

207.

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

FAO-1839-1995

Date of decision:27.02.2017

JAI NARAIN GUPTA & ANR

.... Appellants

versus

SUBHASH CHANDER & ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. A.K. Singal, Advocate,
for the appellants.

Mr. V. Ramswaroop, Advocate,
for respondent No.2.

Mr. Neeraj Khanna, Advocate,
for Mr. Ravinder Arora, Advocate,
for respondent No.4-Insurance Company.

HARI PAL VERMA, J.

The appellants-claimants have filed the present appeal seeking enhancement of compensation in the award dated 26.11.1994 passed by Motor Accident Claims Tribunal, Panipat (for short, 'the Tribunal'), whereby they were granted compensation of ₹25,000/- with interest @ 12% per annum from the date of accident till realization.

Briefly stated, on 16.12.1989, a Swaraj Mazda bearing registration No.DBL/3461 loaded with tobacco of claimant-Sat Pal Jain, was coming towards Safidon from Farrukhabad (UP), being driven by Surinder Singh (respondent No.3 herein). In the said vehicle,

apart from Sat Pal Jain, owner of goods and the driver-Surinder Singh, there were two other persons also i.e. Lalit Kumar, owner of the Swaraj Mazda and Bhanu Partap, Cleaner. As per the claim petition, when the vehicle reached near the Health Centre of Village Patti Kalyana on the G.T. Road, a Bus of Delhi Transport Corporation bearing registration No.9925, being driven by Subhash Chander (respondent No.1 herein) recklessly, without blowing any horn and without watching the coming vehicles from the opposite side, tried to overtake Swaraj Mazda and in the process of this overtaking by the bus, when the bus driver saw a *jhota bughi* and a truck coming from the opposite direction, he slowed down the speed of the bus and on reaching in front of Swaraj Mazda, suddenly applied brakes. This resulted in an accident. Due to the accident, the occupants of the Swaraj Mazda received multiple injuries and became unconscious. Taking advantage of their unconsciousness, the Bus driver, namely, Subhash Chander lodged an FIR against the driver of Swaraj Mazda, namely, Surinder Singh. Lalit Kumar-owner of Swaraj Mazda, died due to the injuries received in the accident, and his parents filed a claim petition i.e. MACT Case No.16 of 1992. The other occupants, namely, Sat Pal Jain; Bhanu Partap (Cleaner) and the driver Surinder Singh, who also received injuries in the said accident, have also filed claim petitions. Except the claim petition of Bhanu Partap, all petitions were accepted by the Tribunal.

The present appeal, which has arisen from MACT Case No.16 of 1992, has been filed by the parents of the deceased-Lalit

Kumar who was the owner of Swaraj Mazda, seeking modification/enhancement of the award dated 26.11.1994.

Learned counsel for the appellants has argued that the Tribunal has erred in awarding only ₹25,000/- for no fault liability. He has further argued that there is ample evidence to show that the bus driver on seeing the *jhota bughi* and truck coming from opposite side, squeezed the bus in front of Swaraj Mazda and suddenly applied the brakes which resulted in the accident solely due to the negligence of bus driver. He further states that there is discrepancy in the bus driver's versions. In the FIR, he stated that the bus was stationary when the accident took place, whereas in his examination and written statement, he has stated that bus was moving at a very slow speed. The Tribunal has further overlooked the fact that the FIR was registered at the instance of bus driver-Subhash Chander when the occupants of Swaraj Mazda were unconscious and the police have not examined any eye witness although so many persons were present on the spot.

I have heard learned counsel for the parties.

Undisputedly the accident took place on 16.12.1989 between the Bus of Delhi Transport Corporation and Swaraj Mazda. The question before Tribunal was that who was responsible for the accident. The Tribunal held the driver of Swaraj Mazda responsible for the accident while observing that if he had maintained a safe distance from the vehicle i.e. bus going ahead of it, the accident would not have taken place. Since the offending vehicle i.e. Swaraj Mazda was insured

only against third party risk and the owner-Lalit Kumar was not a third party for the insurance, his parents-claimants have no claim against the respondent-Insurance Company. Accordingly, they were awarded ₹25,000/- under Section 140 of the Motor Vehicles Act.

The reasoning given by the Tribunal is based on evidence as adduced by the parties. I find no scope for interference in the well reasoned award passed by the Tribunal. Accordingly, the present appeal stands dismissed.

(HARI PAL VERMA)
JUDGE

27.02.2017
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No