

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

FAO-1059-2001

DATE OF DECISION:23.5.2016

CHABBI DEVI AND ANOTHER

.... Appellants

VS.

PEPSU ROAD TRANSPORT CORPORATION LTD. AND ANR.

.... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amit Kohar, Advocate
for the appellant.

Mr. Nikunj Dhawan, Advocate
for Mr. Harsh Aggarwal, Advocate
for respondent No.1-PRTC.

LISA GILL, J. (ORAL)

This appeal has been filed by the legal heirs of deceased-Bishan Singh who lost his life in an accident which took place on 25.11.1996 impugning the award dated 23.9.2000 passed by learned Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as the Tribunal), whereby their claim petition has been dismissed.

2) Facts as revealed in the claim petition filed by Chabbi Devi and Leela Devi who are the mother and sister of the deceased-Bishan Singh respectively are that Bishan Singh along with Madan Lal were proceeding on their bicycles on 25.11.1996 from Ajnali to Mandi

Gobindgarh for procuring kerosene oil. When they took a turn from bus stand Ajnali and came on to the grand trunk road, Bus No.PB-11-F/9705 driven by its driver-Davinder Singh approached in rash and negligent manner at a high speed from behind and struck against Bishan Singh's cycle. Due to the impact, Bishan Singh fell in front of the bus and was crushed under the wheels of this bus. Bishan Singh was taken to Civil Hospital, Mandi Gobindgarh where he succumbed to his injuries. Post mortem examination was conducted and FIR No.134 was registered in this respect on 25.11.1996. The claimants being the mother and sister of the deceased preferred a claim petition under Section 166 of Motor Vehicles Act, claiming compensation to the tune of Rs.15,30,000/- along with interest @ 24% per annum with the averment that the deceased was earning Rs.3,000/- per month. The deceased aged 22 years old was claimed to be a cook earning Rs.3,000/- per month. The claim of the respondents was denied and the learned Tribunal framed the following issues from the pleadings of the parties:-

1. Whether Bishan Singh died as a result of rash and negligent driving of Bus No.PB-11F/9705 by respondent No.2 Devinder Singh? OPA
2. If Issue No.1 is proved, whether the claimants are entitled to compensation and for what amount and from whom? OPA
3. Relief

3) Learned Tribunal on appreciation of the evidence on record as well as the facts and circumstances of the case, decided issue No.1 against the claimants resultantly, dismissing the claim petition vide order

dated 23.09.2000. Aggrieved therefrom, the present appeal has been preferred by the claimants.

4) Learned counsel for the appellant vehemently argues that AW-2-Madan Lal, who was accompanying the deceased-Bishan Singh at the time of accident, has specifically stated that the accident in question took place due to the rash and negligent driving of the offending bus by his driver. Therefore, the learned Tribunal has erred in returning the finding on Issue No.1. Therefore, the said finding should be set aside and adequate compensation be awarded to the appellants on account of death of Bishan Singh. The said claim has been refuted by learned counsel for the respondent who submits that the impugned award is reasonable, justified and hence should be upheld.

5) I have heard learned counsel for the parties and have gone through the record. It is not in doubt that Bishan Singh lost his life on 24.11.1996 in an accident which occurred with Bus No.PB-11-F/9705. The question for consideration in the instant case is whether the accident took place due to the rash and negligent act of the driver of the offending vehicle. Learned Tribunal while deciding Issue No.1, has specifically observed that the deceased as well as Madan Lal were altogether on the wrong side of the road. The respondent driver was acquitted in the criminal proceedings against him as the prosecution failed to bring home the charge under Section 304A against him. The observation of Learned Tribunal reads as under:-

“In order to prove the rash and negligent act of respondent No.2, the claimants have examined Madan Lal, AW alone who while appearing in the

witness box has testified that they were coming from the side of Sirhind and were going towards the Mandi Gobindgarh, Agni casting is on the right hand side and village Ajnali is on the left hand side. They were coming from the side of Ajnali. That means they were going from the left hand side and reached the road which was situated on the right side. Meaning thereby they were altogether on the wrong side. It has come in the evidence of Madan Lal that they had crossed the divider for reaching the road and accident took place at a distance of 3-4 ft. from the divider. It is a matter of common sense and general law that person who is to reach on the main road by crossing the link road, then he will have to wait and look for the vehicles going on the main road. From the above referred statements made by Madan Lal, it appears that Bishan Singh had just gone 3-4 steps on the main road, the bus ran over him. Had he been having a little sense, the he would have look for the vehicle coming from his backside before entering the main road. Thus negligence on the part of the deceased resulted into the accident. It is obvious that when a heavy vehicle is coming on the road, it cannot be controlled within a minute or so abruptly the person entering the road comes in its spate. Thus under these circumstances no fault can be found on the part of

respondent No.2 who was taking his bus on his correct side on the main road. Respondent No.2 was also tried in the court for the said FIR No.134 concerning this case, where also, prosecution failed to bring home the charge U/s 304-A IPC against respondent No.2, as a result of which respondent No.2 was acquitted in the criminal case registered against him (vide judgment Ex.R1).

Thus after appreciation of the entire evidence of Madan Lal AW2, it transpires that the accident did not take place as a result of rash and negligent driving of respondent No.2. Accordingly issue No.1 is decided against the claimants.”

6) Learned counsel for the appellant is unable to point out to any evidence on record apart from the testimony of Madan Lal-AW2 to substantiate the argument that the accident in question did indeed occur on account of rash and negligent driving of the offending vehicle by its driver-Devinder Singh. It is a settled position that it is incumbent upon a claimant to prove the accident in question to be caused due to the rash and negligent act of the respondent by leading cogent evidence. There is no doubt that mere acquittal of the respondent driver in itself is not sufficient to decline relief to the claimant. However, in this matter there is no cogent evidence on record to prove the case set up by the claimant. The learned Tribunal has correctly appreciated the evidence on record and there is no infirmity, illegality or perversity in the impugned award

dated 23.9.2000 passed by learned Motor Accident Claims Tribunal,
Fatehgarh Sahib which calls for any interference by this Court.

7) Resultantly, this appeal is dismissed.

(LISA GILL)
JUDGE

23.05.2016
SwarnjitS