

[105] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-7890-2016

Date of Decision :18.01.2023

Palwinder Kaur and others ...Appellants

versus

Jarnail Singh and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Sandeep Arora, Advocate for the appellants.
Mr. Amrinder Singh Sidhu, Advocate for respondent No.3.
Mr. Alankrit Bhardwaj, Advocate for respondent No.4.

B.S. Walia, J. (Oral)

[1] Challenge in the appeal is to Award dated 29.07.2016 passed by the learned Motor Accidents Claims Tribunal, Gurdaspur, dismissing the claim petition filed by the claimants-appellants Nos.1 to 5.

[2] Learned counsel contends that the learned Tribunal failed to take into account the negligence of the bus driver as was evident from FIR No.291 dated 22.12.2014 under Sections 304-A, 279, 337, 338, 427 IPC registered at Police Station Patran on the statement of a passenger travelling in the bus, which met with an accident with the truck in question, which was being driven by the husband/father of the appellants-claimants.

[3] Learned counsel contends that although FIR was registered on the statement of the passenger travelling in the bus alleging negligence against the driver of the truck in question, which struck against the bus, the facts of the case were not properly appreciated by the learned MACT, Gurdaspur, which unerringly go to point towards the negligence of the bus driver or at best of it being a case of contributory negligence

[4] Learned counsel contends that as per the FIR, the bus was crossing an intersection when the truck driven by the deceased rammed into the rear of the bus and as a result of the impact, the bus fell down.

[5] Learned counsel contends that as per the rules of the road, it is the bounden duty of the driver of every vehicle crossing an intersection to slow down and to ensure that no vehicle is coming before crossing the intersection.

[6] Learned counsel contends that the truck in question was carrying cars, therefore, it was not possible for the truck to stop immediately on brakes being applied as in case of vehicles carrying heavy load, it takes some time for such vehicle to come to a stop on application of brakes. Learned counsel contends that it was incumbent on the bus driver to have seen the heavy vehicle i.e. truck in question coming from the right side of the bus, therefore, the bus driver ought to have waited to cross the intersection but without caring for the rules of the road or safety of the passengers, the bus driver tried to cross the intersection hurriedly as a result of which, although, 3/4th of the bus crossed the intersection, the truck which was a heavy vehicle carrying number of cars applied brakes but since it takes time for a vehicle carrying a heavy load to come to a stop, the truck struck against the rear of the bus.

[7] Learned counsel contends that the facts of the case go to establish beyond an *iota of doubt* the negligence of the driver of the bus although blame has been tried to be thrown on the truck driver.

[8] *Per contra*, learned counsel for the respondents contend that

the FIR was registered on the basis of statement of a person riding in the bus and the same establishes the negligence of the truck driver and the plea that it was the bus driver, who was negligent resulting in the accident is wrong but since the aforementioned aspect of the matter has not been gone into, therefore, learned counsel for the parties jointly request for remand of the matter to the learned MACT, Gurdaspur, to decide the issue of negligence, if any, of the bus/truck driver and resulting implication qua liability after granting liberty to all the parties to lead fresh evidence on the point in issue.

[9] In view of the position noted above but without commenting on the merits of the case, impugned Award dated 29.07.2016 is set aside and the matter remanded to the learned MACT, Gurdaspur, to decide the issue with regard to negligence of the bus/truck driver, after giving liberty to the parties to lead evidence in respect thereto and thereafter to take a decision in the matter. However, nothing stated hereinabove, shall be taken to be an expression of opinion with regard to the merits of the case. Since the accident is of the year 2014, learned MACT, Gurdaspur, is requested to consider and decide the matter as expeditiously as possible, preferably within six months from the date parties put in appearance before it on 14.02.2023

[10] *Disposed of as above.*

(B.S. Walia)
Judge

18.01.2023

'Rajneesh'

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>