

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

F.A.O. No. 4493 of 2013(O&M)

Date of Decision: 09.07.2018

Managing Director Punjab State Bus Stand Management Company Ltd.

.....Appellant.

Versus

Prem Sharma and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Jaswinder Singh, Sr. DAG., Punjab.
for the appellant.

Mr. Satnam Singh Gill, Advocate
for Mr. B.S.Batth, Advocate
for respondents no.1, 2 and 4.

LISA GILL, J (Oral).

This appeal has been filed by Managing Director Punjab State Bus Stand Management Company Ltd., owner of Bus No. PB-08-BR-9320 challenging the award of compensation dated 01.05.2013, passed by the learned Motor Accident Claims Tribunal, Gurdaspur, wherein a sum of ₹27,21,600/- has been awarded to the respondent-claimants on account of death of Rajinder Kumar.

Brief facts necessary for the adjudication of the case are that a claim petition under Section 166 of the Motor Vehicle Act was filed by respondents no.1 to 3 claiming compensation on account of death of Rajinder Kumar in a road side accident which took place on 12.02.2011. It was averred that the deceased, who was working as ASI in Punjab Police,

drawing a salary of ₹ 37,815/- per month, was standing near the petrol pump, Ladowal for crossing the road for boarding a bus or auto rickshaw for going to Phillaur. In the meantime, the offending bus bearing registration no. PB-08-BR-9320 being driven in a rash and negligent manner by respondent no.-5 struck against Rajinder Kumar, who received serious injuries and was taken to Hospital where he succumbed to his injuries. FIR No. 23 dated 13.02.2011(Ex.C-1), under Sections 279, 304-A IPC, was registered against respondent-driver-Jatinder Singh. Postmortem report of the deceased was produced as Ex.C-2.

Learned tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending bus by respondent no.5-Jatinder Singh. Income of the deceased was assessed as ₹37,800/- on the basis of the salary received by him. Compensation to the tune of ₹27,21,600/- was awarded while taking annual dependency of the claimants to be ₹ 03,02,400/- after effecting deduction of 1/ 3rd and applying a multiplier of 9 keeping in view the age of the deceased i.e. fifty six years.

Aggrieved therefrom, appellant-Managing Director Punjab State Bus Stand Management Company Ltd., has filed this appeal.

Learned counsel for the appellant submits that the evidence on record does not point out to the accident in question having been caused on account of rash and negligent driving of the offending bus by respondent no.5. It is submitted that though the driver did not appear before the learned tribunal however drawing an adverse inference on this account is unjustified. There is no site plan on record to show the manner in which the accident in question took place. The propounder of the FIR, it is contended was not the

eye witness of the accident as the FIR was registered on the next day of the incident. The accident, it is contended never took place with the offending vehicle as alleged. Therefore, the impugned award it is prayed be set aside.

I have heard learned counsel for the parties and have gone through the file as well as the documents, which are produced in Court today.

Claim petition under Section 166 of the Motor Vehicle Act was filed by respondents no.1 to 4 seeking compensation on account of death of Rajinder Kumar. It is not in dispute that FIR No. Ex.C-1 was registered on 13.02.2011 in respect to the accident which took place on 12.02.2011. FIR was registered on the statement of Mandeep Sharma, who is the son of the deceased, wherein it is mentioned that his married sister who had come from Australia, wanted to meet their father, who had left home for Phillaur in connection with his training programme. Mandeep Sharma accompanied by his sister and brother-in-law proceeded towards the bus stand to see whether they could still catch up with their father. The deceased was found standing near petrol pump Ladowal for crossing the road for boarding a bus or auto rickshaw for going to Phillaur. In the meantime, the offending bus driven in a rash and negligent manner by its driver-respondent no.5-Jatinder Singh struck against the deceased. It is to be noted that the number of the bus is duly mentioned in the FIR. Postmortem report Ex.C-2 is on record of the case to prove that the deceased-Rajinder Kumar died due to the injuries received in the motor vehicle accident.

CW-2-Mandeep Sharma son of Rajinder Kumar (deceased), in

his evidence (affidavit Ex.CW1/A) has specifically stated that he witnessed the occurrence/accident in which his father lost his life. It is his specific stand that he had followed the deceased in his car along with his sister and her husband who had come from Australia. Nothing could be elicited from his cross-examination to indicate that he is not a reliable witness. Merely because he is the son of the deceased, does not lead to an inference that his testimony is not credible in the absence of any evidence to such effect.

Argument that there is no site plan/record to show the manner in which the accident took place is indeed fallacious and misplaced in the factual matrix of the case. Claimants have successfully proved the factum of the rash and negligent act of the respondent no.5-driver on a preponderance of probabilities.

Learned tribunal has rightly held that an adverse inference has to be drawn due to non-examination of the driver of the offending bus. It is relevant to note at this stage that the driver in this case is admittedly an employee of the appellant. There is no denial of the fact that the driver of the offending bus was facing criminal trial. In the factual matrix of the case, I do not find any merit in the argument raised by learned counsel for the appellant.

No challenge is raised to the quantum of the compensation awarded.

No other point has been urged.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 01.05.2013 passed by the learned MACT, Gurdaspur, which calls for interference by this Court.

Appeal is accordingly dismissed with no order as to costs.

09.07.2018
s.khan

[LISA GILL]
Judge

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