



104 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-1963-1994

Date of decision : 04.03.2025

Kaushalaya Devi and another

....Appellants

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sarju Puri, Advocate
for the appellant.

Mr. Ishan Kaushal, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Claimants are in appeal aggrieved of award dated 29.10.1993 passed by MACT, Jalandhar.

2. Claimants approached Tribunal by filing claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Amar Nath, aged 48 years, in a motor-vehicular accident. As per the claimants, deceased was riding the cycle on 19.09.1991 when he was hit by Bus No.PJG 2293 belonging to Punjab Roadways, Jalandhar from back side. It is claimed that the cause of accident was rash and negligent driving by respondent No.3. The matter was reported to the Police Station Nawanshahr and the case was registered against respondent No.3.

3. The claim was contested by the respondents disputing accident. It was further claimed that no accident in fact occurred with the bus in



question and thus, the claimants are not entitled for any compensation from the respondents.

4. Tribunal framed the following issues:

- “1. Whether the accident took place on account of rash and negligent driving of Bus No.PJG 2293 by respondent No.3 as alleged? OPA
2. If issue No.1 is proved, to what amount of compensation the claimants are entitled to and from whom? OPA.
3. Relief.”

5. While deciding issues No.1 and 2, Tribunal held that the claimants failed to prove accident as claimed in the claim petition and decided issue No.1 against the claimants. Finding on issue No.1 has resulted in dismissal of the claim petition.

6. Mr. Puri counsel for the appellants while assailing the findings recorded by the Tribunal submits that the Tribunal fell in error in disbelieving testimony of AW3 Ravinder Singh Kaluti, Advocate. He submits that the Tribunal erred in proceeding on the presumption as if AW3 was accompanying AW2 Madan Lal. Testimony of AW3 the eye-witness fully proved the accident. The same has been ignored merely on the surmises and conjectures. Thus, the findings recorded by the Tribunal need to be reversed.

7. Per contra, Mr. Kaushal submits that Tribunal has rightly discarded the testimony of AW2 and AW3 as both are contradictory to each other. AW2 Madan Lal testified before the police that bus had in fact



crossed his father when handle of the cycle struck against bus and Amar Nath fell down. AW3 on the other hand claimed that the bus was being driven in a zig zag manner and hit the cycle from behind. He submits that the pure findings of fact have been recorded by the Tribunal after appreciating entire evidence on record. No post-mortem report was recorded and thus the evidence to prove causal relationship between death and accident, is also missing. Thus, no fault can be found with the findings recorded by the Tribunal.

8. I have heard counsel for the parties and have gone through records of the case.

9. Though the circumstances spelled out by Tribunal to discard testimony of Madan Lal (AW-2) cannot be held to be cogent reasons to ignore the same yet even if testimony of Madan Lal is ignored, testimony of Ravinder Singh Kulati, Advocate (AW-3) is on record. Ravinder Singh Kulati, Advocate (AW3) testified before the Tribunal that he was present on the spot at the time of accident. He explained his presence claiming that he was coming from the Court of Sub Divisional Magistrate and going to Civil Court, Nawanshahr. There is no denial to the fact that the spot of the accident is on the way from SDM Court to Civil Court. He stated in his testimony that driver of bus was rash and negligent in driving. Tribunal erred in presuming that Ravinder Singh Kulati was accompanying AW2 Madan Lal and discarded his testimony. The same is against the facts on record. The other reason assigned by the Tribunal for discarding testimony



of Ravinder Singh Kulati is that his name was not disclosed in the claim petition. The reason assigned cannot be sustained. Trite it is that it is the facts which need to be pleaded and not the evidence.

10. Absence of post-mortem report also cannot be held to be fatal to the case of claimants in the light of admission made by RW1 driver. He is explicit in his testimony to state that deceased struck his cycle against the bus and fell down. Deceased was taken to hospital, where he died.

11. The standard of proof in MACT cases is not “beyond doubt” rather is “preponderance of probabilities”.

12. In view thereof, this Court finds that the Tribunal erred in discarding testimony of AW3 the eye-witness which has resulted in perverse finding on issue No.1. Resultantly, finding on issue No.1 is hereby set aside. As a consequence thereof, findings on issues No.2 and 3 also need to be reversed.

13. With the aforesaid observations, the matter is remanded back to the MACT, Nawanshahr to decide the same afresh in accordance with law.

14. Keeping in view that the claim petition is of the year 1992, this Court is sanguine that the Tribunal shall make every endeavour to adjudicate upon the claim petition afresh in accordance with law within a period of six months from the date of receipt of certified copy of this order.

15. The instant appeal is disposed off accordingly.

March 04, 2025

Dpr

**(Pankaj Jain)
Judge**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No