

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

FAO No.2972 of 2003 (O&M)
Date of Decision: February 09, 2018

Jasvir Kaur and others

---Appellants

Versus

Sukhdev Raj and others

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Vikas Bahl, Sr. Advocate with
Ms. Harbani Singh, Advocate for the appellants.

Mr. Naveen Sharma, Advocate and
Mr. Vijay Lath, Advocate for respondent No.2.

Mr. Sarju Puri, Advocate for respondent No.3.

Mr. D.S. Sukharchakia, DAG,Punjab

Mr. Suman Jain, Advocate assisted by
Mr. Garvit Kalra, Advocate for respondent No.9

HARINDER SINGH SIDHU, J.

The claimants-appellants have filed the present appeal against the award dated 02.04.2003 of the Motor Accidents Claims Tribunal, Nawanshahar, whereby, their claim petition has been dismissed and only 'No Fault Liability' of Rs.50,000/- was awarded against respondent No.9, the insurer of the vehicle of the deceased.

The appellants are the widow, mother and grandmother of deceased Jaspal Singh.

The case of the claimants was that deceased Jaspal Singh was working as a Driver on Tata-407 bearing registration No.PB-32-9525. On

04.05.2000, he was going towards village Kahma i.e. on the road from Nawanshahar to Banga. When he reached near the school of village Kahma, respondent No.1 - Sukhdev Raj came from the opposite side driving a police bus bearing registration No.PB-32-A-3476 and was in the process of overtaking a Punjab Roadways bus bearing registration No.PB-12C-9832, which was being driven by respondent No.2, Mohinder Singh. Both the buses were being driven in a rash and negligent manner. In order to protect himself, the deceased took his vehicle to the Katcha path on the left side of the road. However, while attempting to overtake the Punjab Roadways bus, respondent No.1, took the police bus to the wrong side of the road and struck against Tata-407 being driven by the deceased. In the accident, the right front portion of Tata-407 was smashed and its right front tyre also got burst. The driver of the police bus, however, was able to take his bus ahead. Meanwhile, the Punjab Roadways bus, which had been overtaken also came and struck against the vehicle of the deceased. The deceased received serious injuries in the accident and died on the spot.

The respondents admitted the accident. However, denied that they were at fault.

In order to prove its case, the claimants had examined Dr. Naresh Mittal as PW-1, the photographer Adarsh Kumar as PW-2, who proved photographs Ex AW 2/1 to Ex. AW 2/5, Harbhajan Kaur mother of the deceased as PW-3, Kripal Singh brother of the deceased as PW-4 and Jaspal Singh as PW-5. On the other hand, the respondents examined Sukhdev Raj, driver of the police bus as RW-1, ASI Baldev Singh as RW-2 and Mohinder Singh, driver of the Punjab Roadways bus as RW-3.

their witnesses about the Tata 407 having been taken to the extreme left katcha path in an attempt to avert the accident, had been demolished by the evidence of the photographer Adarsh Kumar PW-2, who was their own witness. According to the Tribunal, witnesses of both sides PW-4 & PW-5 and RW-1 & RW-3, who were stated to have witnessed the accident had asserted that the photographs depicted the correct placement of the vehicle after the accident. Contrary to the case of the claimants that the deceased in order to avert the accident had taken his vehicle to the extreme left on the Katcha path, the photographs depicted the vehicle as being on the extreme right i.e. wrong side of the road. The police vehicle on the other hand was lying parked even beyond the Katcha path on its left side and the Punjab Roadways bus, which was being driven by respondent No.2, was shown with its left tyre on the Katcha path to its left side.

Learned Tribunal has held that these photographs corroborated the version of the respondents that in fact the deceased while driving his vehicle rashly and negligently had taken it to the wrong side of the road, where he first struck against the police bus and thereafter against the Punjab Roadways bus being driven by respondent No.2.

Heard learned Counsel for the parties and perused the record.

AW-2 Adarsh Kumar has deposed that the photographs had been taken by him at the spot and they were exact replica of negatives. PW-3 Harbhajan Kaur, mother of the deceased deposed that her son was 36 years old at the time of accident. He was getting a salary Rs.2,500/- per month for working as a driver. Besides, he was cultivating 5 acres of land in the village. His income from the land as well as monthly emoluments was

about Rs.10,000/- per month. PW-4-Kripal Singh, brother of the deceased

stated that the accident had taken place on 04.05.2000 at about 7.30 p.m. in the area of village Kahma. He stated that the place of the accident was about 70 to 80 yards away from the milk plant, where he was working as an Operator. On the day of the accident, when he was about to enter the gate of the milk plant, he heard a loud noise and saw that a bus of Punjab Police and another bus of Punjab Roadway had collided with Tata 407. When he reached the spot, he saw Tata-407 lying on the Katcha path, on the left side of the road from Nawanshahar to Kahma. Its face was also towards village Kahma. The police bus and Punjab Roadways bus were standing on the other side of the road. On being shown the photographs, Ex-PW-2/1 to PW-2/5, he admitted that they correctly depicted the position of the vehicles at the spot and affirmed that they had been clicked in his presence. He maintained that the accident had occurred due to the fault of the drivers of the buses. In his cross-examination, he stated that the photographs were not clicked in his presence but still maintained that they depicted the situation at the spot correctly. He also affirmed that his brother was getting a salary of Rs.2,500/- per month besides food etc. He also used to earn about Rs.7,500/- per month from about 5 acres of land taken on lease by him.

PW-5 Jaspal Singh, who is a resident of village Kahma and is another eye-witness to the accident stated that on 04.05.2000 at about 7.15 p.m. he was on the main road after doing pooja at the Chirag and he saw Punjab Roadways bus and the police bus coming from Banga side at high speed. The police bus was in the process of overtaking the Punjab Roadways bus. Yashpal Singh deceased was coming from the opposite side i.e. from Nawanshahar towards Banga in his Tata-407. On seeing the police

bus trying to overtake the Punjab Roadways bus at high speed, he took his

vehicle to the extreme left side of the berm. He signaled with his light and also blew the horn. The police bus struck the driver side of Tata 407 with its right side. After the accident, the police bus went on the left side of the road from Banga to Nawanshahar side. The right tyre of the Tata-407 burst as a result of the impact of the accident. The Punjab Roadways bus which was following also struck with the right side of Tata-407.

RW-1 Mohinder Singh driver of the Punjab Roadways bus deposed that the bus was going from Jalandhar to Chandigarh. It started from Jalandhar at 6.20 p.m. When the bus reached near Kahma Milk Plant, the police bus was going in front of the Punjab Roadways bus. The Tata 407 which was coming from the opposite side struck against the police bus as a result of which the police bus fell on the left side and turned turtle towards the left side. He stopped his Punjab Roadways bus at some distance from the police bus, but the Tata-407 struck against it while it was standing and caused damage to it. In his cross-examination, he stated that the distance between his vehicle and police bus was about 20 to 25 yards and for a vehicle being driven at normal speed, this distance was sufficient for applying breaks and stopping it. He affirmed that the Tata 407 struck against the police bus from the driver side. He admitted that no case was registered against him and the driver of the police bus as a police vehicle was involved.

RW-2 ASI Baldev Singh of P.S. City Nawanshahr who was the investigating officer of the case candidly admitted that he had not seen the accident. During investigation he had not recorded the statement of any independent witness, Panch, Sarpanch or any shopkeeper nearby. Though

there was a school nearby, statement of any employee of the school was also

not recorded.

RW-2 Sukhdev Raj, driver of the police bus stated that he was on duty and was going in the police van from Jalandhar to Nawanshahr. When he reached near the school of village Kahma, he saw the Tata 407 coming from the opposite side in a zig zag manner and at a high speed. On seeing this he turned his bus to Katcha path and further seeing that the Tata 407 was coming towards the bus, he took it to a pit beyond the Katcha path and in this process, its left tyre fell into the pit and the back right side of the bus was raised from Katcha road. Despite his best efforts to avert the accident, the Tata-407 struck the police bus slightly on the back portion (driver side portion). After crossing the police bus, the Tata-407 struck against the Punjab Roadways bus, which was about 100 to 125 yards behind the police bus and had been stopped on the Katcha road by its driver in an attempt to avert the accident but the Tata-407 struck the Punjab Roadways bus on its driver side. He further stated that he telephoned Police Station Banga and informed about the accident. He also contacted the ambulance from the wireless installed in the police bus. The wife of the deceased, his brother and other family members also came there. He also remained at the spot. The family members of the deceased did not utter a word that the accident was caused due to the rash and negligent driving of the police bus or the Punjab Roadways bus. He also tried to suggest that the deceased was drunk but admitted that neither did he inform the doctor about it though he was present in hospital when the post mortem was conducted, nor did he mention about this in the FIR.

It is in the light of this evidence that a determination of the

negligence has to be made.

The case of the claimants is that on seeing the police bus overtaking the Punjab Roadways bus at high speed and being driven rashly and negligently, the deceased driving the Tata 407 tried to avert the accident by moving to the katcha path on the extreme left, yet first the police bus struck the driver side of Tata 407 with its right side and, later, the Punjab Roadways bus, which had been overtaken and was following the police bus, struck the right side of the Tata 407. The case of the respondents is that the Tata 407 struck against the police bus even though it had been taken to the extreme left of the road and in the process its left tyre had fallen into a pit and the back side portion of the bus was raised. After striking the police bus, the Tata 407 struck the stationary Punjab Roadways bus. The claimants contend that the negligence was of the respondents while the respondents contend otherwise.

The photographs show the front of the TATA 407 to be damaged. The police bus appears to have been struck on the right side slightly behind the driver seat. The Punjab Roadways bus appears to have been struck on the driver side, though the damage is not substantial. The photographs undoubtedly show the police bus on the extreme left side of the road. The photographs also show the left tyres of the Punjab Roadways bus as being on the katcha path. But the Tata 407 appears to be positioned at a right angle to the Punjab Roadways bus, indicating that as a result of the impact of the collision it had turned sideways. It appears to be standing across the road with its front being near about the centre of the road. Thus it cannot be said to be standing on the extreme right side of the road as held by the learned Tribunal. The version of the respondents that the Tata 407

even beyond the katcha path does not appear to be correct. For, if the Tata 407 had struck the police bus when the police bus had been taken even beyond the katcha path on the left side of the road, then front portion of Tata 407 should also have been on the extreme left of the road even beyond the katcha path. But in the photographs of the Tata 407 and the Punjab Roadways bus, the front of the Tata 407 appears to be in the centre or slightly beyond the centre towards the left side of the road, but certainly not on the katcha path. It is only the left wheels of the Punjab Roadways bus that are on the katcha path. This position of the Tata 407 belies the assertion of the respondents that the police bus was on the extreme left even beyond the katcha path when the Tata 407 struck it.

Further, it may be unsafe to place implicit reliance on the position of the police bus shown at the extreme left side of the road as depicting its correct position at the time of the accident. PW-5 in his evidence stated that the police bus struck the driver side of Tata 407 with its right side. After the accident, the police bus went on the left side of the road from Banga-Nawanshahr. As per the evidence of RW 3 Sukhdev Raj he remained at the spot after the accident. He telephoned P.S. Banga and even arranged for the ambulance. Though he has stated that all the vehicles remained standing at the spot in the same position till the photographer arrived and clicked the photographs, the possibility of his having moved the bus to the left side after the accident cannot be ruled out. As per the evidence of respondent Sukhdev Raj (driver of the Police Bus) damage to the police van was slight so it could easily have been moved to the left side.

From the photographs, the front part of the Tata 407 appears to

be totally smashed and its direction appears to have been changed sideways

In this condition, it is doubtful if the Tata 407 could even move and that too further ahead along the road and strike the Punjab Roadways bus which the respondents claim to have been 20—25 yards away and was stationary. If the Tata 407 could move it would move across the road and not along it. Thus, the version of both respondents No.1 and 2 appear to be untenable.

If the version of respondents 1 and 2 is untenable, then the version of the claimants that the accident took place entirely due to the rash and negligent driving by both the buses particularly the police bus as it was attempting to overtake the Punjab Roadways bus and that the deceased had taken the Tata 407 to the extreme left side also does not appear to be wholly correct. The accident appears to have occurred on a clear road when these were the only vehicles on the road. Neither the claimants nor the respondents have claimed that there was any other vehicle on the road at that time. In the facts and circumstances of the case, it appears that the accident was caused due to the contributory negligence of all the three vehicles i.e. 50% of the deceased (driver of Tata 407), 40% of respondent No.1 Sukhraj (driver of the Police Bus) and 10% of respondent No.2 Mohinder Singh (driver of the Punjab Roadways Bus).

Accordingly, the finding of the Tribunal on the issue of negligence is modified to the above extent.

Compensation :

PW-3 Harbhajan Kaur mother of the deceased stated that the deceased was getting a salary of Rs.2500/- per month as driver of Tata 407 besides other facilities of food etc. He was also cultivating five acres of land in the village and his total income was about Rs.10,000/- per month. He was

aged about 36 years. PW-4 Kirpal Singh brother of the deceased also stated that the deceased who was about 37 years of age was getting a salary of Rs.2500/- per month for working as a driver. He had taken about five acres of land on lease and used to earn about Rs.7500/- per month from that. However, no proof of income from the land was produced. The deceased was working as a driver and he was on the wheels of the TATA 407 at the time of the unfortunate accident. In the circumstances, it will be fair to assess his income at Rs.2500/-.

In the post mortem report, the age of the deceased is mentioned as being about 32 years though his brother Kirpal Singh(PW4) stated that he was 37 years old at the time of death, whereas, according to his mother he was 36 years. In the absence of any definite proof of age the age can be based on the post mortem report at 32 years.

Accordingly, the compensation is assessed as under:-

Sr.No.	Heads	Amount (In Rs.)
(i)	Income @ Rs.2500/- per month	
	<i>40% of above (i) to be added as future prospects (deceased aged 32 yrs.)</i>	<i>2500+1000 = 3500/- per month</i>
(ii)	<i>Monthly loss of income after deduction of 1/3rd of (i) as personal expenses of the deceased</i>	<i>3500-1166 = 2334/-</i>
(iii)	<i>Total loss of income after multiplier of 16 is applied (deceased aged 32 years)</i>	<i>2334x12x16 = 4,48,128/-</i>
(iv)	<i>Loss of Estate</i>	<i>15,000/-</i>
(v)	<i>Funeral Expenses</i>	<i>15,000/-</i>
(vi)	<i>Loss of Consortium (exclusively for the widow of deceased)</i>	<i>40,000/-</i>
	<i>TOTAL</i>	<i>5,18,128/-</i>

Accordingly, the appeal is allowed. The claimants – appellants are held entitled to Rs.2,59,064/- (50% of the total compensation) along with interest @ 7.5% per annum from the date of filing of claim application till

realisation. Respondent No.6 and 7 being the owners of the Police Bus

would be liable to pay 80% of this amount. Respondent No.4 and 5 being the owners of the Punjab Roadways bus would be liable to pay 20% of this amount. It is clarified that the compensation awarded hereinabove, is in addition to the amount on account of 'No Fault Liability', already awarded by the Tribunal.

February 09, 2018

**(HARINDER SINGH SIDHU)
JUDGE**

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No