

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

FAO No. 1457 of 1991 (O&M)
Date of decision : July 20, 2018

Wazir Singh and another

..... Appellants

v.

Murti and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. R.S Kundu, Advocate
for the appellants.

Mr. Rakesh Lathwal, Advocate
for respondents No.1 to 3, 5 & 6.

Mr. SR Hooda, Advocate
for respondent No.8.

Mr. Vinod Chaudhari, Advocate
for respondent No.10.

Ajay Tewari, J (Oral)

This appeal has been filed by the driver and the owner of the tempo challenging that part of the Award whereby the Tribunal held that it was a case of composite negligence of both the drivers of the truck as well as the tempo, and consequently held both the vehicle owners as well as their drivers along with the Insurance Company liable jointly and severally to pay the compensation awarded.

Brief facts are that on 6.12.1989 at about noon time, Ram Chari and Hawa Singh were going from Sonipat towards village Chitana in the

tempo in question being driven by Wazir Singh and when this tempo was near village Barwasini from Gohana side, the truck in question being driven by Nand Lal struck against the tempo and as a result of this accident, both Ram Dhari and Hawa Singh died due to receipt of injuries. After the trial, the Tribunal, as stated above, held that it was a case of composite negligence of both the drivers, and awarded the compensation.

Counsel for the appellants has argued that the Tribunal has passed the Award on the basis of conjectures and surmises and has misconstrued the evidence on the record. It has misread the statements of PW4-Balwant Singh and PW6-Ramesh. As per him, while analyzing the evidence on record, the Tribunal made contradictory observations.

Counsel for the appellants has taken me through the testimony of PW4 and PW6. I find that the Tribunal has selectively used the testimony of Balwant Singh in coming to the conclusion that the tempo driver was also negligent. The Tribunal has noticed a part of the statement where Balwant Singh said that the tempo driver was also driving the tempo fast but it has ignored the statement where he said that on his asking the driver slowed its speed. It has also gone on to ignore that part of the statement where Balwant Singh said that the tempo was on its correct side. The Tribunal also ignored the fact that the truck was over loaded. It has also ignored the fact that the truck after striking the right side rear wheel of the tempo turned turtle.

Counsel for the Insurance Company is not in a position to rebut the arguments raised by counsel for the appellants.

In the circumstances, it has to be held that the finding of composite negligence was wrong and the accident occurred due to rash and

negligent driving by the truck driver. Consequently, this appeal is allowed and the Award of the Tribunal holding the appellants liable to pay the compensation amount is set aside.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

July 20, 2018
'kk'

(AJAY TEWARI)
JUDGE

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