

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.177 of 1991

Date of Decision.01.08.2017

Guddi Devi and others

.....Appellants

Vs

Kali Ram and others

.....Respondents

Present: Mr. Sunil Saharan, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been filed by the legal representatives of deceased namely Jai Narain aged 35 years, who unfortunately died in a motor accident occurred on 19.03.1989 at about 4 PM.

The aforementioned accident according to the counsel representing the appellants was witnessed by one Sat Narain-PW2 stating that Jai Narain was coming on motor cycle and a Haryana Roadways bus insured with the United India Insurance Co. Ltd. was going towards Kaimri from Hisar and while overtaking the bus, it hit the motor cyclist, who was run over by its rear wheel.

Learned counsel appearing on behalf of the appellants submits that the Tribunal has erroneously dismissed the claim petition on the premise that the appellants have failed to prove the rashness and negligence of the bus as the petition was filed under Section 110A of the erstwhile Motor Vehicles Act, 1939. The Tribunal while assessing the compensation to the tune of ₹1,50,000/- has failed to advert to the cross-examination of PW2 and as well as the site plan, as it is conceded position on record that on both side of the road

material meant for road metalling was lying which narrowed the width of the

road. The finding of the Tribunal on the basis of site plan Ex.R2 prepared by the concerned police official as on account of registration of FIR, cannot be a clincher for determining the negligence on the premise that the dead body of Jai Narain was lying on the right side of the road, therefore, in the absence of such evidence the deceased cannot be held to be negligent in driving the motor cycle. According to him, there had been mis-appreciation of evidence on record and as well as the explanation given by the eye-witness, therefore, Tribunal erred in dismissing the claim petition, thus, urges this Court for setting aside the finding on issue No.1.

Mr. Neeraj Khanna appearing for Mr. Ravinder Arora, learned counsel appearing on behalf of insurance company submits that the finding of the Tribunal is perfectly legal and justified. In the absence of direct and cogent evidence qua rashness and negligence, the finding of fact cannot be interfered with, though it is a first appeal, as the claimants have failed to prove on record the rashness and negligence. In fact, the deceased met with an accident in the process of overtaking the bus, thus, urges this Court for upholding the award rendered by the Tribunal.

I have heard learned counsel for the parties and appraised the paper book. It is a burnt case. Evidence, I could gather from the statement of PW2 Sat Narain, is that in his examination-in-chief he stated that the bus was overtaking the motor cycle and this fact has not been disputed by the respondents. The finding of the Tribunal by relying upon the site plan Ex.R2 i.e. the basis of the dismissing the claim petition is, thus, not correct, as admittedly on both sides of the road, material meant for re-carpeting the road was lying and in that process, the width of the road had narrowed. By enacting the situation which would have occurred and taking the clue from site plan, coupled with the statement of PW2, what emerges is that the bus was

overtaking the deceased and in that process, the deceased was crushed under the rear right tyre. Obviously, the dead body would roll down to the right side of the road due to moving of the wheels and therefore, the Tribunal could not have gone in the arena of conjectures and surmises in non-suiting the claimants on issue No.1. The said finding, thus, in my view is not correct, much less, erroneous and is off the record. The Tribunal has not referred to cross-examination of Sat Narain, who despite being put suggestion with regard to motor cycle driven by the deceased and overtaking of the bus could not cause dent. Neither the driver, owner nor the insurance company has been able to prove through any cogent evidence to belie what has been stated in the examination-in-chief of PW2, therefore, that has to be believed. It is settled law that if no other cogent evidence is brought to rebut what is stated in the examination-in-chief, adverse inference is liable to be drawn. This view of mine is derived from the judgment rendered in **Harnam Kaur Vs. SGPC AIR 1992 P&H DB 252.**

For the reasons aforementioned, I am of the view that the finding rendered by the Tribunal on issue No.1 is not sustainable in the eyes of law hereby to be set aside. The compensation of ₹1,50,000/- as assessed by the Tribunal is ordered to be released in favour of the claimants within a period of two months from the date of receipt of certified copy of the order, failing which it shall entail interest @10% per annum. The liability shall be upon respondent Nos.1 to 3 jointly and severally.

The award passed by the Tribunal is set aside and the appeal is allowed.

(AMIT RAWAL)
JUDGE

August 01, 2017
Pankaj*