

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

FAO-230-2008(O&M)

Reserved on:-15.5.2023

Date of Pronouncement:-22.5.2023

Manjit Kaur and others

...Appellants

Versus

Nihal Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Chetan Kapoor, Advocate
for the appellants.

Mr.Gopal Mittal, Advocate
for respondent No.3.

Mr.Sandeep, Addl.A.G., Punjab
for respondents No.4 and 5.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that Joginder Singh son of Dalip Singh working as a driver in Punjab Roadways, Jalandhar was on duty in bus bearing registration No.PB-12-C-9662 (hereinafter referred to as the ill-fated bus) taking the bus from Jalandhar to Delhi; Harbhajan Singh was performing duty as a Conductor in the said bus; the bus had started on 7.7.1998 at 5:00 p.m. and when on 8.7.1998 at about 1:40 a.m., it had reached near Bakouli (Delhi), it struck against a truck bearing registration No.HP-34-0507 (hereinafter referred to as the offending truck) which was parked on G.T. Road without observing traffic rules; resultantly Joginder Singh driver of the bus as well as some passengers travelling in the bus received multiple injuries; Joginder Singh was taken

to Hindu Rao Hospital, Delhi, where he succumbed to the injuries at about 3:20 p.m.; information regarding the accident was given to the police and FIR No.220 of 1998 for the offences under Sections 279, 337, 338, 304-A IPC was registered at Police Station concerned

2. The legal representatives of the deceased, namely, his widow – Manjit Kaur aged about 38 years, son Gurtej Singh, aged about 21 years, another son Gurwinder Singh, aged about 18 ½ years, minor daughter Jasbir Kaur aged about 15 years, all residents of village Pabri, Tehsil Rajpura, District Patiala had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Nihal Singh – driver, Ved Ram – owner and United India Insurance Company, Ltd., Patiala – insurer of the offending truck as well as General Manager, Punjab Roadways, Jalandhar-II and State of Punjab through its Secretary Transport, Chandigarh – owners of ill-fated bus.

3. As per the case of the claimants, Joginder Singh deceased was aged about 34 years and he was getting salary of Rs.10,000/- per month by working as a driver with Punjab Roadways, Jalandhar; in addition to that he was running a dairy farm and all the claimants were dependent upon his earnings.

4. On getting notice, all the respondents appeared and contested the claim petition by filing written statements. Respondents No.1 and 2 had filed a joint written statement wherein they denied the accident and other averments in the claim petition, craving for dismissal of such petition.

5. In the written statement submitted on behalf of respondent No.3, it had also controverted the assertions in the claim petition; in addition to that raising objection that the petition was not maintainable; the driver of the truck was not holding a valid and effective driving licence at the time of accident; the truck was not having an effective route permit and fitness certificate at the time of alleged accident.

6. The respondents No.4 and 5 have also filed joint written statement in which they admitted that Joginder Singh was on duty as a driver in the ill-fated bus and he had perished in the road accident due to fault of respondent No.1 – truck driver.

However, all the respondents prayed for dismissal of the claim petition.

7. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

8. After hearing arguments, the claim petition was accepted by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the Tribunal) vide award dated 1.6.2005 and compensation of Rs.3,20,000/- was awarded to the claimants, payable by respondents No.3 – insurance company. However the respondent No.3 was held to be entitled to recover the same from respondents No.1 and 2. Whereas the claim petition qua respondents No.4 and 5 was dismissed. It was made clear that the payment shall be made within two months from the date of award, failing which the interest shall be payable at the rate of 6% per annum from the date of filing of the petition till actual realization.

9. Feeling that the compensation awarded to them was on lower side, the claimants have approached this Court by filing the present appeal seeking enhancement of the compensation awarded to them, notice of which was issued to the respondents and respondents No.3 to 5 have put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record.

11. The Tribunal taking into consideration the eye-witness account of the accident provided by PW4 Harbhajan Singh, who was on duty as Conductor in the ill-fated bus at the time of mishap. He had reported the matter to the police, on the basis of which formal FIR Ex.PW4/B was registered. Such witness deposed in consonance with the case of claimants stating that the accident had taken place on account of wrong parking of the offending truck on the road as well. The Tribunal further took into consideration the FIR lodged with regard to the accident and postmortem report of the deceased Ex.PW4/C, further noticing that respondents had not led any evidence in rebuttal. The Tribunal had returned a finding that the occurrence had taken place on account of negligence of respondent No.1 Nihal Singh, who had parked the offending truck on the road without observing traffic rules as a result, the bus collided with the truck and Joginder Singh deceased had suffered injuries to which he had succumbed. It was further observed that Joginder Singh could not be absolved of contributory negligence since he was also supposed to be vigilant and anticipate such events while driving the bus and if he had exercised full care in driving the bus, the occurrence could

have been avoided or its gravity could be diminished. Therefore, the deceased was held to be equally negligent in causing of accident, which led to his death.

12. However, I find that the Tribunal the was not justified in putting the responsibility for accident equally on the deceased bus driver. The truck driver was more at fault in parking his truck on the road without observing traffic rules, to say putting the parking lights and reflectors on so as to indicate to the traffic coming on the road that truck was standing there so as to avoid colliding therewith. Of course the deceased bus driver was also required to take precautions in that regard but it has to be kept in mind that the accident had taken place in early morning hours when it is dark and he could not have anticipated the truck standing on the road and without parking lights or reflectors being on the same, the truck could not have been visible from considerable distance to enable the bus driver to either apply brakes in time or swerve it to a side to avoid collision. In my considered view the fault of the truck driver was to the extent of 60% and that of bus driver 40%.

13. With regard to the quantum of compensation, the Tribunal has taken the age of deceased to be 35 years while referring to document Ex.PW4/C. His salary has been taken to be Rs.5,431/- per month.

14. The Tribunal has not awarded any amount towards future prospects. The Tribunal has considered the age of deceased to be 35 years. In terms of the judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased had a permanent job and was below the age of 40 years, an addition of 50%

of the actual salary is to be made towards future prospects. Doing that the monthly income of the deceased comes out to Rs.8146/-(5431 + 2715).

15. The Tribunal has deducted 1/3rd of the amount towards personal and living expenses of the deceased. Whereas in terms of judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and another, 2009(3) RCR(Civil)77**, when the dependent family members are 4 to 6, the deduction should be 1/4th. Doing that, the monthly dependency of the claimants comes out to Rs.6110 (8146 – 2036) and annual dependency comes out to Rs. 6110 x 12 = Rs.73,320/-.

16. The Tribunal has used multiplier of 16, which is correctly done in terms of judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and another(supra)**. Doing that the compensation payable comes out to Rs. 73,320 x 16 = 11,73,120/-.

17. Since the liability of the deceased has been taken to be 40%, the proportionate amount is to be deducted from the total compensation payable. Doing that the compensation comes out to Rs.7,03,872/- (1173120 - 469248).

18. Under the conventional, the Tribunal has awarded a sum of Rs.5,000/- to the claimant No.1 under the head loss of consortium and Rs.25,000/- towards transportation as well as miscellaneous expenditure incurred in the hospital.

19. As per the latest judgment **Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]**, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium.

The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

20. Doing that the compensation comes out to be Rs.7,73,872/- (7,03,872 + 40,000 + 15,000 + 15,000).

21. The Tribunal has awarded compensation of Rs.3,20,000/-

22. In this way, the enhanced amount comes out to be Rs.4,53,872/- (7,73,872 – 3,20,000).

23. The claimants would be entitled to get interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till actual realization of that amount. Other terms and conditions in the original award shall remain the same. The share of the claimants shall increase proportionately.

24. With such modification, the appeal is allowed partly with costs.

Since the main appeal stands partly allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

22.5.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No