

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227/3

FAO-496-1986 (O&M)
Date of decision : 09.11.2023

Kalawanti and Others

.....Appellants

Versus

Daljit Singh and others

..... Respondents

FAO-497-1986 (O&M)

Kaki and Others

.....Appellants

Versus

Daljit Singh and others

..... Respondents

FAO-1683-1992 (O&M)

Chhoti Kaki and Others

.....Appellants

Versus

Daljit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Arun Bansal, Advocate and
Mr. Anubhav Bansal, Advocate for the appellants.

Mr. Aman Sharma, Advocate,
for respondent No.2-PRTC

AMAN CHAUDHARY, J.

1. The aforesaid appeals are being decided by a common judgment, as common facts and question of law are involved.
2. These are reconstructed cases, as the original files were burnt in the fire that broke out in the concerned branch. Since the cases are pending for more than 30 years, the counsel for the appellants as well as respondent No.2-PRTC have no objection, if the same are decided on basis of the available record.

3. Challenge in the aforesaid appeals is to the Award dated 25.02.1986 passed by the learned Motor Accident Claims Tribunal, Bathinda (for short ‘the Tribunal’) vide which the claim petitions of the claimant-appellants, being the dependents, were dismissed.

4. Learned counsel for the appellants contends that four persons namely Nand Singh, Mohinder Singh, Dev Singh and Pritam Singh had died in an accident on 19.02.1983, caused by respondent No.1 while driving the offending PRTC bus, in a rash and negligent manner. It is proved from statements of Lilla Singh and Mithu Singh that the accident was caused by respondent No.1, who was driving the bus at a very high speed. The Tribunal, without considering the said fact, dismissed the claim petitions.

5. On the other hand, learned counsel for respondent No.2 submits that the driver of the offending bus was not at fault and the Tribunal after considering the evidence on record, has rightly dismissed the claim of the appellants.

6. Heard learned counsel on both sides and perused the record.

7. It is apposite to refer the findings of the Tribunal returned while deciding the issue with regard to the rash and negligent driving of respondent No.1, which read thus:

“..The existence of carelessness or negligence on the part of the driver in a case like the one in hand, has to be brought home by cogent and convincing evidence, but the applicants have miserably failed to substantiated any such thing against Daljit Singh, and this I say, because sitting on the ‘Gadda Rehra’ and the tractor and that too at 7.30 P.M., which is the month of February is quite a dark an hour, the aforesaid Lilla Singh and Mithu Singh could not have possibly formed any opinion about the speed of the on coming bus, and the facts deposed to by them in this regard do not, therefore, inspire confidence and do not, therefore, in my opinion deserve to be given any weight. .. It is a matter of common knowledge that there is no mechanical device for towing a ‘gadda rehra’) which is actually meant to be plied with the help of oxen only) to a tractor and it is generally tied thereto with the help of a rope or an iron chain

only, meaning thereby, that the driver in the front can have no means or device to retain any control thereon and since in the case before me admittedly, no harm was done to the tractor, what seems to have happened is, that on seeing the oncoming bus, while the tractor was able to get to its left on the kacha path, while the tractor was able to get to its left on the kacha path, the 'gadda rehra' may have been left trailing loosely behind, wobbling and wavering on the main road itself, and it was obviously such a thing alone which resulted in its being hit and dragged into the ditch and in these circumstances, therefore, I certainly do not feel persuaded to come round to the view that he (Daljit Singh) had also any role in causing the unfortunate collision and no liability can, therefore, be fastened to him at all..”

8. The findings aforesaid having been perused as also on examining of the record, this Court finds no infirmity or perversity in the same.

9. The appellants had also filed an application bearing CM-1226-CII-1992 in the present appeals for claiming a sum of Rs.15,000/- towards 'No Fault Liability' as provided under Section 92-A of the Motor Vehicles Act. He however prays for grant of Rs.50,000/- as per the Amendment in the Motor Vehicles Act.

10. Learned counsel for respondent No.2 opposes the prayer and submits that the effect of the amendment was prospective and not retrospective. He places reliance on **State of Punjab vs. Bhajan Kaur**, (2008) 12 SCC 112.

11. Notably, the accident occurred in the year 1983. Applications filed seeking compensation on account of 'No Fault Liability' in FAO-496 & 497-1986, were allowed by this Court vide order dated 18.08.1992 and respondent No.2-PRTC was directed to pay a sum of Rs.15,000/- to them under the said head within one month.

12. This Court while considering entitlement of the complainant-appellants enhanced amount as per the amendment, finds the same not payable in view of the dictum in **Bhajan Kaur** (supra) wherein, while holding that the amendment does not have retrospective effect, Hon'ble the Supreme Court

observed that, “No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more particularly, when it came into force on or about 1-7-1989.”

13. It is apparent that in FAO-1683-1992 no application had been filed as was in the aforesaid two cases for grant of amount for ‘No Fault Liability’ which had been allowed by this Court as mentioned above, therefore, this Court is of the considered opinion that the ends of justice would be adequately met, if a sum of Rs.15,000/- is allowed to them as well alongwith interest at the rate of 7.5% per annum from the date of filing of the appeal till its realization. Ordered accordingly.

14. It is also clarified that if the amount of Rs.15,000/- as directed by this Court vide order dated 18.08.1992 on account of ‘No fault liability’ in FAO-496 & 497 of 1986 has not been paid to the claimants, it be now released with interest @ 7.5% per annum from the date of filing of the appeals till its realization, within 2 months from date of receipt of copy of this judgment.

15. All the three appeals stand disposed of accordingly.

16. Photocopy of the judgment be placed on the files of the connected cases.

09.11.2023
gsv/Ankur

(AMAN CHAUDHARY)
JUDGE

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