

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

**(1) FAO No.3579 of 2007 (O&M)
Date of Decision:- 17.5.2018**

Paramjit Kaur Sekhon and others

....Appellants

Versus

Khushwant Singh and others

....Respondents

(2) FAO No.3967 of 2007 (O&M)

Moga Malwa Bus Service Registered through its Proprietor Swarnjit Kaur

....Appellant

Versus

Paramjit Kaur Sekhon and others

....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Dhiraj Chawla, Advocate
for the appellants in FAO-3579-2007 and
for respondent Nos.1 to 4 in FAO-3967-2007.

Mr. Dhirinder Chopra, Advocate
for appellant in FAO-3967-2007 and
for respondent Nos.1 to 3 in FAO-3579-2007.

Mr. Suman Jain, Advocate
for respondent No.4 in FAO-3579-2007 and
for respondent No.7-insurance company in FAO-3967-2007

Gurvinder Singh Gill, J. (Oral)

1. This judgment shall dispose of the aforesaid two appeals challenging award dated 17.2.2007, whereby the learned Tribunal while accepting the claim

petition filed on behalf of claimants Paramjit Kaur Sekhon and others has awarded compensation to the tune of ₹17,25,000/- being 50% of the assessed amount of ₹34,50,000/- on account of the findings having been returned that it is a case of “contributory negligence”. While an appeal has been filed on behalf of the claimants seeking enhancement of compensation, the other appeal has been filed on behalf of the owner of offending vehicle challenging award of compensation.

2. As per the case set up by the claimants, when on 17.12.2004 deceased Harvinder Sekhon was going towards village Nangal, Tehsil Nihal Singh Wala, to meet his sister on a jeep bearing registration No.PUL-1845, a bus bearing registration No.PB-10AM-0255 which was being driven rashly and negligently by respondent No.1 came from the opposite side and hit against the jeep, resulting in death of Harvinder Sekhon. The claimants thus prayed for award of compensation.
3. The aforesaid claim petition was resisted by the respondents. The learned Tribunal, upon appreciating the evidence led by the parties returned its findings to the effect that the accident in question had occurred due to contributory negligence of the deceased himself as well as the driver of bus in question to the extent of 50% each and consequently awarded compensation to the tune of ₹17,25,000/- (being 50% of the assessed amount of ₹34,50,000/-).
4. The learned counsel for the claimants while assailing the impugned award has submitted that the learned Tribunal fell an error in holding the present case to be a case of contributory negligence whereas there was no evidence on record

to suggest even a semblance of negligence on part of the deceased who was driving the jeep in question.

5. On the other hand, learned counsel for insurance company has submitted that since it was a case of head-on collision, therefore, negligence on part of deceased is implicit. The learned counsel in order to hammer forth the aforesaid submission, cited a judgment of Hon'ble Supreme Court reported as 2006(2) R.C.R. (Civil) 590 Bijoy Kumar Dugar Versus Bidyadhar Dutta and others wherein in case of head-on collision, it was held that drivers of both the vehicles should be held responsible to have contributed equally to accident.
6. I have considered the aforesaid rival submissions and have also perused the above cited judgment. The aforesaid judgment would not be applicable to the facts of the present case inasmuch as in the present case there is categorical evidence of PW-1 Mukand Singh to the effect that the deceased was driving his jeep very carefully, whereas the driver of the bus in question was driving at a high speed in rash and negligent manner and had struck his bus against the front side of jeep leading to death of deceased. Nothing could be brought about during cross examination of PW-1 Mukand Singh, so as to suggest that the deceased himself was also negligent in any manner or was violating any rules or was driving at a high speed. There is no other evidence to suggest any such thing from which it could be inferred that the deceased was negligent. It will be very hazardous to lay down a straight-jacket formula that every case where the vehicles coming from opposite side hit against each other, has treated to be as a case of contributory negligence.

7. The relevant extract from the impugned award, wherein the manner of

accident has been discussed reads as follows:-

“He has further stated that Harvinder Singh was driving his jeep very carefully. When he reached near elementary school “Bir Badhni” at about 6.00 PM, a bus bearing registration No.PB-10AM-0255 was coming from Barnala side and it was a high speed and was being driven in rash and negligent manner by respondent No.1 and it struck against the front side of the jeep in which Harvinder Singh was traveling. Due to this accident Harvinder Singh died at the spot. He has also testified in his examination in chief that he was knowing the driver because he was going up and down between his village and Moga. He was knowing driver because he was usually traveling in that bus. In his cross-examination he has stated that Harvinder Singh was real brother of his wife (Sala as known in local parlance). Bus and jeep struck into each other face to face and he had identified the driver before he could escape. So in this manner, the petitioners evidence prove that none of the driver had exercised any restraint or precaution that is why he had struck face to face with other and it amounts to case of contributory negligence. Accordingly, this is decided in favour of the petitioners.”

8. A perusal of the aforesaid extract shows that no reason much less a convincing reason has been assigned for holding it to be a case of “contributory negligence”. As such, in the absence of any evidence to suggest that the deceased himself had contributed in causing accident in any manner or was rash in driving, the findings of the Tribunal that it is a case of contributory negligence, cannot be upheld and the same are hereby modified. It is held that the accident leading to death of deceased Harvinder Singh had occurred due to rash and negligent driving solely on the part of driver of bus in question.
9. As regards the quantum, while I find that the annual dependency of the claimants upon income of deceased has been appropriately assessed as ₹2,45,000/- but no amount has been added to the income on account of the

expected enhancement of income in future. Bearing in mind the age of the deceased which has been assessed to be around 40 years and in view of dictum of judgment of Hon'ble Supreme Court in (2017) 16 SCC 680 National Insurance Company Limited Vs. Pranay Sethi and others, an amount equal to 40% of assessed income needs to be added on account of "future prospects". Thus after adding the aforesaid 40%, the annual dependency would work out to ₹3,43,000/-.

10. I also find that in case where the age of deceased is 40 years, the appropriate multiplicand would be 15 in view of the dictum in (2009) 6 SCC 121 Sarla Verma and others Vs. Delhi Transport Corporation and another. By applying the above multiplicand 15 to the aforesaid dependency, the amount works out to ₹51,45,000/-. ($₹3,43,000 \times 15 = ₹51,45,000/-$)
11. In addition to the above assessed amount, the claimants being widow and children are also entitled to an amount of ₹40,000/- towards loss of consortium, ₹15,000/- towards loss of estate and ₹15,000/- towards funeral expenses. Thus the total compensation works out to ₹52,15,000/-. The claimants are thus entitled to the above assessed compensation.
12. As regards the liability to pay compensation the learned Tribunal has held that the driver of the offending vehicle was not holding a valid driving licence and thus the liability to pay compensation has been fastened upon respondents No.1 to 3 to the exclusion of respondent No.4-insurance company.
13. The learned counsel for the owner while pressing upon his appeal, has submitted that as per the driving licence verification report, the licence in question was found to be valid. As per verification report Ex.R-4 it was only

on account of the fact that the licence in question was a renewed licence and there were no particulars available as regards to the original licence, that the licence in question has been held to be invalid. The learned counsel for the owner has further submitted that in any case the law enjoins upon the owner a duty only to broadly ensure that the driver employed by him possesses a valid driving licence that he is not expected to go about verifying authenticity of the licence.

14. I have considered the aforesaid submission. A perusal of the verification report Ex.R-4 shows that the licence produced by the driver bears No.12488/REN and the said number suggests that it is a renewed licence. A perusal of the verification report shows that it has been reported that the licence No.12488/REN had been issued in the name of Khushwant Singh. It has also been reported that the old number 8145/NDL/94-95 is not in the list as the last number in the year 1994-95 was upto 6256. The aforesaid report shows that the earlier licence on the basis of which the renewed licence was issued was a fake licence as the entries recorded in the office of DTO in the year 1994-95 were only upto serial no.6256, whereas the purported earlier licence of the driver is stated to be bearing serial No.8145.
15. It is a settled law that the renewal of a fake licence will not clothe the same with validity. As such this Court does not find any reason to differ with the findings of the Tribunal to the effect that the driver of the offending vehicle was not possessing a valid driving licence.
16. In the present case there is nothing on record to suggest that the owner of the offending vehicle had been diligent enough before employing the driver. Merely seeing the driving licence would not be sufficient and he was

expected to have taken care of ensuring that the driver was a competent driver and should have taken some type of basic driving test before employing him. The owner not having done so, the primary liability to pay compensation would be of respondents No.1 to 3. However, in view of the settled position it will also be open to the claimants to initially recover the aforesaid compensation from respondent No.4 insurer, who would be at liberty to recover back the same from respondents No.1 to 3. The aforesaid enhanced compensation of ₹52,15,000/- shall be paid alongwith interest @ 7.5% from the date of filing of claim till its realization, to be shared by the claimants in the proportion defined by the tribunal.

17. The award in question stands modified accordingly. While the appeal filed on behalf of the claimants stands accepted, the appeal filed on behalf of the owner i.e. FAO-3967 is dismissed with the modification as regards recovery rights indicated above.

May 17, 2018
sandeep

(Gurvinder Singh Gill)
Judge

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