

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

554

FAO No.1368 of 2004

Decided on : 25.10.2017

Kamaljit Kaur

... Appellant

Versus

Balbir Singh and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.C.L.Verma, Advocate
for the appellant.

Mr.V.Ram Swaroop, Advocate for respondent No.3.

Avneesh Jhingan , J. (Oral)

The present appeal has been filed against the award dated 2.1.2004 passed by Motor Accidents Claims Tribunal, Kapurthala (for short 'the Tribunal').

2. On 26.2.2002, Kulwinder Singh, aged 27 years was travelling in a bus No.PB-08-U-0693. The said bus belonged to M/s Onkar Bus Service Ltd. Jalandhar. When the bus reached near Chahal Nagar, G.T.Road, Phagwara, it slowed down as Shoba Yatra (procession) was passing by. In the meantime, Kulwinder Singh alighted from the moving bus and lost his balance and he was crushed under the rear wheels of the bus.

3. The mother of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The claim petition was dismissed as the claimant failed to prove rash and negligent driving of the offending vehicle.

4. Aggrieved of the said award, the present appeal has been

filed.

5. I have heard learned counsel for the parties and perused the paper book.

6. Learned counsel for the appellant argued that admittedly there was an accident, as a result of which, Kulwinder Singh lost his life. In spite of proving both these factors, Tribunal had dismissed the claim petition. He further argued that it was duty of the driver and the conductor of the bus to ensure that nobody alight from the moving bus.

7. Learned counsel for the Insurance company argued that the claimant has miserably failed to prove that there was any rash and negligent driving of the offending vehicle. He rather contended that it was proved on record that the deceased himself alighted from the moving bus without informing the driver and conductor and in such circumstances, no compensation can be awarded in a claim petition moved under Section 166 of the Act.

8. The claimant in support of her claim petition produced Paramjit Singh, ASI as AW-4 and Jeet Ram as AW-5 who were eye witnesses to the accident. AW-1, Harbans Singh was also produced for proving the FIR. From a bare reading of the deposition of AW-4 and AW-5, it is clear that the claimant could not prove the rash and negligent driving of the offending vehicle. AW-4 and AW-5 though they appeared to support the claim petition but in their deposition, both of them stated that the deceased alighted from the moving bus. The bus was slowed down as there was a Shoba Yatra (procession) passing by. Kulwinder Singh without informing the bus driver and conductor alighted from the

moving bus as it had slowed down, he lost his balance and was crushed under the rear wheels. Jeet Ram, AW-5 who was stated to be sitting on the seat near the front window has specifically stated that there was no bus stop at the said place. He further stated that when the bus slowed down because of Shoba Yatra (procession), Kulwinder Singh stepped down and lost his balance. It was stated that when the driver tried to pass by the side of the Shoba Yatra (procession), it ran over Kulwinder Singh. AW-4 also admitted in his cross-examination that there was no bus stop at the place where Kulwinder Singh tried to alight from the bus.

9. It has not been disputed even in this appeal that Kulwinder Singh while stepping down from the moving bus had lost his balance and fell down on the pacca (concrete) road. The present appears to be a case where because of rush of the Shoba Yatra (procession), the bus had slowed down which tempted the deceased to get down from the moving bus. AW-4 and AW-5 have specifically stated that bus was going dead slow. In these circumstances, no rash and negligent driving can be attributed to the driver.

10. Hon'ble Apex Court in case **Surender Kumar Arora and another Vs. Manoj Bisla and others, 2012 (4) SCC 552** has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

11. As per the above referred decision, the onus is on the claimants to prove that the accident occurred due to rash and negligent driving of the offending vehicle.

12 In the present case, in the absence of any reliable evidence or witness, the claimant has failed to discharge the onus. No fault can be found in the award passed by the tribunal. The appeal is without any merits, and the same is dismissed.

13. Though it is unfortunate that the widow mother lost her young son but the claim petition moved under Section 166 of the Act, failed at its threshold as rash and negligent driving of the offending vehicle could not be proved.

14. The fact remains that Kulwinder Singh lost his life in an accident in which insured vehicle was involved. No fault liability under Section 140 of the Act should be awarded to the claimant mother.

15. There is no merit in the appeal, hence, the award passed by the Tribunal dismissing the claim petition on this count cannot be faulted. An amount of Rs.50,000/- is awarded to the appellant under Section 140 of the Act.

16. The appeal is partly allowed in the aforesaid terms.

[Avneesh Jhingan]
Judge

25.10.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No