
(1998) 12 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 300 of 1994

State of Haryana

APPELLANT

Vs

Banti Devi and Others

RESPONDENT

Date of Decision : 14-12-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2000) ACJ 699 : (1999) 122 PLR 50 : (1999) 2 RCR(Civil) 698

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Surinder Bishnoi, for the Appellant; None, for the Respondent

Judgement

Jawahar Lal Gupta, J.—On September 3, 1992 Balkar Singh - a youngman of 21 years- boarded the Haryana Roadways bus at village Laha to go to Naraingarh. The bus had hardly gone some distance when the accident occurred. He fell out of the bus and died. The parents claimed compensation. Haryana Roadways, Yamunanagar and Naresh Kumar, driver, contested the claim. The Tribunal framed the following issues:-

1. Whether Balkar Singh had died as a result of rash and negligent driving of Haryana Bus No. HR-05-5412 by its driver Naresh Kumar respondent No. 1? OPP.
2. Whether claimants are legal heirs/representative of deceased Balkar Singh? OPP
3. To what amount claimants are entitled towards damages/compensation on account of death of Balkar Singh and against whom? OPP
4. Relief.

The Tribunal found that the accident had occurred as the driver was "negligent in driving the bus". It further found that "the deceased also was responsible to the extent of 1/3rd because if he had not stood near the window the occurrence would not have taken place." Resultantly, the driver and the deceased were held

to be negligent. Issue No. 2 was decided in favour of the claimants. Regarding issue No. 3 it was held that the deceased was earning about Rs. 1,000/- per month. Monthly dependency was fixed at Rs. 600/-. By applying the multiplier of "16", the total compensation was assessed at Rs. 1,15,200/-. After deducting 1/3rd on account of contributory negligence, the Tribunal awarded a compensation of Rs. 77,000/-. Issues Nos. 3 and 4 were accordingly decided.

2. Aggrieved by the award, the State of Haryana as well as the claimants have filed F.A.O. No. 300 and 283 of 1994, respectively.

3. On behalf of the State of Haryana it has been contended that once the deceased has been found to have contributed to the accident, both the deceased as well as the driver should have been held to be equally liable. As a result instead of allowing for 1/3rd deduction, the Tribunal should have imposed a cut of 50 per cent. No one has appeared on behalf of the claimants.

4. The evidence in the case has been examined. It is clear that deceased Balkar Singh had boarded the bus at Village Laha. The bus had hardly gone a few yards when it had turned to the left. Balkar Singh, who was standing near the window, had fallen out. He had received injuries which were fatal. The postmortem report shows that multiple abrasions were there on the right side of the body. He had also suffered other injuries. 2nd, 4th, 5th and 6th ribs were fractured. The peritoneal cavity was full of blood. The liver and the spleen had ruptured. The death was found to be due to hemorrhage and shock.

5. The full details regarding the accident have been given by Gurcharan Singh P.W.2. He had boarded the bus along with the deceased. It had hardly gone 10 to 15 yards when the driver had started talking to the passengers sitting at the back. The bus had gone towards the kacha portion of the left side. It had struck against the eucalyptus tree. The bus was overloaded. Due to the "weight of passengers" Balkar Singh had fallen down and struck against the tree. The bus had stopped on account of the impact with the tree. The witness was cross-examined. However, nothing was brought out to indicate that the accident had not occurred the way he had described it.

6. On the other hand Naresh Kumar driver had appeared as R.W.1. He stated that he had to turn the bus to the left because a truck was coming from the opposite direction. The deceased, who was standing in the window, had struck against the eucalyptus tree. He had also stated that it had rained. Fresh earth work had been done. In this situation, the wheel had got stuck in the mud.

7. It is not the case of the appellant-State that the deceased passenger had not bought a ticket. It is also clear from the evidence that the bus was overloaded. That being so, a number of passengers were admittedly standing. It appears that the deceased was nearest to the window. When the bus struck against the tree, the window opened and he fell out. The injuries proved fatal. In this situation, there is nothing to indicate that the passenger was negligent. He was standing near the window only because the bus was overloaded. It was not out of choice.

That being the position, he cannot be said to have been negligent. Learned counsel for the appellant (respondent in the connected appeal) has not been able to refer to any evidence to show as to how the deceased was negligent.

8. In view of the above, the finding recorded by the Tribunal that the deceased was negligent to the extent of one-third cannot be sustained.

9. Resultantly, the appeal filed by the State of Haryana viz., F.A.O. No. 300 of 1994 is dismissed and the appeal filed by the claimants is partly allowed to the extent that the claimants shall be entitled to the amount of Rs. 1,15,200/- and not Rs. 77,000/-, as determined by the Tribunal. The claimants shall also be entitled to the interest. Since no one has appeared on behalf of the claimants in this appeal or in F.A.O. No. 283 of 1994, there shall be no order as to costs.