

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2079 of 1997

Date of Decision : 08.12.2016

Kashmir Singh and others

....Appellants

Versus

Vijay Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Maharaj Kumar, Advocate
for the appellants.

Mr. Nitish K. Vasudeva, Advocate
for respondent no. 1.

Mr. Ravinder Arora, Advocate
for respondents no. 2 and 3.

Surinder Gupta, J.

This is appeal filed by claimants against award dated 03.06.1997 passed by Motor Accident Claims Tribunal, Karnal whereby claimants were awarded compensation of ₹1 lac on account of no fault liability for deaths of Narinder Kaur and Milap Singh (later referred to as 'the deceased') in a motor vehicle accident on the intervening night of 19/20.07.1995 with bus bearing registration No. HP-14-3545 (later referred to as 'the offending vehicle') with the observation that both the deceased suddenly came in middle of metalled road while attempting to cross it and were themselves responsible for the accident and their consequent deaths.

BRIEF FACTS

2. Case of claimants, in brief, is that on the intervening night of 19/20.07.1995, Narinder Kaur alongwith Milap Singh and her other

children, namely, Saranpreet Singh and Manpreet Kaur was going from Delhi to village Mandiala in District Jalandhar on truck bearing no. PB-06-2380, driven by Jatinder Singh. At about 02.30 a.m., the truck reached near Dadupur and deceased Narinder Kaur alongwith Milap Singh were standing on *kacha* portion of the road for going to toilet, when the offending vehicle, which was being driven by respondent no. 1- Vijay Kumar, came in a rash and negligent manner from opposite side of Taraori and hit both the deceased, as a result of which Milap Singh, aged 4 years, died at the spot while Narinder Kaur aged 27 years, received injuries and died in hospital on 20.07.1995. A criminal case bearing FIR No. 242 dated 20.07.1995 was registered at Police Station Butana for offence punishable under Section 279 and 304-A IPC. Claim petition was filed by Kashmir Singh, her husband and Saranpreet Singh, son and Manpreet Kaur, daughter of the deceased. They claimed compensation for the medical expenses, transportation of dead bodies from Karnal to their native village Mandiala. It was averred that Narinder Kaur was household lady and used to earn ₹2000/- per month by doing sewing and stitching work at her home.

3. In the written statement, respondents averred that at about 03.00 a.m. on the intervening night of 19/20.07.1995, Vijay Kumar was driving the offending vehicle and was going from Dartlang to Delhi. Near Dadupur, a truck came from opposite side and crossed the offending vehicle. Just behind the truck a lady alongwith a child came in middle of the busy road. She was at such a short distance from the bus that it was impossible for bus driver to stop the bus at once but still he tried his level

best to save both lady and the child by taking the bus to its extreme proper left hand side but in the process that lady and child were hit by right back portion of the bus and fell on the metalled road. Driver of the offending vehicle stopped the bus at its extreme left hand side. The accident was caused due to negligence of the deceased and not due to rash and negligent driving of the offending vehicle by its driver. The deceased had tried to cross the road in a hurried manner without caring of traffic on the road.

4. The Tribunal on analysis of evidence produced by claimants concluded that the accident was not caused due to rash and negligent driving of the offending vehicle by respondent no. 1-Vijay Kumar but due to the fact that Narinder Kaur and Milap Singh (deceased) suddenly came in middle of the road while attempting to cross it and were themselves responsible for the accident. While reaching the above conclusion, the Tribunal took note of statement of Jatinder Singh, the only eye-witness examined by claimants. He has stated that the truck, in which they were travelling, stopped for taking tea and after taking tea Narinder Kaur and Milap Singh went to one side of the road for making water. After making water they were standing on the side of metalled road on *kacha* berm, when hit by the offending vehicle, which crushed Narinder Kaur and Milap Singh. After stopping the bus at 100-150 yards, respondent no. 1-Vijay Kumar ran away from the spot leaving the bus behind. The statement of this witness is not credible as the version of accident he has given is different from the version of accident given in FIR, which was recorded on his statement. He has stated that lift was

given to the deceased and his family in the truck while coming from Delhi towards Punjab. On the way, Narinder Kaur got the truck stopped as her children wanted to make water. He stopped the truck at a *dhaba*. Deceased-Narinder Kaur alongwith her son Milap Singh was going towards other side of the road when they were hit by the offending vehicle. Jatinder Singh while appearing as PW-1 has twisted the version regarding accident by stating that the truck was stopped for taking tea and after taking tea Narinder Kaur and Milap Singh went to one side for making water and were standing on the side of metalled road when they were hit by the offending vehicle. The version of occurrence given in FIR makes it clear that the accident took place when Narinder Kaur was crossing the road alongwith her son for going to other side of the road to ease herself and her son Milap Singh. It is duty of the person crossing busy road like G.T. Road to ensure that the traffic is avoided. At about 03.00 a.m., the traffic moves on the road at a speed which may be moderate to high and it is not expected that if someone comes in middle of the road, the moving traffic will halt immediately.

5. Respondent no. 1-Vijay Kumar driver of the offending vehicle appeared as RW-1 and stated that at about 02/02.30 a.m. on the intervening night of 19/20.07.1995, when his bus reached near Dadupur, a lady and a child came running from right side of the metalled road to cross it. In order to save them he turned his bus on his extreme left hand side and in the process right back side of the bus hit the lady and child who fell down. He stopped the bus and came to those persons and took the injured to General Hospital, Karnal in their truck. Then he went to

Police Station, Butana. He has stated that the accident took place due to negligence of the lady who came on the road all of a sudden alongwith a child. He could witness the lady and child on the road when the bus was 8 to 10 ft. away from them and made all his best efforts to save them and to take the bus on its extreme left hand side. After halting the bus his passengers boarded another bus and he left for the police station. The version of accident given by respondent no. 1-Vijay Kumar appears to be more credible and in accordance with the version of accident as given in FIR by PW-1 Jatinder Singh.

6. Tribunal has committed no error while concluding that the accident was not caused due to rash and negligent driving of the offending vehicle by its driver. I find no reason to interfere with the observation recorded by the Tribunal in the award. This appeal has no merit.

Dismissed.

December 08, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No