

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

FAO-897-1988 (O&M)
Date of decision: 06.10.2018

BALBIR KAUR AND ORS.

... Appellants

Versus

PEPSU ROADWAYS TRANSPORT CORP. AND ORS. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Malkeet Singh, Advocate
for the appellants.

Mr. Aman Sharma, Advocate
for respondents No.1 and 2.

Mr. R.C. Gupta, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.12737-CII of 2018

Heard.

Allowed as prayed for. Annexures A1 and A2 are taken on
record subject to just exceptions.

Main Case

The present appeal directs challenge against award dated
15.06.1988 passed by the Motor Accidents Claims Tribunal, Sangrur
whereby application for compensation filed by Balbir Kaur and others in
regard to death of Mangat Singh in a motor vehicular accident that took

place on 13.04.1986 at about 6.00 am, filed under Section 110-A of the Motor Vehicles Act, 1939 (in short 'the Act') was dismissed by the Tribunal primarily on the basis of findings recorded on issue No.1.

The facts relevant for disposal of present appeal are that as per allegations raised by the claimants, on 13.04.1986 at about 6.00 am deceased was travelling in Pepsu Road Transport Corporation bus No.PJG-7341 which was going to Bathinda from Patiala. When the bus reached near village Balad Kalan on Patiala-Sangrur road, truck No.RSC-8939 driven by Dalip Singh came from the side of Sangrur and struck against the bus. Mangat Singh sustained injuries and died. Many other passengers also received injuries.

Respondents No.1 and 2 filed the written statement and denied the accident having occurred due to fault of bus driver with the averment that driver of the truck was responsible for the accident, Kulwant Singh, driver of the bus also filed the written statement, in line, with averments raised by respondents No.1 and 2.

The owner and driver of truck filed joint written statement and admitted that accident took place between the truck and bus but it was denied that Mangat Singh died in the accident. It was also admitted that FIR under Section 304-A, 279 and 338 IPC was registered against driver of the truck but the same is against facts and circumstances of the alleged accident. It was further pleaded that Rajinder Kumar Punia was owner of the truck in question. Rajinder Kumar Punia was impleaded as a party. He

filed the written statement and denied the material averments raised in the petition.

New India Assurance Company Ltd. with whom the truck was insured also filed the written statement denying its liability to pay compensation with a plea that liability of insurance company is only upto Rs.1,50,000/-.

The controversy between the parties led to framing of the following issues:-

1. Whether death of Mangat Singh was caused due to rash and negligent driving of truck No.RSC-8939 by Sunder Singh, respondent No.4, while he was travelling in bus No.PJG-7341 which was being driven by Kulwant Singh, respondent?OPA.
2. If issue No.1 is proved, whether the claimants are entitled to any compensation? If so, how much and from whom? OPA
- 2-A. What is the effect of impleading respondents No.6 and 7 after the period of limitation?
- 2-B. Whether the driver of truck No.RSC-8939 was holding a valid driving licence at the time of alleged accident?
3. Relief.

To prove their case, one of the claimants Balbir Kaur appeared in the witness box and they examined Dr. O.P. Aggarwal PW2 to prove the postmortem examination/postmortem report Ex.P2 and Constable Sube Singh PW3.

Having heard counsel for the parties, in the light of materials on record, the learned Tribunal determined issue No.1 against the claimants

and eventually the application for compensation was dismissed.

A relevant extract from findings of the Tribunal on issue No.1, reads as follows:-

The onus of proving this issue was on the claimants but the onus has not been discharged. The learned counsel for the claimants contended that it was admitted by the respondents that on 13.04.1986 an accident occurred between a bus and a truck, so in view of this admission, no further evidence was required, but I find that this contention of the learned counsel is not valid, because, none has admitted that Mangat Singh received injuries during this accident. However, the claimants were also required to prove that the accident occurred due to rash and negligent driving of the truck by Dalip, respondent, but no witness was examined to prove this fact. Mere First Information Report is not enough to hold that the accident occurred due to rash and negligent driving of the truck by Dalip Singh. The First Information Report was recorded on the statement of Kulwant Singh, driver of the bus but he was not examined by the claimants to prove this fact that the truck driver was at fault and the accident was the result of his negligence and also the fact that Mangat Singh, deceased was travelling in the bus at the time of accident and he suffered injuries, on account of which he died.

Counsel for the appellants would urge that Kamla Devi and others filed application for compensation on account of death of Kaur Sain in the same accident that took place on 13.04.1986. The Motor Accidents Claims Tribunal, Sangrur passed award dated 15.06.1988 whereby compensation was assessed on account of death of Kaur Sain by accepting plea of the claimants that accident is the result of rash and negligent driving

of offending vehicle i.e. the truck in question. The award passed by the Tribunal in favour of Kamla Devi and others become subject matter of FAO No.980 of 1988 decided by this Court on 14.05.2018 and compensation assessed by the Tribunal was enhanced. It is vehemently argued that in view of the decision in **Kamla Devi and others's case (supra)**, the respondents cannot be heard to say that the claimants have failed to substantiate their plea that accident is the result of rash and negligent driving of offending vehicle in which bus No.PJG-7341 of Pepsu Road Transport Corporation was also involved.

Another submission made by counsel is that though the claimants have not examined an eye-witness to the occurrence to say something that Mangat Singh sustained injuries in the accident in question but postmortem examination of Mangat Singh was conducted on 13.04.1986. As Mangat Singh died on the spot, his identity could not be established at that point of time. Claimants cannot be denied compensation particularly in the circumstances that provisions of the Motor Vehicles Act providing for compensation are benevolent social legislation and do not admit of strict principles of Evidence Act to be applied. It is further argued that there is nothing on record suggestive of the fact that except with regard to death of Mangat Singh and Kaur Sain, any other application for grant of compensation was filed in regard to the accident in question.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 with the submission that claimants

have failed to adduce satisfactory much less cogent evidence that Mangat Singh was travelling in the bus in question on the fateful day and he sustained injuries in the accident in question.

Another submission made by counsel is that in the postmortem report (Annexure A2) the date in the column of examination of body is 13.03.1986 at 4.00 pm but the accident in question took place on 13.04.1986.

I have heard counsel for the parties, perused the paper book and documents, copies whereof were made available by the appellants by filing an application under Section 151 CPC for placing on record Annexures A1 and A2 as records have burnt in a fire in the record room of this Court.

So far as findings of the Tribunal that the claimants have not been able to prove their case with regard to accident being the result of rash and negligent driving of offending truck, the same cannot be allowed to sustain in view of findings of the Tribunal at Sangrur wherein claim of Kamla Devi and others qua death of Kaur Sain in the said accident has been accepted and affirmed in appeal by this Court.

The only question that survives for consideration is whether claimants are able to connect death of Mangat Singh with the accident in question in regard whereof, FIR No.38 dated 13.04.1986 was registered at the behest of Kulwant Singh son of Naib Singh, driver of bus No.PJG-7341 of PRTC, Bathinda. Perusal of the postmortem report leaves no manner of

doubt that postmortem on dead body of Mangat Singh son of Dalip Singh was conducted in Government Medical College, Patiala on 13.04.1986. Though in the column of examination of body, the date has been wrongly mentioned as 13.03.1986 at 4.00 pm but fortunately the doctor who conducted postmortem has put the date on every page of the postmortem report beneath his signatures.

Perusal of copy of FIR lodged on 13.04.1986 reveals that in the proceedings conducted by the police, the police found an unidentified body lying at the place of occurrence where the truck and bus involved in the accident in question were standing. Counsel for the insurance company has fairly conceded that out of this accident, only two claim applications have been filed, one by Balbir Kaur and others in regard to death of Mangat Singh and other by Kamla Devi and others qua death of Kaur Sain. There is no dispute that Kaur Sain did not die at the spot and he was shifted to Rajindra Hospital, Patiala and died there.

Taking into consideration cumulative view of the facts and circumstances discussed hereinbefore coupled with that there is nothing on record suggestive of the fact that Mangat Singh sustained injuries in some other accident, the irresistible conclusion is that unidentified body lying at the spot was of Mangat Singh which was later subject to postmortem examination in the hospital at Patiala on 13.04.1986. That being so, it is hard to believe that Mangat Singh did not sustain injury in the occurrence in question or the claimants are not entitle to get compensation. In this view

of the matter, findings on issue No.1 cannot be allowed to sustain and accordingly set aside. As a natural corollary, issue No.1 is answered in favour of the claimants and against the respondents before the Tribunal.

The Tribunal has not recorded any findings on other issues. The matter is remitted to the successor Court of Mrs. Harmohinder Kaur Sandhu for determination of other issues on the basis of materials already on record and additional evidence, if any, permitted to be adduced. Parties through their counsel are directed to appear before the Tribunal on 01.11.2018.

The Tribunal is directed to decide other issues within a period of three months from the parties putting in appearance as claim preferred in the year 1986 has been revived.

06.10.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No