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**(2000) 05 P&H CK 0093**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal From Order No. 771 of 1994

Bimla Devi and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

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**Date of Decision :** 04-05-2000

**Acts Referred:**

**Citation :** (2000) 2 CurLJ 173 : (2001) 1 LJR 479 : (2000) 4 RCR(Civil) 399 : (2001) 1 TAC 291

**Hon'ble Judges :** Jawahar Lal Gupta, J

**Advocate :** Mr. G.S. Gill, Advocate., Advocates for appearing Parties

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## Judgement

Jawahar Lal Gupta, J. (Oral)

1. On September 19, 1990, Bus Nos. HYE1284 and HNR4415 met with an accident. Bus No. HYE1284 was going from Ambala towards Chandigarh. It was being driven by Hari Singh. The other Bus No. HNR4415 was coming from Chandigarh towards Ambala. It was being driven by Albel Singh the husband of Smt. Bimla Devi the present appellant. The accident had taken place at about 6.30 A.M. near Baldev Nagar (Ambala City). This place is admittedly close to Ambala. Unfortunately, the drivers of both the buses died. The passengers also sustained injuries. One of the passengers in Bus No. HYE 1284 also died on the spot. Various claim petitions were filed. This is an appeal filed by the widow and children of driver Albel Singh.

2. It was pleaded by the claimants that Hari Singh was driving the bus rashly and negligently. It was on account of his mistake that the accident had occurred and that Albel Singh had died at the spot. On the other hand, it was claimed by the legal representatives of Hari Singh that Albel Singh was negligent.

3. Vide order dated July 16, 1993, the claim petitions were consolidated. The Court broadly examined two matters. The first issue considered by the Tribunal was as to who was rash and negligent in driving. Secondly, the Court determined the amount of money that shall be due to the claimants. The Tribunal found that

the accident had occurred on account of "rash and negligent driving of Albel Singh driver of Bus No. HNR4415". It further found that keeping in view the salary etc., the claimants were entitled to an amount of Rs. 2,18,880/ by way of compensation. However, as the accident had occurred on account of the rash and negligent driving by Albel Singh, the claim petition was dismissed.

4. Aggrieved by the order passed by the Tribunal, the claimants have filed this appeal.

5. Mr. G.S. Gill, counsel for the appellants has contended that the findings recorded by the Tribunal are contrary to the evidence on record and that the conclusions cannot be sustained. The claim made on behalf of the appellants has been controverted by Mr. D.P. Singh, learned counsel for the State of Haryana. No one has put in appearance on behalf of the Insurance Company.

6. The first question that arises for consideration is Was Albel Singh guilty of driving in a rash and negligent manner ?

7. The Tribunal has referred to the testimony of PW1Harphool Singh. He was a passenger in Bus No. HNR4415. The next witness is Sukhdev Kumar (PW5). He was conductor on Bus No. HYE1284. The third witness whose testimony has been considered by the Tribunal is Sham Sunder (RW2) the conductor who was on duty on Bus No. HNR4415. The Tribunal has disbelieved the testimony of Harphool Singh on the ground that he did not produce the bus ticket and that he had received no injury.

8. Mr. Gill has produced the statement of Harphool Singh. The witness had categorically stated that he had got into the Bus at 5.15 A.M. at Chandigarh. Bus No. HYE1284 was coming from Ambala. It was being driven "by a Sikh gentleman rashly and negligently..." The police had come to the spot but it had not recorded his statement. In crossexamination, he asserted that he was sitting on seat No. 3. He had seen Bus No. HYE1284 when it was at a distance of 4050 feet from the bus in which he was traveling. He had further stated that "our bus was on the left side of the road when the accident had taken place." The only suggestion given to the witness was that he had not seen the accident. He had denied it. He was not asked as to whether or not had got the ticket. It also deserves mention that no suggestion was made to him that he was not a passenger on the bus. He was never asked to produce the ticket. Yet, the Tribunal had drawn an adverse inference against him on the ground that "no bus ticket was produced nor he was injured in the course of the accident." Still further, the Tribunal has noticed the testimony of Sham Sunder (RW2). He was conductor on Bus No. HNR4415. His testimony has been disbelieved on the ground that had "introduced the version relating to drizzling for the first time....." The Tribunal observed that it "is an afterthought version and beyond pleading." On this basis, the evidence produced by the claimants viz. PW1Harphool Singh as also the evidence produced on behalf of the respondent viz. Sham Sunderconductor has been discarded. On the other hand, the Tribunal has

accepted the testimony of Sukhdev Kumar (PW5). He was conductor on Bus No. HYE1284. Mr. Gill produced the statement of this witness also.

9. Sukhdev Kumar stated that the bus was going from Ambala City to Chandigarh. As soon as Bus No. HYE1284 "reached near Virji Ki Kutia on AmbalaChandigarh road near Baldev Nagar Camp, another Bus bearing registration No. HNR4415 of Haryana Roadways, Rohtak Depot came from the opposite direction..... Our bus was being driven slowly and on the extreme left side of the road whereas Albel Singh, driver was driving.....rashly and negligently and hit against our Bus No. HYE1284." In the crossexamination, he admitted that he was "busy in delivering the tickets to the passengers at the time of the accident." He further admitted that he "had first noticed the other bus when it had struck our bus". Lastly, he categorically admitted that "it was raining at that time." It is, thus, clear that both sides had admitted the factum of rain. That being so, one of the grounds taken into account by the Tribunal for disbelieving the testimony of Sham Sunder (RW2) is clearly knocked out. Still further, it is apparent that Sukhdev Kumar was busy in selling the tickets and that he had noticed the other bus only when it had struck against the bus in which he was going. In this situation, it is not understood as to how he had asserted that the bus was being driven rashly or negligently.

10. On a consideration of the evidence of the three witnesses noticed above, the conclusion as recorded by the Tribunal cannot be sustained. I find no ground to doubt the testimony of Harphool Singh who asserted that he had seen the bus coming from the opposite direction at a distance of 4050 feet. It was being driven rashly. This testimony is duly corroborated by the statement of Sham Sunder. He was an independent witness employed with the Roadways. He had no reason to depose against one or in favour of the other. It is significant that he was produced by the respondents and not by the claimants.

11. In view of the above, the finding recorded by the Tribunal on the issue of negligence is reversed. It is held that the accident had not occurred on account of any negligence on the part or Albel Singh the driver of Bus No. HNR4415.

12. In view of this conclusion, the amount as determined by the Tribunal was clearly payable to the claimants. The order of the Tribunal dismissing the claim petition on the basis of the finding on issue No. 1 is, thus, reversed. It is held that the claimantappellants shall be entitled to the payment of an amount of Rs. 2,18,880/ as determined by the Tribunal. They will also be entitled to interest @ 12% per annum from the date of the presentation of the petition to the date of the payment.

13. The appeal is allowed in the above terms. Since no one has appeared on behalf of the Insurance Company to even contest the claim, there will be no order as to costs. However, the compensation shall be recoverable from either of the respondents.