

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****225****FAO-1302-2001 (O&M)
Date of decision: 18.08.2025****Smt. Rajbala and others****...Appellant(s)****Vs.****Dharam Pal and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Kuldeep Khandelwal, Advocate for the appellants.Mr. Narender Kaajla, Advocate for
respondent No.1.Mr. Sandeep Suri, Advocate for
respondent No.6-Insurance Co.*********NIDHI GUPTA, J.**

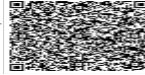
1. The present appeal has been filed by the claimants against the dismissal of their claim petition by the learned MACT, Bhiwani (hereinafter referred to as 'the Tribunal'), vide Award dated 17.11.2000 passed in MACT Case No. 45 dated 11.06.1998 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). The 6 claimants are the widow, 3 children, and parents of the deceased Braham Parkash.

2. Brief facts of the case are that the Tribunal on the basis of pleadings and evidence adduced before it concluded that the claimants had been unable to prove that the accident dated 20.03.1998 had taken place due to rash and negligent driving of the Bus bearing registration No. RJ-18-PQ-236 (for short "the alleged offending Bus") being driven by



respondent No.1; owned by respondent No. 2; and insured by respondent No.5.

3. Learned counsel for the appellants *inter alia* submits that the learned Tribunal was in patent error in dismissing the claim petition of the appellants as the pleadings as well as material evidence on record have been misread, misconstrued and misapplied to the facts of the present case resulting in failure of justice. It is submitted that issue No.1 has been wrongly decided by learned Tribunal. It is contended that the claim petition was filed with positive facts that the accident in question had taken place on 20.03.1998 in which Braham Parkash had died. It was positively stated in the claim petition that on 20.03.1998 Braham Parkash deceased had boarded a Jeep bearing registration No. HR-19-8088 (hereinafter referred to as "offending Jeep") which was being driven by respondent No.4. Respondent No.4 had stopped the Jeep at Bus Stand of village Birhi Kalan when the offending Bus being driven at a great speed in a rash and negligent manner, came from Dadri side and ran over a child, who expired at the spot. Yet, Bus driver did not stop the Bus. Some persons who were standing at bus stand asked respondent No.4 to chase the Bus, upon which respondent No.4 started chasing the Bus in which the deceased along with other persons were travelling. As soon as the Jeep overtook the Bus the driver of the Bus struck the Bus against the Jeep resulting in the second accident in which deceased Braham Parkash had died. It is submitted that it has also been pleaded by the claimants in the claim petition that driver of the Jeep was also rash and negligent in

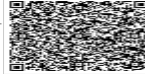


overtaking the Bus. It is contended that despite this clear allegation of the appellants, learned Tribunal has unnecessarily drawn conjectures in respect of the rash and negligent attitude of the driver of the Bus and the driver of the Jeep. In fact, respondent No.5, the insurer of the offending Bus, has compromised the matter in case of Smt. Santi who was also travelling in the Jeep along with the deceased before the Lok Adalat. However, in the instant case, learned Tribunal has been much swayed away by the pleadings of contributory negligence. It is submitted that in their claim petition, appellants had alleged contributory negligence by both respondents No. 1 and 4. All these aforesaid three versions corroborated one thing that there was first incident of crushing of boy under the bus and said bus was chased by the Jeep resulting in second accident. The Ld. Tribunal was duty bound to have appreciated all these facts in arriving at a just conclusion. There was no occasion for the Tribunal to disbelieve the basic story which has been confirmed in all the three instances. It is accordingly prayed that the impugned Award be set aside.

4. Per contra, Id. counsel for the respondents submit that the impugned Award suffers from no error. Contradictory pleas had been taken by the appellants. As such, their claim petition has been rightly dismissed.

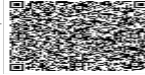
5. No other argument is raised on behalf of the parties.

6. I have heard Id. counsel and perused the case file in detail.



7. I find no merit in the submissions made on behalf of the appellants. Perusal of the record of the case shows that the pleaded case of the appellants in the claim petition as recorded in para 1 of the impugned Award reads as follows:-

“The present claim petition has been filed by the claimants to claim compensation on account of death of Braham Parkash. As per petitioners, on 29.3.1998 Braham Parkash had boarded jeep No. HR-19-8088 which was being driven by respondent no.4, Naresh Kumar. The said jeep was coming to Bhiwani from village Jhojhu. Respondent no.4 stopped the jeep at bus stand of Birhi Kalan. Three/four other passengers were also travelling in the said jeep. During this period a bus bearing registration No. RJ-18-PQ-236 came from the side of Dadri. The said bus was being driven by respondent no.1 in a rash and negligent manner and bus ran over a child who expired at the spot. Driver of the bus did not stop the bus and ran away towards Badhra side. Upon this some persons standing at the bus stand, Birhi Kalan asked respondent no.4 to chase the bus. Three/four more persons also boarded in a jeep. Respondent no.4 chased the bus alongwith deceased and others and reached near village Atela Khurd. The jeep overtook the bus no.RJ-18-PR-236. Since the jeep in question overtook the bus, driver of the bus struck the bus against the jeep. As a result of which accident took place. Jeep No. HR-19-8088 was also being driven by respondent no.4 in a rash and negligent manner while chasing and overtaking the bus. Deceased Braham Parkash and three/four other passengers travelling in the jeep also sustained injuries. Braham Parkash died because of these injuries. Post mortem was conducted on the dead body of Braham Parkash. Petitioners were not

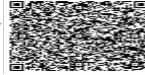


informed about this mis-happenning and dead-body of Braham Parkash was cremated by Municipal Committee, Charkhi-Dadri as unknown person. As per petitioners accident had taken place because of rash and negligent driving of respondent no.1 and 4 and as such respondent being drivers, owners and insurers of the vehicles are jointly and severally liable to pay the compensation to the petitioner on account of death of Braham Parkash.” (Emphasis added)

8. Thus, as per the appellants, the accident in question had been caused due to the rash and negligent driving of both, respondent no. 1/driver of the offending Bus and respondent no.4/driver of the offending Jeep. However, pursuant to the accident, an FIR No. 56 dated 20.03.1998 was registered by one Sh. Dhanpat Singh against respondent No.1 only. Admittedly, version given in the FIR implicates only the driver of the Bus.

9. The record reveals that the respondent No.5 i.e. United India Insurance Co. Ltd. - insurer of the offending Bus had filed written statement averring that it was the driver of the Jeep who was driving in a rash and negligent manner resulting in the second accident that led to the death of Braham Parkash. It was averred that despite the fact that passengers of the Jeep had requested respondent No.4 to slow down, he gave more accelerator to the Jeep; and as such respondent No. 4 was squarely responsible for the accident.

10. On the other hand, Respondent No.6 i.e. National Insurance Co. Ltd. - insurer of the Jeep in its written statement had stated that it had been clearly stated in the FIR that the accident had taken place on account



of rash and negligent driving of the Bus. As such, claim petition was liable to be dismissed qua respondent No.6.

11. Needless to say, the onus to prove as to whether the accident had taken place due to rash and negligent driving of the offending Bus **OR** had taken place due to contributory negligence of respondent No.1/driver of the Bus and respondent No.4/driver of the Jeep, was upon the appellants. To make out their case, appellants had examined PW2 Krishan Kumar, who was also a passenger on the offending Jeep. PW2/Eyewitness had testified that the driver of the Jeep had chased the Bus despite the fact that the passengers of the Jeep had requested him not to drive in a rash and negligent manner. PW2 further testified that the Bus was going in a zig-zag manner, and it was the driver of the Jeep who had crossed the Bus and had stopped the Jeep in front of the Bus, resulting in the accident in question. Clearly, therefore, as per the testimony of PW2, it was respondent no.4 who was responsible for the second accident, which resulted in the death of Braham Prakash. It is to be noted that this is totally contrary to the case set up by the appellants. In this regard, it is also relevant to note that RW2/respondent No.1 - driver of the offending Bus had deposed that the Jeep had chased the Bus upto 2 k.m. side by side on the single road. RW2 had further deposed that false case has been registered against him and accident had been caused by respondent No.4.

12. RW1 respondent No.4/driver of the Jeep had not specifically denied the above testimony of RW2 and had deposed that it was on the request of the passengers of the Jeep that he had chased the Bus, and the



accident had been caused as the driver of the Bus had struck the Bus into the Jeep. From a conjoint reading of the above said evidence of all parties, it cannot be said with certainty, that the accident was caused due to contributory negligence of both drivers as, different versions have been given by each person. In holding as above, I give especial weightage to the testimony of PW2. As per the appellants' own witness PW2, the accident had taken place due to rash and negligent driving of the Jeep by respondent No.4. Thus, there is a variance in the pleadings and the evidence led by the appellants. It can also not be ignored that as per the FIR, accident had taken place only due to rash and negligent driving of respondent No.1. In these circumstances, therefore, Learned Tribunal has correctly held that *"There must be positive evidence available on the file that the claimants have been able to prove that rash and negligent driving was on the part of such and such persons who have been arrayed as respondents and there must be some proof on that point. That aspect is completely missing in the present case."*

13. Clearly, appellants have been unable to prove that accident had taken place because of rash and negligent driving of respondent No.1 or caused by contributory negligence of respondents No.1 and 4 as there are different versions of the accident.

14. Moreover, admittedly respondent No.4 has expired in the meantime. Learned counsel for the appellants is unable to show this Court that claim petition is maintainable against the LRs of respondent No.4.

15. In view of the above, no ground is made out to interfere in the impugned Award dated 17.11.2000. The present Appeal is hereby **dismissed.**

16. Pending application(s) if any also stand(s) disposed of.

18.08.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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