

(2000) 11 P&H CK 0084

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O No. 99 of 1993

Baldev Singh and another

APPELLANT

Vs

Harbhajan Kaur

RESPONDENT

Date of Decision: Nov. 23, 2000

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2001) 2 RCR(Civil) 340

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. Ashok Aggarwal, for the Appellant; Mr. Yash Pal, AAG, Haryana, Mr. Kamal Sehgal and Mr. Sanjay Majithia, for the Respondent

Judgement

R.L. Anand, J.

By this judgment, I will dispose of as many as 12 FAOs i.e., F.A.O. No. 99 of 1993 Baldev Singh and another v. Harbhajan Kaur etc., FAO No. 100 of 1993 Baldev Singh and another v. Ram Pyari and others, F.A.O. No. 101 of 1993, Baldev Singh and another v. Ram Pyari, F.A.O. No. 102 of 1993, Baldev Singh and another v. Baldev Raj and others, F.A.O. No. 103 of 1993, Baldev Singh and another v. Lipika Ray and others, F.A.O. No. 104 of 1993, Baldev Singh and another v. Dharam Pal Gupta and others, F.A.O. No. 105 of 1993, Baldev Singh and another v. Gurbax Singh and others, F.A.O. No. 106 of 1993, Baldev Singh v. Isham Singh and others, F.A.O. No. 107 of 1993, Baldev Singh and another v. Rajiv Mittal and others, F.A.O. No. 108 of 1993, Baldev Singh and another v. Braham Singh and others, F.A.O. No. 1623 of 1992, Gurbax Singh v. Baldev Singh and others and F.A.O. No. 1624 of 1992, Isham Singh and Baldev Singh and others, as in my opinion all these 12 appeals can be disposed of by one judgment having the common question of law and fact.

2. The facts are being taken from F.A.O. No. 99 of 1993. The facts in this case are not much in dispute, The common case of the claimants before the trial Court was that

tractor-trolley No. BRY-1140 was being driven by Shri Baldev Singh and Haryana Roadways Bus No. HNE 376 was being driven by Shri Rupinder Singh and both the vehicles were involved in this accident. The tractor was owned by Shri Jaswant Singh while Haryana Roadways is the owner of the bus. Tractor in question was insured with the New India Assurance Company Ltd. while the bus of the Haryana Roadways was insured with National Insurance Company Ltd. Both the vehicles were going on G.T. Road near Jai Guru Dev Spinning Mill, Pipli on 2.4.1989 at 7.30 P.M. when the accident took place. FIR Ex. PW4/C (Ex. PA) was registered on the information of the conductor of the Haryana Roadways bus against Shri Baldev Singh, driver of the tractor trolley, Smt. Harbhajan Kaur, Smt. Rani Piari, S/Shri Baldev Raj, Rajiv Mittal, Braham Singh and Dharam Pal were travelling in the Haryana Roadways bus who sustained injuries. Shri Ram Kishan husband of Ram Piari and Bhago d/o Ram Piari died in this accident. Sarv Shri Gurbax Singh and Isham Singh were travelling on their respective cycles who also allegedly received injuries. According to Ram Piari, Gurbax Singh, Isham Singh, Braham Singh and Dharam Pal, the accident was caused due to rash and negligent driving of Baldev Singh while driving tractor trailer. According to Lipika Roy the accident was caused due to the rash and negligent driving of respondent No. 3 Shri Bhupinder Singh while driving the Haryana Roadways bus.

3. A joint written statement was filed by respondents No. 1 and 2 and they denied the allegations of negligence. It was pleaded that in fact on 2.4.1989 Baldev Singh respondent was driving the tractor towards Ambala and when he reached near Jai Guru Dev Spinning Mills, Pipli on G.T. Road, a Haryana Roadways Bus No. HNE-376 came from the opposite side which was being driven rashly and negligently by Shri Rupinder Singh who was not obeying the traffic rules and another bus was going ahead of Bus No. HNE 376 which was also coming from Ambala side. The driver of Bus No. HNE 376 wanted to overtake the other bus. While overtaking that bus, Rupinder Singh lost the control of his bus. Baldev Singh was driving the tractor trolley at a low speed and he was keeping full precautions. He even tried to take his tractor on kutcha portion of the road on its correct side but on account of rash and negligent driving of Rupinder Singh, the bus struck in the trolley of the tractor which resulted in to the accident and the accident was caused solely on account of the fault of the driver of the Haryana Roadways bus. The Insurance Company of tractor took the ground that the driver of the tractor was not having a valid driving licence.

4. Respondents No. 3 and 4 filed their joint written statement alleging that while crossing, the tractor hit the bus. Since the hook of the trolley broke down, the trolley dashed against the back portion near the back tyre on the right side and the accident took place due to the rash and negligent driving of tractor. The Insurance Company of Haryana Roadways bus also pleaded that the accident took place on account of rash and negligent driving of the tractor against which the criminal trial was pending. It was also pleaded by the Insurance Company that the driver of the bus was not holding a valid driving licence.

5. With these rival claims, the Tribunal framed the following issues:

1. Whether the accident took place due to rash and negligent driving or respondent No. 1 Baldev Singh, driver of tractor No. BRY-1140 or respondent No. 3 Rupinder Singh driver of Bus No. HNE 376 ? OPP

2. Whether the claimants of each case are entitled to compensation as alleged, if so, to what amount and from whom ? OPP

3. Whether the petitions of Harbhajan Kaur, Gurbax Singh, Isham Singh, Rajiv Mittal, are barred by time as alleged by respondent No. 6, if so, to what effect ? OPP

4. Whether the driver of Bus No. HNE 376, Rupinder Singh was not holding a valid driving licence as alleged by respondent No. 6, if so, to what effect ? OPP

5. Whether the liability of Insurance Company respondent No. 6 is limited to Rs. 15,000/-, per passenger as alleged by respondent No. 6 ? OPP

6. Relief.

6. It may be mentioned here that all the claim petitions arising out of this accident were consolidated by the Tribunal. The parties led their evidence in support of their case and it was observed by the Tribunal that accident had taken place on account of the composite negligence on both the drivers and their liability in the matter of negligence is fifty-fifty. Under issue No. 2, the Tribunal has awarded compensation to the claimants differently. It may be mentioned here that only two persons have come in the High Court for the enhancement of the compensation. The legal representatives of the deceased and the few injured have not filed any appeal. I will deal with the case of two injured separately in the subsequent portion of this judgment. Moreover, there is no cross-appeal from the side of the Haryana Roadways or by the Insurance Company which insured the bus. It may also be mentioned here that the tractor was not insured, therefore, there is no liability of the New India Assurance Company. The liability is that of National Insurance Company which has insured the Bus No. HNE 376 and the liability will also be of the owner and driver of the tractor to the ratio which I will also determine in the latter portion of this judgment. Finally, the Tribunal gave the award and under Issue No, 6 it was observed as follows :

"In view of my above discussion and for the foregoing reasons the claim petitions of :

(i) Harbhajan Kaur v. Baldev Singh etc; (67/90) is accepted partly awarding a sum of Rs. 27,000/-(Rupees Twenty Seven thousand only) as compensation. She is also entitled to interest at the rate of 12 per cent per annum from 26.5.1989 i.e. date of filing of petition till the date of realisation. The liability of respondents No. 1 and 2 is joint and several to the extent of half amount. The liability qua the remaining half amount would be of respondents No. 3,4 and 6 jointly and severally limiting the

liability of respondent No. 6 to Rs. 15,000/-.

(ii) Ram Piari v. Baldev Singh etc (43/90) is accepted partly awarding a sum of Rs. 25,000/- (Rupees twenty Five thousand only) as compensation. She is also entitled to interest at the rate of 12 per cent per annum from 12.9.1989 i.e. date of filing of petition till the date of realisation of award amount. The liability of respondents No. 1 and 2 is joint and several to the extent of half amount. The liability qua the remaining half amount would be of respondents No. 3, 4 and 6 jointly and severally, however, limiting the liability of respondent No. 6 to Rs. 15,000/-.

(iii) Ram Piari v. Baldev Singh etc. (44 of 1990) is accepted making an award of Rs. 3,20,000/- (Rupees Three lacs and Twenty Thousand only) as compensation but limiting to Rs. 3,00,000/- (Rupees three lacs only) being claimed. She is also entitled to interest at the rate of 12 per cent per annum from 12.9.1989 i.e. date of filing of petition till the date of realisation of the award amount. The liability qua the remaining half amount would be of respondents No. 3, 4 and 6 jointly and severally, however, limiting the liability of respondent No. 6 to Rs. 15,000/-. The compensation amount shall be apportioned in equal shares amongst all the three claimants. The amount of the share of the minors shall be deposited in the name of the minors in any scheduled bank which shall be withdrawn either on the date of their attaining age of majority on the date of their marriage, whichever is earlier.

(iv) Baldev Raj v. State etc (56/90) is accepted partly awarding a sum of Rs. 27,000/- (Rupees Twenty Seven thousands only) as compensation. He is also entitled to interest at the rate of 12 per cent per annum from 24.7.1989 i.e. date of filing of petition till the date of realisation of the award amount. The liability of respondents No. 1 and 2 is joint and several to the extent of half amount. The liability qua the remaining half amount would be of respondents Nos. 3, 4 and 6 jointly and severally, however, limiting the liability of the respondent No. 6 to Rs. 15,000/-.

(v) Lipika Roy etc. v. State etc. (65 of 1990) is accepted partly awarding a sum of Rs. 4,00,000/- (Rupees four lacs only) as compensation. They are also entitled to interest at the rate of 12 per cent per annum from 15.9.1989, i.e. date of filing of petition till the date of realisation of the award amount. The liability of respondent Nos. 1 and 2 is jointly and severally to the extent of half amount. The liability qua the remaining half amount would be of respondent Nos. 3, 4 and 6 jointly and severally, however, limiting the liability of respondents No. 6 to Rs. 15,000/-. Petitioners are entitled to get compensation amount in the ratio of 2:1:1.

(vi) Rajiv Mittal v. Rupinder Singh etc. (66/90) is accepted partly awarding a sum of Rs. 2,00,000/- (Rupees Two lacs only) as compensation. He is also entitled to interest at the rate of 12 per cent per annum from 12.6.1989 i.e. date of filing the petition till the date of realisation of award amount. The liability of respondent Nos. 1 and 2 is jointly and severally, to the extent of half amount. The liability qua the remaining half amount would be of respondents Nos. 3, 4 and 6 joint and several, however,

limiting the liability of respondent No. 6 to Rs. 15,000/-.

(vii) Gurbax Singh v. Baldev Singh etc. (68 of 90) is accepted partly awarding a sum of Rs. 25,00/- (Rupees two thousand and five hundred only) as compensation. He is also entitled to interest at the rate of 12 per cent per annum from 15.6.1989 i.e. date of filing of petition till the date of realisation of the award amount. The liability qua the remaining half amount would be of respondent No. 3,4 and 6 joint and several, however, limiting the liability of respondent No. 6 to Rs. 1,50,000/-.

(viii) Isham Singh v. Baldev Singh etc. (69/90) is accepted partly awarding a sum of Rs. 4,000/- (Rupees four thousand only) as compensation. He is also entitled to interest at the rate of 12 per cent per annum from 15.6.1989 i.e. date of filing petition .till the date of realisation of the decretal amount. The liability of respondent Nos. 1 and 2 is joint and several to the extent of half amount. The liability of the remaining half amount would be of respondent Nos. 3,4 and 6 joint and several, however, limiting the liability of respondent No. 6 to Rs. 1,50,000/-.

(ix) Braliam Singh v. Baldev Singh etc. (70/90) is accepted partly awarding a sum of Rs. 1,40,000/- (Rupees one lac and forty thousand only) as compensation. He is also entitled to interest at the rate of 12 per cent per annum from 12.6.1989 i.e. the date of filing of petition till the date of realisation of the award amount. The liability respondents No. 1 and 2 is joint and several to the extent of half amount. The liability qua the remaining half amount would be of respondents No. 3, 4 and 6 joint and several, however, limiting the liability of respondent No. 6 to Rs. 15,000/-

(x) Dharam Pal v. Baldev Singh etc. (71/90) is accepted to partly awarding a sum of Rs. 500/- (Rupees five hundred only) as compensation. He is also entitled to interest at the rate of 12 per cent annum from 20.7.1989 i.e. the date of filing of petition till the realisation of the award amount. The liability of respondents No. 1 and 2 is joint and several to the extent of half amount. The liability qua the remaining half amount would be of respondents No. 3, 4 and 6, however, limiting the liability of respondent No. 6 to Rs. 15,000/-.

7. The owner and the driver of the tractor were not satisfied with the award and they have filed F.A.O. Nos. 99 to 108 of 1993 and they have prayed that the liability if any is that of the driver of the bus because according to Mr. Ashok Aggarwal who represented the owner and the driver of the bus, the accident had taken place solely on account of the negligence of Shri Rupinder Singh driver of the Haryana Roadways bus.

8. Shri V.B. Aegarwal, Advocate, who represented the appellants of two appeals i.e. F.A.O. No. 1623 and 1624 of 1992 has prayed that the amount of compensation awarded to his clients is on the lower side and it should be enhanced.

9. On the contrary, the stand of the Haryana Roadways and the National Insurance Company is that the liability of fifty-fifty which has been assessed by the Tribunal,

should not be disturbed and moreover, the injured who have filed two appeals, are not entitled to any enhanced compensation.

10. I have heard Shri Ashok Aggarwal, learned counsel who appearing on behalf of the driver and owner of the tractor No. BUY 1140, Shri V.B. Aggarwal, who appeared on behalf of the two injured Isham Singh and Gurbax Singh who have made a prayer for enhancement of the compensation. I have also heard Shri Kamal Sehgal, who appeared on behalf of the National Insurance Company and Shri Yash Pal, learned AAG. who appeared on behalf of the Haryana State, and Shri Sanjay Majithia who gave the appearance on behalf of New India Assurance Company and with their assistance have gone through the record of this case.

11. First of all, I declare that M/s New India Assurance Company is not liable to pay any compensation because in this case the tractor No. HRY 1140 was not insured with that Company at the relevant time and the learned counsel Shri Ashok Aggarwal admits that New India Assurance Company is not liable to pay any compensation which has been awarded by the tribunal or which may be awarded by the High Court in the appeal.

12. Shri Ashok Aggarwal, wanted to convince me that in this case, the accident had taken place on account of the sole negligence of Shri Rupinder Singh driver of the bus and since he was solely responsible, therefore, the Tribunal fell in error in holding that this accident had taken place on account of contributory negligence and that the Tribunal further erred in fixing the liability fifty-fifty. The counsel with the help of a site plan wanted to convince me that the tractor is a slow moving vehicle which was going on its correct side. The driver of the bus could not control the vehicle and it hit against the trolley. The driver of the bus wanted to overtake it. He came on the wrong side and caused this accident. I am not convinced with the submission of the learned counsel Shri Ashok Aggarwal. The men may lie but the circumstances not. The proved facts on the record are that on the place of the accident the width of the road is 60 feet. Common case of the parties is that the bus No. HNE 376 belonging to Haryana Roadways, was going from Chandigarh to Delhi while the tractor trolley bearing No. BRY 1140 was coming from the opposite direction. It is also the common case of the parties that certain cyclists were going on the road. The site plan Ex. PW4/B indicates the position of the tractor trolley and the bus. I may also clarify that the bus was coming from North to South and the tractor was going from South to North. The Investigating Officer who prepared the site plan has shown point "A" where the bus was standing and it was facing towards Delhi. Point "B" is the point where the trolley was standing. It is on the western side and it was facing West East meaning thereby that the back portion of the trolley was towards the road. Point "D" is the place where the tractor was standing and it was facing towards Ambala. Meaning thereby that the tractor and the trolley after the accident were on the correct side of the road. The broken cycle was standing at point "C" and it was also on the left side of the road if one faces Ambala side. I have

already stated above that at the place of accident the width of the road is 60 feet. Bus was going from Chandigarh to Delhi. Tractor was coming from the opposite direction. Both these vehicles must be going in the middle of the road after giving small passage of both the sides to the pedestrians/cyclists etc. Had it been head-on-collision, I would have expected much damage to the tractor trolley. Even the driver of the tractor would have suffered major injuries. It has become difficult for me to understand how the accident has taken place when both the vehicles were coming from opposite direction, it was the duty of both the drivers to leave a reasonable gap between both the vehicles so that none of the vehicles may come into contact with each other. Unfortunately, both the drivers did not take care of the traffic rules. They did not leave the gap as a result of that the right side of the bus came into contact with the right side of the trolley and on account of the impact of the accident the hook of the tractor broke down and the tractor and the trolley became out of the control. After the impact of the accident, the bus stopped at point "A". The tractor stopped at point "D" : and the trolley fell at point "B" by injuring the cyclists who were going on the road. Thus, the Tribunal was right in holding that this accident had taken place on account of the contributory negligence.

13. Now, it is to be seen what should be extent of the liability. Tractor is a slow moving vehicle as compared to the bus which can be driven even up to the speed of 100 Kms or 120 kms depending on the discretion of the driver. G.T. Road is one of the busiest roads of the country. The accident had taken place near Pipli. There was a traffic on the road at that time during the night.

14. In these circumstances, the duty of the driver of the bus was more. His obligation for safe journey was much more as compared to the driver of the tractor. Therefore, I am of the opinion that the liability of Shri Rupinder Singh should be fixed at 67% while that of Shri Baldev Singh should be 33%. Since the Bus was insured with National Insurance Company, therefore, this company is also liable to pay compensation to that extent jointly and severally along with the owner and the driver of the bus. Since the tractor is not insured, therefore, the liability of the owner and the driver of the tractor is jointly and severally but to the extent of 33% and they shall pay the compensation in this ratio along with interest.

15. Reverting to the two appeals of the injured, it was submitted by Shri V.B. Aggarwal that a compound fracture has been suffered by Shri Isham Singh. He remained admitted in the P.G.I. for one and half months. Yet he has only been awarded a sum of Rs. 4,000/- by way of compensation besides interest at the rate of 12% from the date of the filing of the petition till payment. Supplementing his submission he invited my attention to the statement of Shri Isham Singh who was young and received injury. This patient remained in the PG1 as an indoor patient for one and half months. He also received injuries on head and chest. There is no satisfactory evidence that this petitioner spent Rs. 30/35 thousands on his treatment or Rs. 4000/5000 on the conveyance charges. The Tribunal while assessing the

compensation with regard to the injuries of Isham Singh has held in the paras No. 40 to 43 of the award, as follows:

"40. Isham Singh claimant received injuries in the accident when he was going on bicycle from Pipli to his village Untsal. He pleaded his age 20 years. He used to work with Ramesh who was running a shop of shoe making at Pipli earning Rs. 50/- per day. PW6 Isham Singh stated that he received injuries on his right arm. He was admitted in L.N.J.P. Hospital where he remained as indoor patient for one day and two nights and then he was referred to P.G.I. Chandigarh where he remained as in-door patient for about one and half months. He also received injuries on his head and chest. He has spent about 30-35 thousand on his treatment. He also spent Rs. 4-5 thousand on conveyance charges. He remained unconscious in PGI for 20 days. He used to make shoes at Pipli along with Ramesh son of sister of his father and used to earn Rs. 60/- per day. Now he is unable to do anything. He proved on record Ex. PW6/1 to Ex. PW6/39 which are medical bills and which were objected to for want of mode of proof. In his cross-examination, he stated that the shop at Pipli was on rent but does not know the name of the owner and who is resident of Pipli. Therefore, it is highly unbelievable if he used to make shoes at Pipli on a rented shop. He does not know the address of the owner of the shop. There is no shop in existence at present. He borrowed money from one Sehzada Ram resident of Karsa and who is alive. He went 3-4 times to Chandigarh in PGI in Taxi. I wonder that a labourer would go in a taxi, when he received injury just in the forearm, and could well travel in the bus. He could not give the particulars of taxi and taxi drivers. This ignorance falsifies the claim. He also examined PW 7 Ramesh Kumar, who stated that the shop was owned by Darshan Lal resident of Pipli and were not obtaining any receipt. After the accident they have left the shop.

41. PW Dr. Balbir Bhardwaj, Medical Officer, L.N.J.P. Hospital, Kurukshetra stated that on 2.4.1989 at 9.25 P.M. he medico-legally examined Isham Singh son of Gurbax Ram aged 20 years r/o village Karsa and found the following injuries on his person :

1. Swelling bridge of nose clotted blood was present in both nostrils. Advised X-ray.
2. Compound fracture right humerus in its lower 1/3rd.
3. Swelling measuring 7 cm 5 cm on anterior medical aspect of upper part of right leg, just below knee joint. Advised X-ray.
4. Complained of pain abdomen guarding and rigidity (doubtful). Advised X-ray and surgical opinion.
5. Multiple small abrasion on both lateral malleoli and dorsum of both feet.

Injuries No. 1 and 3 were subjected to X-ray while Injury No. 2 was declared grievous and injury No. 4 was subjected to surgical opinion and injury No. 5 was declared as

simple. All the injuries were fresh and kind of weapon used was blunt. He proved on record copy of MLR Ex. P3 and X-ray report Ex.P4 was not issued by Civil Hospital, Kurukshetra. The patient had disclosed his occupation as labourer. He just gave him first aid.

42. He has not examined anyone from PGI to show if he remained as indoor patient there or if he got treatment from PGI. PW 1 Dr. N.K. Gandhi, apri-vate practitioner stated that on 21.8.1989, Isham Singh came to his O.P.D. and examined him and x-ray of the right upper arm was done. There was united fracture of the right upper arm. He proved on record his certificate Ex. P.1. He also examined Isham Singh in the Court and found his arm quite O.K. In his cross-examination he stated that he never treated Isham Singh nor he saw the X-ray nor he could depose as to the age of injury.

43. The amount of the bills comes to Rs. 3,000/-. After 30.4.1989 the bill of 7.5.1991 i.e. he got no treatment for over a period of two years, and, therefore, bills dated 7.5.1991 and 8.5.1991 amounting to Rs. 134/- approximately have nothing to do with his treatment. In view of the medi-ca! expenses, injuries, pain and suffering etc. I feel satisfied that the ends of justice would be met if an award of Rs. 4,000/- in all is made in his favour. I order accordingly."

16. I have gone through the reasons given by the learned Tribunal. Keeping in view the fact that this petitioner (Isham Singh) suffered compound fracture of the right humerus in its lower 173rd and also keeping in view that he also suffered injuries on his nose, right leg and multiple abrasions on the dorsum of both the feet, I am inclined to award him Rs. 10,000/-. (Rupees ten thousand only) by way of compensation including for the pain etc. This amount of compensation shall be paid in the ratio of 67% and 33% by the Insurance Company of the bus and by the owner and the driver of the tractor respectively.

17. The discussion of the Tribunal made in paras No. 38 and 39 is as follows :

"38. Gurbax Singh claimant was going from Pipli to his village Untsal on his bicycle and when he reached near the place of occurrence he received injuries in the accident; involving both the vehicles. He pleaded his age 19 years a Labourer with mechanic Babu Ram who used to repair truck body at Pipli earning Rs. 30A per day. He sustained multiple and grievous injuries on the right arms in other parts of the body. After the accident he was admitted in L.N.J.P. Hospital, Kuruk-shetra wherefrom he was referred to P.G.I, up to 11.5.1989. Still he is under the treatment of PGI. His right arm is still unfit. He claimed compensation of Rs. 1,00,000/-.

39. As PW 8 he stated that he was referred to PGI, Chandigarh from L.N.J.P. Hospital on 4.4.1989 and remained there as indoor patient for 15 days. He spent about Rs. 10,000/- on his treatment in the PGI and Rs. 5,000/- in L.N.J.P. Hospital. Two rods were inserted in this right hand which now does not work properly. He spent Rs. 607- per day on his special diet which he took for two months. He used to repair

truck bodies getting a salary of Rs. 40/- per day before the accident. Now, he is unable to do his job. He proved on record medical bills Ex. PW 8.1 to Ex. PW8/33. In his cross-examination he stated that he used to work as Mistri on the shop of Babu Ram who runs Vishavkarma Body Builders, Patiala Wale, Pipli. He used to receive his pay against a receipt. He used to get wages only for the day he worked. Therefore, 2-3 days remains off in a month. He denied if no such shop is ever existing at Pipli nor he ever worked there. He also denied if he did not receive any salary from there. Babu Ram is resident of village Alhar. Teh Radaur. Now a days he is working at Ambala. He is now working as casual labourer. He was told by a member of his family that a sum of Rs. 4-5 thousand was spent on his treatment at Kurukshetra. He spent Rs. 15-20 thousands in the P.G.I. on his treatment. He obtained the amount on interest from Panna Ram of village Morthala. He is alive. He denied if no amount was spent on his treatment and he is healthy, neither any Babu Ram has been examined when he has been allegedly working and who could prove his earning of Rs. 30/- per day. He has also not satisfied the Court if he borrowed any amount from any one to enable him to spend Rs. 15,000/- on his treatment. The amount of bills of medicines, however, comes to Rs. 1700/- approximately. The last bill is of 19.4.1989. PW1 Dr. N.K. Gandhi now private practitioner stated that on 31.8.1989 he examined Gurbax Singh in his private clinic and X-ray was done of the forearm and found fracture of both bones with internal fixation alongwith limitation of the movement of the wrists. During examination in the Court, he found limitation of the movements of the right wrist on the dorsum side. He also found that a rod was fitted in the right hand of the claimant and its removal requires operation. Possible disability might be up to 5 per cent. In his cross-examination he stated that he never treated Gurbax Singh. He has not seen the X-ray of the injured today. He could not say the age of fracture. The above deposed 5 per cent disability has chances of improvement but less chance of complete cure. He denied if he never examined Gurbax Singh. However, he proved on record certificate Ex. PW2 and in which nothing about liability has been mentioned and this certificate is dated 21.8.1989. There is no medical evidence if he ever remained as an indoor patient anywhere. There is no evidence if he ever worked as Mistri. From his case itself, it is proved that he is casual labourer. There is no evidence of any loss of earning for any period. Although he submitted medical bills amounting to Rs. 1661/- yet he is entitled just to Rs. 1223.50 allegedly spent up to 26.6.1989. Thereafter, he received no treatment for about one year and therefore, there is no evidence to link the bills from 4.4.1990 to 19.4.1990. In this case, I am of the view that ends of justice would be met if an award of Rs. 2500/- in all is made in his favour. Hence the award is made accordingly."

18. The reading of the above would show that this gentleman Shri Gurbax Singh suffered a compound fracture and there is a disability to the extent of 5%. A rod was fitted in his right hand and its removal required operation. In my opinion, the compensation of Rs. 2500/- awarded by the Tribunal is on the lower side and the just

compensation should not be less than Rs. 10,000/- and I award a compensation of Rs. 10,000/- to Gurbax Singh. The liability to pay this compensation will be in the ratio of 67% and 33% by the owner, driver and Insurance Company of the bus and the owner and the driver of the tractor respectively. Of course, Isham Singh and Gurbax Singh will be entitled to interest at the rate of 12 percent from the date of the filing of their respective petitions till payment.

19. The net result is that ten appeals i.e. F.A.O. Nos. 99, 100, 101, 102, 103, 104, 105, 106, 107 and 108 of 1993 succeed partly and it is held that the liability of the driver and the owner of the tractor would be 33% to pay the compensation along with interest at the rate of 12% from the date of the filing of the respective petitions till payment. The two appeals i.e. F.A.O. Nos. 1623 and 1624 of 1992 are also partly allowed and compensation of Rs. 10,000/- each is hereby awarded to Shri Isham Singh and Gurbax Singh for the injuries suffered by them. This amount shall also carry interest at the rate of 12% from the date of the filing of the petition till payment. The liability of the owner, driver and the Insurance Company of the bus will be to the extent of 67% jointly and severally and similarly the liability of the owner and the driver of the tractor will be 33% jointly and severally. There shall be no order as to costs.

20. All the 12 appeals stand disposed of as indicated above.

21. Appeals partly allowed.