

---

**(1984) 12 AHC CK 0022**  
**In the Allahabad High Court**

|                         |    |            |
|-------------------------|----|------------|
| Shamsher Singh          | Vs | APPELLANT  |
| Gopal Prasad and Others |    | RESPONDENT |

---

**Date of Decision :** 19-12-1984

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 110D  
Motor Vehicles Act, 1988 — Section 110D  
Motor Vehicles Act, 1988 — Section 110D

**Citation :** (1985) 1 ACC 489 : (1985) ACJ 711

**Hon'ble Judges :** O.P. Saxena, J;I.P. Singh, J

**Bench :** Division Bench

---

## Judgement

O.P. Saxena, J.—This is an appeal u/s 110-D of the Motor Vehicles Act against the order dated 2nd March, 1978 passed by the Motor Accident Claims Tribunal (VIth Additional District Judge), Meerut dismissing the claim petition with costs on parties.

2. On 27th June 1974 at 5 p.m. in front of the main gate of M/s. Mohan Meakin Breweries, Mohan Nagar, Ghaziabad on Grand Trunk Road, one Hari Singh met with an accident. He was trying to board Bus DLP 4916 operating between Ghaziabad and Delhi and fell down. He came under the rear wheel of the bus and died as a result of the accident. A report of the occurrence was lodged by Ram Kamal Singh, an employee of the Mohan Meakin Breweries, Ghaziabad on the same evening.

3. Shamsher Singh, the father of the deceased filed a claim petition for Rs. 1,00,000/-. It was alleged that the accident took place due to the rash and negligent driving of the bus, by respondent No. 2, Ashok Kumar Respondent No. 1, Gopal Prasad, was impleaded as the owner of the bus. Respondent No. 3, New India Assurance Company Ltd., Delhi was impleaded as the insurer of the bus.

4. The Tribunal considered the evidence on the record.

5. The claim was contested by respondents mainly on the ground that the

accident did not take place on account of the rash and negligent driving of the bus but due to the own negligence of the deceased. The amount of compensation claimed was also challenged.

6. The Tribunal considered the evidence adduced by the parties and held that the claimant failed to prove that the accident took place due to rash and negligent driving of the bus. It further held that if the deceased tried to board the bus after the bus had moved and the conductor had closed the door, the driver and the conductor could not be held responsible for the accident. In view of these findings be dismissed the petition with costs on parties. Hence, this appeal.

7. The learned Counsel for the appellant submitted that the Tribunal erred in disbelieving claimant's version regarding the accident. He contended that the driver moved the bus as soon as the deceased boarded the bus and as the driver was negligent, the deceased fell down and came under the rear wheel of the bus. He was severally injured and he died. In this view of the matter he urged that the Tribunal should not have accepted the evidence adduced by the respondents and should have preferred the evidence adduced by the claimants.

8. Learned Counsel for the respondents submitted that the Tribunal has rightly refused to accept the claimant's version.

9. P.W. 2, Ram Kewal Singh and P.W. 3, Amrit Sagar are the two witnesses of the accident examined by the claimant. Both the witnesses are the employees of Mohan Meakin Breweries Ltd. PW 2, Ram Kewal Singh was not travelling by that bus. He was standing outside the main gate of the factory near a Pan shop. His version is that his attention was diverted when the bus came to a screeching halt. Two or three passengers boarded the bus and as soon as Hari Singh boarded the bus, it started moving and he fell down. He came under the rear wheel of the bus and died. As the witness was not travelling in the bus, it is not very natural and probable that he should have been observing as to how many passengers boarded the bus at the time it arrived. His attention may have been diverted after the accident and it may be that he has come forward to depose on account of being an employee in the same factory.

10. PW 3 Amrit Sagar wanted to board that bus. He stated that after the bus stopped, some passengers boarded the bus and as soon as Hari Singh boarded the bus, it started moving. Hari Singh fell down and the rear wheel passed over him. He died on the spot. The witness was behind Hari Singh and he could not board the bus. His version is that the time the bus moved, one foot of Hari Singh was on the foot board. He could not tell if the conductor whistled before the bus started moving. He is a resident of Krishna Nagar, Delhi. The brother-in-law of Hari Singh also lives in the same "mohalla". It was put to him that the bus reached Mohan Nagar with a large number of passengers and Hari Singh forcibly tried to board the bus from the front door. He could not refuse that Hari Singh tried to board the bus from the front door. He could not deny that the bus was full of passengers. He simply stated that some passengers boarded the bus. It

was suggested that he was also at friendly terms with Hari Singh, but he denied the same. There can be little doubt that he works in the same factory and he also lives in the same locality in which the brother-in-law of the deceased lives.

11. DW 1 Ashok Kumar was the driver of the bus. DW 3 Hari Prasad was the conductor of the bus DW 2 Ghanshayam Swarup was travelling on this bus on his way from Ghaziabad to Delhi. DW4 Vijai Kumar was waiting at the bus station. The evidence of these witnesses shows that after the bus stopped at Mohan Nagar, some passengers boarded the bus, the conductor closed the door and blow a whistle and the bus started moving. Their evidence further is that the deceased tried to board the bus from the front door, but he lost grip over the handle and fell down. He came under the rear wheel and died on the spot.

12. The Tribunal has rightly laid emphasis on the question as to whether the conductor had closed the Door before the bus started moving. The Tribunals quite justified in believing respondents version on this point. There is no satisfactory evidence to show that there was any negligence of the driver of the bus. The evidence shows that the driver started moving the bus on hearing the whistle of the conductor, which was given after the closing the door. The evidence further shows that the deceased tried to board the moving bus from the front door, and he lost the grip over the handle and fell down. He came under the rear wheel and that he died on the spot. In view of this evidence the Tribunal was quite justified in holding that the claimants failed to prove that the deceased died due to rash and negligent driving of the bus.

13. There is no force in the appeal and the same is dismissed. We, however, make no order as to costs.