

FAO No.771 OF 1990

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.771 OF 1990

Date of Decision: 27-7-2006

Smt.Tarsem Kaur widow of Baljit Singh, resident of village Pattar Khurd,
Tehsil and District Jalandhar

.....Appellant

VERSUS

- 1.Sulakhan Singh son of Sudagar Singh, Mazhbi Sikh, resident of village Waryam Nangal, P.S.Kathu Nangal, District Amritsar, driver of bus No.PJG-762, Punjab Roadways, Batala Depot.
- 2.The State of Punjab through the Secretary to Government Transport Department, Punjab, Chandigarh.
- 3.The General Manager, Punjab Roadways, Batala Depot,Batala District Gurdaspur.

.....Respondents.

and

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- 1.Smt.Parkash Kaur wife of Jagir Singh and
- 2.Shri Jagir Singh son of Sadhu Singh,
both residents of village Pattar Khurd, Tehsil and District Jalandhar.

...Appellants.

Versus

- 1.Sulakhan Singh son of Sudagar Singh, Mazhbi Sikh, resident of Waryam Nangal, P.S.Kathu Nangal, District Amritsar, Driver of Bus No.PJG-762, Punjab Roadways, Batala Depot.
- 2.The State of Punjab, through the Secretary to Government, Transport Department, Punjab, Chandigarh.
- 3.The General Manager, Punjab Roadways, Batala Depot, Batala, District Gurdaspur.

...Respondents.

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CORAM:- HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.RKS Brar, Advocate
for the appellant.

Mr.JS Dhillon, Deputy Advocate General, Punjab
for the respondents.

JUDGMENT

This order of mine shall dispose of FAOs No.771 of 1990 and 751 of 1990, which have arisen out of the common award dated 03-8-1990 passed by the Motor Accident Claims Tribunal, Kapurthala whereby both the claim petitions were partly accepted, granting the compensation amount of Rs.15,000/- under the no fault theory. Smt. Tarsem Kaur widow of the deceased was granted Rs.10,000/- and Parkash Kaur mother was found entitled to Rs.5,000/- along with interest @ 12% per annum from the date of the application, till realization. The claim petition of Jagir Singh was however dismissed.

In brief, the facts of the case are that on 19-11-1988, at about 10.A.M., a police party headed by ASI Tarsem Singh alongwith H.C. Balbir Singh and other Constables was on patrol duty and were present near the bone factory, G.T. Road, Phagwara. It was noticed by them that a bus bearing No.PJG 762 belonging to Punjab Roadways, Batala Depot being driven by Sulakhan Singh came with a rash speed from Jalandhar side and struck against the scooter, which was being driven by Baljit Singh-deceased. Hem Raj was pillion rider. The said scooter was going from Phagwara towards Jalandhar. Due to the impact, Baljit Singh died at the spot and Hem Raj suffered injuries and became unconscious.

It is further the case of the claimants that the scooter

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driver Baljit Singh was a mason and was earning Rs.1800/- per month on the date of accident. His widow Tarsem Kaur claimed the compensation of Rs.5,46,000/-, whereas Parkash Kaur and Jagir Singh, the parents of the deceased claimed the compensation of Rs.5,96,000/-.

Both the claim petitions were contested by filing of written statements. A joint written statement has been filed on behalf of respondents No.2 and 3, taking all the facts pertaining to the accident. However, it was admitted that the bus was going from Batala to Delhi and when it reached near Chehru bridge, a scooter, without any registration number, was coming from the opposite side, which was trying to overtake a three wheeler and struck against the bus. Thus, according to the respondents, the accident took place due to rash and negligent driving of scooter driver.

Sulakhan Singh-respondent No.1 also took up the similar plea holding that the deceased-driver of the scooter was responsible for causing the accident.

The two claim petitions No.39 of 1989 **Parkash Kaur and Jagir Singh Vs. Sulakhan Singh and others** and claim petition No.1 of 1989 **Tarsem Kaur Vs. Sulakhan Singh and others** have arisen out of the common accident so were consolidated and tried together by the Tribunal.

On the pleadings of the parties, the parties framed the following issues:

“1.Whether Sulkhan Singh driver caused the death of Baljit Singh by driving rashly and negligently

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bus No.PJG 762 on 19.11.1988 near village
Chehru? OPP

2.Whether Tarsem Kaur is the legal representative
and heir of Baljit Singh and is entitled to get
compensation? OPP

3.Whether Parkash Kaur and Jagir Singh are also
legal representatives of Baljit Singh and are
entitled to get compensation? OPP.

4.To what amount the claimants are entitled to get
compensation and from which of the
respondents? OPP

5.Whether Baljit Singh was not having a valid
driving license? OPP

6.Whether the application is not maintainable in
the present form? OPR

7.Relief.”

Both the parties adduced evidence in support of their case
as pleaded.

After going through the evidence brought on the record,
the learned Tribunal returned the findings on issue No.1 against the
claimants holding that they were unable to prove the accident in question,
arising out of the rash and negligent driving of respondent No.1, driver of
bus No.PJG-762 belonging to Punjab Roadways and as well as, the
claimants have failed to prove on record that Baljit Singh suffered death in
the accident. The other injured Hem Raj, who also suffered injuries in this
accident was not produced. Therefore, the best evidence available with

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claimants, have not been proved so an adverse inference was drawn. Hence, the findings on issue No.1 were returned against the claimants for want of evidence on the point of rash and negligent driving of respondent No.1.

So far as the findings on other issues are concerned, they were decided in favour of the claimants.

In both the appeals mentioned above, the claimants have challenged the findings of the learned Tribunal on issue No.1.

Learned counsel for the appellant has taken me through the evidence led by the claimant before the Tribunal. He referred to the statement of PW3-Jit Singh, Constable 266 of police post Phagwara, who was one of the members of the police party, which was on patrol duty and the said police party was headed by ASI Tarsem Singh and Head Constable Balbir Singh. It is ASI Tarsem Singh, who had lodged the FIR with police post, Phagwara soon after the accident. Learned counsel stated that PW3 Jit Singh Constable 266, who was an independent witness, was not related to either of the parties. He had categorically stated that on the date of accident, he was member of the police party present near the bone factory, near Chehru bridge at about 10.00 A.M. He noticed a scooter coming from Phagwara side and was proceeding towards Jalandhar. It was being driven by Baljit Singh deceased while Hem Raj injured was sitting on the pillion. In the meanwhile, bus bearing No.PJG 762 being driven by Sulkhan Singh-respondent No.1, in a rash and negligent manner, came from Jalandhar side, hit against the scooter of Baljit Singh, by going on wrong side. Due to the impact, Baljit Singh died on the spot whereas Hem Raj was admitted in the hospital in an injured condition.

In cross-examination, this witness denied the suggestion

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put by the respondent that the present accident took place due to rash and negligent driving of scooter driver. It was nowhere suggested that the scooter driver, who suffered death in the accident was not Baljit Singh.

Learned counsel stated that in the post-mortem report, the name of the deceased has been described as unknown. It was on this count that the learned Tribunal has held that the identity of the deceased Baljit Singh was not established, as well as, the claimant failed to examine Hem Raj injured, who was a pillion rider at the relevant time on the scooter. The Tribunal fell in error in observing that the present accident is not the outcome of rash and negligent driving of respondent No.1.

I have gone through the FIR Ex.PA recorded on the statement of ASI Tarsem Singh, in which the name of Jit Singh Constable 266 PW3 was also mentioned. Merely that the author of the FIR and Hem Raj injured have not been examined, it would not amount that there is no evidence on the record. There is a testimony of PW3 Jit Singh member of the police party to hold that Sulkhan Singh, respondent No.1 driver of bus No.PJG 762 was responsible for causing this accident due to rash and negligent driving.

In view of the fact that no suggestion has been given to PW3 that the injured deceased was not Baljit Singh and some other person. It is to be inferred that it was deceased Baljit Singh, who was driving the scooter on the date of accident at the relevant time when the bus No.PJG 762 being driven by respondent No.1 caused the present accident. The Tribunal was not justified in observing that the claimant has not examined any independent witnesses, who had witnessed the accident. No doubt, the injured, eye witness Hem Raj was one of the best witness, who could throw

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light on the accident as well as over the death of Baljit Singh in the present accident. However, the statement of PW3 Jit Singh is sufficient to establish that the scooter at the relevant time was driven by Baljit Singh deceased and Hem Raj was sitting on the pillion.

Another contention of the counsel is that the relatives of the deceased have not claimed the dead body has no merit because it has come on the record that it was already cremated by the police as is evident from the statement of PW1 Tarsem Kaur, who approached the police after reading it from the newspaper about the death of her husband in a road side accident.

In the light of submission of the learned counsel for the parties, I am of the view that the learned Tribunal was not justified in deciding issue No.1 against the claimants. Accordingly, the finding of the learned Tribunal on this issue, is set aside and the finding of issue No.1 is returned in favour of the claimants.

Now coming to the finding on compensation, the income of the deceased was Rs.500/- per month or Rs.6,000/- per annum, as he was working as a labourer on daily wages. The claimant was unable to prove on record that the deceased was working as a mason. The labour was available in the year 1989. Therefore, the Tribunal has rightly assessed the income of the deceased as Rs.6,000/- per annum. If 1/3rd cut is applied as expenses of the accused, the dependency of the claimant comes to Rs.4,000/- per annum.

Keeping in view the age of the deceased as 25 years, a suitable multiplier 16 is adopted in this case. The compensation thus comes to Rs.64,000/-. The claimant has already been paid a sum of Rs.15,000/- under the no fault theory, which shall be deducted from this amount. Thus,

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the balance compensation is Rs.49,000/-. Out of this amount, a sum of Rs.20,000/- would be paid to mother Parkash Kaur and the balance amount of Rs.29,000/- would be paid to Tarsem Kaur widow of Baljit Singh. However, while awarding the quantum of interest, these days rate of interest paid by the bank is between 6% to 7 % per annum. The ends of justice would be met if they were awarded an interest @ 7% per annum from the date of filing the petition till the payment. The appeal qua Jagir Singh father of the deceased is dismissed on the ground of class II heirs.

As a sequel to above discussion, both FAOs No.771 of 1990 and 751 of 1990 are accepted in the terms indicated above.

July 27, 2006
jt

(R S MADAN)
JUDGE