

(2000) 10 P&H CK 0040

High Court Of Punjab And Haryana At Chandigarh**Case No:** First Appeal from the Order: 881 of 1985

Kartar Kaur

APPELLANT

Vs

Baljit Singh and others

RESPONDENT

Date of Decision: Oct. 10, 2000**Hon'ble Judges:** V.S. Aggarwal, J**Bench:** Single Bench**Advocate:** T.S. Sangha, for the Appellant; Ravinder Kaur Nihalsinghwala, A.A.G., Punjab, for the Respondent**Final Decision:** Dismissed

Judgement

V.S. Aggarwal, J.

The present appeal has been preferred by Kartar Kaur wife of Balbir Singh, hereinafter described as "the Appellant" directed against the award of the Motor Accident Claims Tribunal, Bhatinda, dated 1.3.1985. By virtue of the impugned award, the learned Tribunal had dismissed the claim petition filed by the Appellant.

2. The relevant facts are that Kartar Kaur is the mother of one Binder Singh who died in an unfortunate accident on 31.07.1982 in front of Guru Nanak Dev Thermal Plant, Bhatinda. The accident was alleged to have been caused by Baljit Singh by driving his bus No. PUK-8112 in a rash and negligent manner. It was alleged by the Appellant that on the fateful day the deceased who is a labourers came to cycle from the main gate with one Sarabjit Singh sitting on the carrier of the cycle. When he tried to across the road, Baljit Singh Respondent came driving his bus No. PUK-8112 in a rash and negligent manner from the side of Gidderbaha and dashed in against Binder Singh. Binder Singh fell on the road and was crushed by the right front wheel of the bus. He died at the spot. Sarabjit Singh alongwith Gur Lal Singh had reported the matter to the police at Guru Nanak Dev Thermal Plant, Police Station. Bhatinda. When post-mortem examination was conducted on the person of the deceased, it was found that the cause of death was shock and haemorrhage resulting from injuries. The Appellant claimed that the deceased was giving Rs. 800/- per month.

Rs. 70,000/- was claimed as compensation by the Appellant.

3. The petition had been contested. The Respondent driver Baljit Singh denied that he was driving the vehicle in a rash and negligent manner. According to him, the case registered against him is false and that it was the fault of the deceased himself. The bus was on the correct side. The deceased was trying to cross the road from the right side of the bus. The person sitting on the carrier of the cycle jumped away while the deceased was run over and killed.

4. On perusal of the facts and circumstances, the learned Tribunal held that the deceased met with an accident but it was not the rash and negligent driving on the part of the driver of the bus. Accordingly, the petition as such had been dismissed. Aggrieved by the same, the present appeal has been filed.

5. Sarabjit Singh, AW4, is the solitary main witness pertaining to the incident. It was he who was sitting on the carrier of the cycle of the deceased. Therefore, he is a natural witness to the accident that took place. In his examination-in-chief, he excluded the presence of Harbans Singh. It reads as under:

... At about 1.05 p.m. about two years back I along with Binder Singh deceased was coming on a cycle towards Bhatinda city from Thermal Plant. Binder Singh was driving the cycle and I was sitting on the back. We were on our correct side. A Punjab roadways bus came with fast speed on road side. Sensing that bus would crush us. I jumped from the carrier and got aside, but Binder Singh was crushed under the bus and he sustained multiple injuries. Harbans Singh came to the spot after 2/3 minutes of the accident. Harbans Singh was on duty at the gate of the Thermal Plant. Bhatinda. The accident took place at a distance of about 5/6 karams from the said gate. I along with Gurdial Singh went to the police station and lodged a report there. The deceased was drawing Rs. 350/- per month.

6. A reading of the statement of the said witness, whose presence has not been disputed shows that he has totally exonerated the driver of the bus. He knew that the deceased was trying to cross the road and, therefore, he jumped from the carrier. This version of the witness is in line with the First Information Report that was lodged. Copy of the same has been proved as Exhibit AW2/A. Therein also, the said witness had given the version that when Binder Singh tried to cross the road, one bus came from the side of Gidderbaha at fast speed. He advised the deceased not to cross the road. The deceased did not stop and, therefore, this witness jumped from the carrier of the cycle. The deceased met with an accident.

7. There are other facts on the record which leads one to the same conclusion that there was no rash and negligent driving on the part of the deceased. It is correct that the deceased died as a result of the accident but the wheel of the bus had not crossed over the body of the deceased. It shows that the bus was not being driven at a fast speed otherwise he would have been crushed under the wheel. The evidence of the other witnesses was rightly ignored because Gurdial Singh and

Harbans Singh were not witnesses to the accident and. therefore, they cannot say about rash and negligent driving.

8. Taking stock of the totality of the facts, the learned Tribunal rightly held that there was no rash and negligent driving that was attributed to the bus driver. The learned Tribunal has rightly dismissed the claim petition.

9. Not other argument has been advanced.

10. For these reasons the appeal being without merit must fail and is dismissed.