

# SUPREME COURT OF INDIA

Gian Chand & Ors.

Vs.

Gurlabh Singh & Ors.

C.A.No.14731 of 2015

(Kurian Joseph and Arun Mishra,JJ.)

15.12.2015

## JUDGMENT

**Arun Mishra, J.**

Arising out of SLP [C] No.8543 of 2015

1. Leave granted.
2. The appeal arises out of judgment and order passed by the High Court of Punjab & Haryana at Chandigarh in FAO No.862 of 1997 thereby dismissing the appeal filed by the claimants assailing the award dated 8.1.1997 passed in M.A.C.T. No.18/1994.
3. The claimants preferred petition under section 166 of Motor Vehicles Act on account of death of Mulakh Raj, aged 25 years, who died in an accident involving Bus No.CH-01-G-5152. He boarded the said bus from Una for Delhi. Near Kotli about 5 kms. before Anandpur Sahib the bus dashed a stationary tractor trolley and thereafter struck against a eucalyptus tree and turned turtle. It was driven rashly and negligently by Gurlabh Singh, owned by Chandigarh Transport Undertaking. The deceased was the sole bread winner of the family, used to earn Rs.4552 per month, was a Headmaster and in addition used to earn Rs.1000 per month from agriculture.
4. The respondent driver contested the claim petition and contended that the accident was not the outcome of rash and negligent driving but due to a sudden breaking of belt of spring the accident took place. He was not at fault.
5. The Transport Undertaking in a separate statement contended that when the bus reached near village Solkhain, two scooterists came from the opposite side. The scooter was driven rashly and negligently and struck the bus on the driver side which was the cause of accident. The accident did not take place due to fault of the bus driver.

6. The Motor Accidents Claims Tribunal came to the conclusion that accident was caused due to sudden breaking of belts of springs for which driver could not be said to be at fault. Under no fault liability a sum of Rs.25,000 had been awarded to the claimants. The claim petition was dismissed. The High Court has affirmed the award hence the present appeal before us.

7. It was strenuously contended by learned counsel appearing on behalf of the appellants that the courts below have erred in law in dismissing the claim petition. Pleas totally at variance from each other have been taken by the driver and Transport Undertaking in their reply and the statement of mechanic that breaking of belt of springs can take place in case brakes are applied all of a sudden, has been ignored. The finding recorded by the courts below that the driver did not drive the bus rashly and negligently is perverse and deserves to be set aside. Suitable compensation be awarded.

8. Learned counsel appearing on behalf of the respondents has supported the award. It was contended that the accident took place due to mechanical failure for which driver could not be said to be responsible. In the absence of rash and negligent driving by the driver of the bus liability has rightly not been fastened on the owner and driver.

9. Having heard learned counsel for the parties at length, perusing the evidence and the orders passed by the courts below we are of the considered opinion that grave error of law has been committed while arriving at the findings as to the method and manner in which accident has taken place and as to rash and negligent driving of bus driver. There is reliable evidence adduced on behalf of the claimants that the bus was driven at high speed and it dashed firstly against the stationary tractor parked below the road and thereafter it dashed against the eucalyptus tree. The Transport Undertaking has taken totally different plea that the scooterists came from the opposite side and dashed against the driver's side of the bus which was the cause of accident. The driver has not taken the stand that any scooter was involved in the accident. The pleas taken by the driver as well as the Transport Undertaking are totally at variance. It is clear that they have not come to the tribunal with clean hands. Even otherwise there is nothing to doubt the version of the claimants and their witnesses that the bus was driven rashly and negligently. Ram Kishan, PW-3, has clearly stated that the bus was driven rashly and it came from Nangal side and dashed the stationary tractor which was parked below the road, and thereafter the bus dashed eucalyptus tree. He has clearly stated that there were no pits around the place of occurrence. Whereas the driver Gurlabh Singh has stated that the bus jumped and owing to that belts of springs were broken, as such he lost control of the bus and it struck with the eucalyptus tree. A bare perusal of the FIR substantiates the plea of the claimants and not of the driver. Driver has not pleaded in reply that due to road condition the bus jumped all of a sudden, and has also suppressed the fact that the bus initially dashed a stationary tractor. Thus the version of the driver is not reliable. When we come to the statement of the mechanic he has categorically stated that the belt of springs could have been broken in case brakes were suddenly applied. Thus it appears that the bus driver drove the bus rashly and negligently and initially dashed the stationary tractor and then a eucalyptus tree. In that process due to application of brakes belt of springs was broken. The plea of Transport Undertaking that a scooterist was involved in the accident is

totally a false plea and is not supported by its driver. In the circumstances there is no escape from the conclusion that the bus was driven in a rash and negligent manner by its driver. Apart from that merely a mechanical failure is not enough to exonerate the Transport Undertaking from its liability in the absence of evidence being adduced that the vehicle was maintained properly.

10. Coming to the question of compensation to be awarded the claimants are the parents. Brothers could not be said to be dependent on the earning of the deceased. Considering the fact that the deceased was teaching in a school, in totality of facts and circumstances, it would be appropriate to award a lump sum compensation of Rs.7,50,000/- to the parents along with interest at the rate of 6 per cent per annum from the date of filing of claim petition till its realization.

11. The appeal is allowed. Let the Transport Undertaking deposit the amount awarded within a period of three months. No order as to costs.