

In the High Court of Punjab and Haryana at Chandigarh

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CM No.8183-CII of 2015 and
F.A.O. No.2687 of 2015 (O&M)

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Date of decision:23.4.2015

General Manager, Rajasthan Roadways, Hanumangarh Depot through Shri
Ashok Mathuria

.....Appellant

v.

Nirmala Devi and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Anil Kumar Gahlawat, Advocate for the appellant.

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Inderjit Singh, J.

CM No.8183-CII of 2015:

For the reasons mentioned in the civil miscellaneous application, the delay of 22 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

F.A.O. No.2687 of 2015 (O&M):

General Manager, Rajasthan Roadways-owner of Bus No.RJ-31PA-1220 (hereinafter referred to as 'the offending bus') has filed this appeal against Nirmala Devi, Manisha, Gurmail Singh-owner of Tavera and United Insurance Co. Ltd.-insurer of Tavera-respondents and Rajasthan Roadways, Hanumangarh Depot, Government of Rajasthan and Jaswinder

Singh-driver of offending bus-proforma respondents challenging the impugned award dated 25.11.2014 passed by the Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), whereby on account of the motor vehicle accident, a compensation of ₹35,43,888/- has been awarded in favour of the claimant-petitioner (respondent No.1 herein) and Manisha in equal share.

The brief facts of the case are that Nirmala Devi-claimant/petitioner filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') against Rajasthan Roadways, General Manager, Rajasthan Roadways and Government of Rajasthan-owners of offending bus No.RJ-31PA-1220, Jaswinder Singh-driver of offending bus, Insurance Co. of offending bus, Gurmail Singh-owner of Tavera, United India Insurance Co. Ltd.-Insurer of Tavera and Manisha widow of Bikramjeet Singh, on account of death of her son Bikramjeet Singh, who died in a road side accident on 27.7.2012, which happened 10 Kms. behind Village Rattangarh, District Churu (Rajasthan). Bikramjeet Singh (hereinafter referred to as 'the deceased') along with Rohit, Malkit Singh, Buta Singh and Suraj Parkash was returning from Cochin to Punjab in Tavera No.PB-13S-9637, which was being driven by Kuldeep Singh (since deceased), in a rash and negligent manner. At about 4.00 p.m., when they crossed Village Bhojasar and were about 10 Kms. behind Village Rattangarh on Megha Highway, the offending bus, which was being driven rashly and negligently by respondent No.4-Jaswinder Singh, came from the opposite direction. Both the vehicles met with head on collision resulting

into an accident in which all the passengers sitting in the Tavera including Kuldeep Singh driver received multiple injuries. All the passengers and driver Kuldeep Singh died on the spot. It is also the case of the claimant that age of the deceased was 23 years at the time of accident. He was working as a Clerk in Municipal Council, Khanna and his monthly income was ₹25,000/-. FIR No.280 of 27.7.2012 was registered with Police Station, Rattangarh, District Churu. The claimant being legal heir and dependent of the deceased claimed compensation of ₹50 Lacs.

On the other hand, respondents No.1 to 3, in the written statement, had taken legal objection that claim petition was not maintainable. Respondents No.6 and 7 were liable to pay compensation to the claimant. On merits all the averments were denied and stated that false FIR was registered against the driver of the offending bus.

Respondent No.4 also in separate written statement stated that the offending bus was never involved in the alleged accident. Respondent No.6-owner of the Tavera stated that the alleged accident occurred due to rash and negligent driving of offending bus by its driver. So, respondents No.1 to 4 were liable to pay compensation.

Nirmala Devi-claimant/petitioner examined herself as PW-1, Raman Manrao, Clerk, Municipal Council, Khanna as PW-2 and Gulab Singh as PW-3. Thereafter, her counsel closed the evidence.

On the other hand, respondents No.1 to 3 examined Ram Dev-Conductor as RW-1 and respondent No.4-Jaswinder Singh as RW-2. Respondents No.6, 7 and 8 tendered into evidence some documents. The Motor Accident Claims Tribunal, Ludhiana vide award dated 25.11.2014

awarded compensation of ₹35,43,888/- along with interest @6% per annum (simple) from the date of filing of the claim petition till actual realization in favor of claimant Nirmala Devi through L.R. and respondent No.8-Manisha, in equal share against respondents No.1 to 4.

Aggrieved against this award, this appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that it is a case of contributory negligence. He further argued that the compensation awarded by the Tribunal is excessive.

After hearing learned counsel for the appellant and after going through the record, I find that first of all he has not shown any cogent evidence produced on the record that it is a case of contributory negligence. The counsel has argued only on one point that it is a head on collision, therefore, it is a case of contributory negligence.

Keeping in view the evidence on record produced by the claimant and specially the eye witness, also copy of the FIR and report under Section 173 Cr.P.C. presented against respondent No.4-Jaswinder Singh shows the rash and negligent driving of the offending bus. This Court in the other claim petitions filed by the LRs of other deceased impugning against the awards regarding the death of other passengers in the Tavera has also gave the finding that there is no contributory negligence as the driver of the offending bus was overtaking another vehicle without seeing whether the road is clear or not and caused the accident.

Therefore, keeping in view the above discussion, I find that there is no contributory negligence in the present case.

[5]

As regards the contention that excessive compensation has been awarded, learned counsel for the appellant has not pointed out anything as to how the award amount is excessive. He has not argued whether multiplier has been wrongly applied or whether the income has been wrongly taken in excess. No specific arguments on these points have been addressed and also on which ground this amount has been given in excess. The mere general argument that the amount has been given in excess is having no merit.

Therefore, finding no merit in the appeal, the same is dismissed.

April 23, 2015.

(Inderjit Singh)
Judge

hsp