

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3732 of 2003 (O&M)

Date of decision : February 09, 2016

Brij Bala,

..... Appellant

v.

Kuldip Singh and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Ms. Sarika Gupta, Advocate
for Mr. Sanjay Gupta, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for respondent No.2.

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

Ajay Tewari, J (Oral)

This appeal has been filed against the Award of the Tribunal awarding ₹ 50,000/- for the death of 13 years old son of the claimant/appellant.

Brief facts are that on 15.6.1998 at about 7.45 am, when deceased Bankush @ Bankush Kumar was going from Balachaur to Siana on his bicycle, the offending bus being driven rashly and negligently by its driver-respondent No.1, came from Balachaur side and hit the deceased from behind, as result of which the deceased died at the spot. The Tribunal held that though accident took place but negligence could not be proved

and hence awarded ₹ 50,000/- as no fault liability to the claimant.

Counsel for the appellant has argued that the Tribunal has erred in ignoring the testimony of Harjit Singh only on the fallacious ground that in the FIR allegedly lodged by the father of the deceased it was mentioned that no body was to be blamed for this accident. As per him, by the time the case came up for evidence, father of the deceased who was also the eye witness passed away, but on the other hand, the other eye witness Harjit Singh had clearly stated that the accident had taken place due to rash and negligent driving by the driver of the offending bus, and that evidence could not have been disregarded merely by writing that the FIR was a public record because the person who wrote the FIR was not produced in evidence and the person who got lodged the FIR and could have explained died in the meanwhile.

Counsel for the Insurance Company is not in a position to refute these arguments.

In the circumstances, the finding of 'no fault liability' has to be set aside and it has to be held that the accident took place due to rash and negligent driving by the driver of the offending bus. Ordered accordingly.

Now coming to the question of compensation; counsel for the appellant has relied upon the decision of the Hon'ble Supreme Court in Kishan Gopal v. Lala, 2013(4) RCR (Civil) 276, where their Lordships held that in a case of non-earning deceased, compensation had to be awarded as ₹ 5 lacs with interest @ 9% pa.

Counsel for the Insurance Company is not in a position to cite any contrary judgment.

Resultantly, this Appeal is allowed and a sum of ₹ 5 lacs is awarded as compensation to the claimant/appellant along with interest @ 9% pa from the date of the application till the date of payment.

February 09, 2016
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(AJAY TEWARI)
JUDGE