i.e., offending vehicle, to challenge award dated 04.09.2013, whereby learned Motor Accident Claims Tribunal, Jalandhar (for short 'Tribunal') has awarded compensation amounting to Rs.5,66,000/- alongwith interest @ 7% per annum in favour of the claimants (respondents no.1 to 3 herein) after having reached a conclusion that the deceased, namely, Mohinder Singh died in a motor vehicle accident caused at about 8.30 p.m. on January 20, 2012 on account of rash and negligent driving of the offending vehicle by Sarwan Singh.

Learned counsel for the appellants has argued that the deceased alongwith his brother was riding a motorcycle which collided with another vehicle and on account of that death of the deceased had taken place and that

the motorcycle of the deceased never came in contact with the offending vehicle.

A perusal of the impugned award, however, would reveal that in the written statement filed on behalf of the appellant factum and manner of the occurrence were denied and that being so the assertion which has now been put forth on behalf of the appellants is not available to them. Even otherwise, the learned Tribunal, while dealing with issue no.1, has recorded the following finding:-

“On appraisal of above-referred evidence on the record and considering the submissions of the parties, this tribunal has to find out as to who was rash and negligent in causing the accident. This tribunal finds that the statement of RW1 Sarwan Singh is quite significant and material to unravel this point as to whether it was a foggy day and parking lights of the trapped vehicles oil tanker and school bus were on or not. The rash and negligent driving of respondent no.1 is to be fixed mainly on this basis. From the perusal of testimony of RW1 Sarwan Singh, it has nowhere appeared that the trapped vehicles on the road were carrying their parking lights on or not. On this, the witness has not stated this fact specifically that there were no parking lights of the parked vehicles and it was a foggy day and, as such, he was not solely responsible for this accident. The matter would have been then different if it has been proved by this witness in his statement that parked vehicles involved in the accident were without parking lights. Nothing transpired from the testimony of RW1 Sarwan Singh that there were

parking lights on of the parked vehicles involved in the accident. Even otherwise, it was at 8.30 A.M. approximately when the Sun had already risen when this accident took place. Even from the statement of RW2 Gurminder Singh, it has no where transpired that the trapped oil tanker and school bus did not sport any parking lights which were not on. So when evidence on a point is not coming, it cannot be supposed by this tribunal that there were no parking lights of the parked vehicles which were trapped there. So it was the sole responsibility of respondent no.1 to have taken proper precaution for driving the vehicle in the foggy day. There is also no evidence by respondent that there were any foggy lights on the vehicle of respondent no.1 and he took every care and precaution to spot many approaching vehicles or parked vehicles on that foggy day on the road. The respondent no.1 was driver of a heavy vehicle which was a bus carrying many passengers in it and their safety was at stake and respondent no.1 was supposed to have taken proper precaution and care by using powerful foggy lights thereon before he could drive such a heavy vehicle on the road. It cannot be believed that the trapped vehicles were not visible to respondent no.1, who was driving the heavy transport vehicle as the lights of heavy transport vehicles are quite effective and strong vis-a-vis light transport vehicles. This tribunal is unable to hold from evidence that it was the liability of parked vehicles on the spot, which were trapped on the road. The sole responsibility falls on respondent no.1 that he should

not have taken impending risk of moving such a bus with many passengers without any effective foggy lights on the road. Consequently, this tribunal is unable to agree with the contention of respondent no.1 that there was no rash and negligent driving of respondent no.1 in causing this accident. The respondent no.1 is facing trial for causing this accident and police also found him responsible for causing this accident in the investigation. The FIR of this case was lodged by PW2 Harbans Singh, who was present on the spot of accident. The FIR is Ex.P1 and presence of Harbans Singh is probable on the spot of accident as he was brother of deceased Mohinder Singh. If Mohinder Singh since deceased took steps for performing some samaritan act to save the trapped person crying for help in groaning pain, it cannot be said that he was at fault. The person who proceeds to do such benevolent act must be appreciated instead of condemning him. Consequently, this tribunal finds that it was the responsibility of respondent no.1 to have taken the proper precaution to avoid this accident. The respondent no.1 has been found to be rash and negligent in driving the offending bus and thereby striking it against the parked vehicles which further tailgated with each other and thereby Mohinder Singh was crushed. Consequently, this tribunal holds that respondent no.1 Sarwan Singh being driver of offending bus has been found rash and negligent in driving the same and in causing the death of Mohinder Singh in the accident. The death of Mohinder Singh took place due to

accidental injuries and post mortem report Ex.P2 has further substantiated this fact on the record. His death certificate is Ex.P3 on the record. It cannot be said that this is a case of composite negligence of the parked vehicles, who were already in trouble due to their own acts. Nothing could be said by this tribunal as to how they were trapped there as there is no such evidence nor they have been impleaded in this case nor their fault has been found by this tribunal even from the evidence obtaining on the record. Consequently, issue no.1 is decided in favour of claimants by this tribunal and against respondents.”

Nothing has been shown on behalf of the appellant to say that the above findings recorded by the learned Tribunal are not sustainable or are against the evidence available on record.

In view of the above, I am not inclined to interfere in the well reasoned award passed by the learned Tribunal.

Dismissed.

(MAHAVIR S. CHAUHAN)
JUDGE

February 05, 2015.

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