
(1963) 11 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 117 of 1956

Alwar Motor Association (Private) Ltd., Alwar and Another

APPELLANT

Vs

Hazari Lal and Others

RESPONDENT

Date of Decision : 28-11-1963

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1965) ACJ 542 : (1964) 66 PLR 804

Hon'ble Judges : Capoor, J; Bedi, J

Bench : Division Bench

Advocate : K.C. Nayar, H.L. Sarin and R.K. Cuccria, for the Appellant; Moti Ram, Dalip Singh, N.N. Goswami, Surrinder Mohan Suri, H.R. Sodhi, S.S. Mahajan and H.R. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

Bedi, J.—This judgment will dispose of all the four appeals Nos. 117, 118, 162, and 163 of 1956, which arise in the following circumstances:

Hazairi Lal plaintiff instituted the suit in forma pauperism against the eight defendants claiming Rs. 20,000/- as damages for his own benefit and also for the benefit of some other persons. The connected suit also was instituted by Roshan Lal for the recovery of Rs. 11,500/- against the same defendants by way of damages. The facts, as disclosed in the plaints, are that on the 4th February 1954 there was a collision between Bus No. RJL 2817 and truck No. PNJ 633. The accident took place near the furlong post 72/5 near Ferozepore Jhirka in Gurgaon District. The bus was coming from Alwar towards Delhi while the truck was going to Alwar. It is alleged that on that day Tara Chand Aggarwal, son along with Roshan Lal plaintiff and Kanta Devi wife of Roshan Lal booked their seats in the above bus from Alwar to Delhi with the Alwar Motor Association Ltd., Alwar, defendant No. 1, under a common ticket No. 14/96. The bus in question was owned by the defendant above-mentioned and was being driven by Thela Ram defendant No. 2. It was insured with the General Assurance Society Ltd., Ajmer

defendant No. 7 against injuries to passengers and third party risk. The bus left Alwar at about 9.30 a. m. and collided with the above mentioned truck at about 11 a.m. The truck in question was owned either by Sardar Makhan Singh defendant No. 3 or by Bawa Harbans Singh Bedi defendant No. 4, and M/s. Jaipur Golden Transport Delhi, defendant No. 5, were the carriers who had employed this truck in the course of their business. Puran Singh defendant No. 6 was the driver of the truck in the employment of the owners and under the direction of the said carriers. The truck was also insured with M/s. Deepak General Insurance Company Ltd., New Delhi, defendant No. 8, against third party risk. As a result of this collision Tara Chand, Kanta Devi wife of Koshan Lal and their minor daughter Parmila received fatal injuries. Kanta Devi and her minor daughter Parmila Devi died at the spot while Tara Chand died in the hospital soon thereafter. It was alleged that the collision occurred due to the negligence of either of the two drivers or both of them who drove the vehicles on wrong sides, at excessive speed and without giving warning while rounding the curve. They failed to keep proper look out or to apply the brakes and also to exercise due care and skill in the management of the vehicles. Tara Chand deceased was the sole bread winner of his family consisting of his father Hazari Lal plaintiff, his mother Mst. Rama Devi, his wife Lajiwanti, his sons Radhey Shayam, his daughter Saroj Devi and his another son Bal Ram, aged 2 months. It was alleged that the family was deprived of the benefit of Rs. 200/- per mensem which Tara Chand deceased was earning. Hazari Lal plaintiff, father of Tara Chand deceased, therefore, claimed Rs. 20,000/- as damages for the benefit of himself and the above-mentioned members of the family.

2. In the other suit by Roshan Lal, he claimed Rs. 10,000/- as damages for the death of his wife Kanta Devi, which deprived him, his two daughters Sharda and Usha, and his two sons Sarvan and Paven, of the benefit they derived from her. Besides Rs. 1,000/- were claimed as damages for the death of his daughter Parmila Devi. In addition an amount of Rs. 500/- was claimed for the personal injuries caused to him, the sufferings undergone and the reduction in his physical capacity to enjoy life in future and for the medical expenses incurred etc.

3. Bawa Harbans Singh Bedi, who was mentioned as defendant No. 4, and is a resident of 29-C Nizam-ud-Din appeared and stated that he had no concern with the truck in question and that it was Bawa Harbans Singh Bedi son of Bawa Parbodh Singh, Roshanara Road,. Delhi, who was at one time the owner of the truck and that the plaintiff should, therefore, sue him instead. The plaintiffs realised the mistake and the name of defendant No. 4 was struck off on the statement of the plaintiffs' counsel made on the 20th May, 1955, and instead the name of Bawa Harbans Singh Bedi son of Bawa Parbodh Singh of Roshanara Road, Delhi, was substituted. Summonses were issued in response to which Bawa Harbans Singh Bedi son of Bawa Parbodh Singh appeared in Court and put in his written statement on the 3rd August 1955. Defendants Nos. 1 and 2 put in their written statements denying the allegations against them. It was denied that the bus driver Thela Ram was negligent or in any way at fault. It was asserted

that he was driving the bus at the speed of 25 to 30 miles per hour as was permissible and that he was sounding the horn while taking the turn and even otherwise kept proper look out. He did not apply the brakes as there was no occasion for it and that the speed of the bus at the time of the collision was normal. It was also averred that the truck in question was being driven very rashly and negligently which struck on the back portion of the bus. The alleged loss to the plaintiffs was also denied, and the earning capacity of Tara Chand deceased was also questioned. Similarly, defendant No. 3 in his written statement averred that the truck in question neither belonged to him nor to Bawa Harbans Singh, that although his name appeared in the record of the registration authority, but the real owners were S. Nihal Singh, Tej Singh of Alwar half, and Jiwan Singh, Prem Singh and Sujan Singh, Soheli Singh of Delhi-one half, and that the collision and the deaths were not due to any kind of negligence on the part of the truck driver, but the fault lay with the driver of the bus, namely, Thela Ram. It was also averred that the vehicles were insured and the liability therefore rested with the insurers. It was denied that the plaintiffs were entitled to any damages.

4. Defendant No. 4 who was subsequently impleaded, asserted in his written statement that the suit in question was time-barred and that he was only a nominal owner of the truck which in fact had been transferred to the name of Makhan Singh before the collision. He, therefore, denied his liability for any damages.

5. Defendant No. 5 M/s. Jaipur Golden Transport, Delhi., in their written statement averred that they had nothing to do with the truck and that its driver was neither under their management or control, nor he was in their employment.

6. No written statement was put in by Pooran Singh defendant No. 6, or by the General Assurance Society Ltd., Ajmer, defendant No. 7. The suit therefore proceeded against them ex parte.

7. M/s. Deepak General Insurance Company Ltd., defendant No. 8, also put in their written statement averring that Bawa Harbans Singh Bedi got the truck in question insured with the Company and that the same was transferred to Makhan Singh before the accident. Therefore the policy issued by them insuring this truck did not exist and it became void by reason of non-disclosure of material facts by the insured. It was also denied that the accident took place on account of the negligence of the driver of the truck, namely, Pooran Singh. They also challenged that the plaintiff Hazari Lal or his wife could not be called the legal representatives or heirs of the deceased Tara Chand, and averred that the amount claimed by the plaintiffs was also excessive. It was further averred that Roshan Lal had no right to file the suit for the other persons mentioned by him in his plaint.

8. As both the suits were against the same defendants and arose out of the same accident, these were tried together by the trial Court. The pleadings of the

parties gave rise to the following issues in the suit filed by Hazari Lal :

1. Whether Tara Chand son of Hazari Lal plaintiff travelled by Bus No. RJL 2817 on 4th February, 1954 ?
2. Whether the said Bus collided with truck No. PNG 633 as a result of negligent driving by the drivers of both or either of them as detailed in paras 7 and 8 of the plaint ?
3. Whether the death of Tara Chand was caused by such negligent driving?
4. Whether the person or the persons mentioned in para 10 of the plaint suffered any loss or deprivation and to what damages are they entitled and against whom ?
5. Is Harbans Singh defendant concerned with the said truck and is he liable to pay any damages and if so, what damages ?
6. Whether the suit is within time qua defendant No. 4 ?
7. Has the plaintiff no right to bring the suit, if the above issues are decided in his favour ?
8. Relief.

The issues framed in the other suit filed by Roshan Lal were as under :

1. Whether Roshan Lal plaintiff and Kanta Devi, his wife and Parmila his daughter were travelling by Bus No. RJL 2817 on 4th February, 1954 ?
2. Whether the said Bus collided with truck No. PNJ 633 as a result of negligent driving of the drivers of the two vehicles or any of them as detailed in Paras 7 and 8 of the plaint ?
3. Whether the plaintiff suffered any injuries and whether Kanta Devi and Parmila died on account of the collision due to such negligent driving ?
4. Whether the plaintiff and persons mentioned in para No. 10 of the plaint suffered any loss due to injuries to plaintiff and to the death of Kanta Devi and Parmila and to what damages, if any, are they entitled and against which defendants ?
5. Is Harbans Singh defendant concerned with the said truck and is he liable for any damages and to what extent ?
6. Whether the suit is in time qua Harbans Singh defendant ?
7. Relief

The trial Court after considering the evidence led by the parties came to the conclusion that issue No. 1 in each case was proved. On issue No. 2 it was held that both the drivers were negligent in driving at the place of the accident. Issue No. 3 in each case was found in favour of the plaintiffs. Under issue No. 4

besides the two drivers, defendants Nos. 1, 2, 7 and 8 were held liable. Regarding loss suffered, it was held that in respect of the death of Tara Chand, Rs. 12,000 paid in lump sum would meet the requirements of the case and would compensate for the financial loss caused by the removal of the bread-earner of the family as a result of the accident. As regards death of Kanta Devi, wife of Roshan Lal, it was adjudged that Rs. 6000/- be paid in lump sum to the children of the deceased Kanta Devi. No amount was, however, allowed in respect of the death of Parmila Devi, Rs. 5000/- were allowed in respect of personal injuries suffered by Roshan Lal plaintiff. On issues Nos. 5 and 6 it was found that Bawa Harbans Singh, defendant No. 4 was neither the owner of the truck nor was its driver in his employ or under his direction or control so as to be regarded the servant of defendant No. 4. The suits as against defendant No. 4, were also held to be time-barred. Against issue No. 7, it was held that the suit was maintainable as Hazari Lal plaintiff was a dependant on the deceased Tara Chand and he was suing as representative and for the benefit of all the dependants of the deceased. In the result, the trial Court granted Hazari Lal Plaintiff a decree for Rs. 12,000/- with proportionate cost for the benefit of himself and of the other dependants of Tara Chand deceased against defendants Nos. 1, 2 and 6 to 8. The suit against defendants Nos. 3 to 5 was dismissed, but they were left to bear their own costs. The liability of defendants Nos. 7 and 8 was limited to the extent of the requirements necessary under the Motor Vehicles Act of 1939. The amount of decree viz. Rs. 12,000/- was also apportioned for distribution to the dependants of Tara Chand deceased as detailed in the decree. Roshan Lal plaintiff in the other suit was granted a decree for Rs. 6500/- in all with proportionate costs for the benefit of himself and the children mentioned in the plaint against defendants 1, 2 and 6 to 8. The suit against defendants Nos. 3 to 5 was dismissed but they were left to bear their own costs. The liability of defendants Nos. 7 and 8 was held to be limited to the amounts necessary to meet the requirements of the Motor Vehicles Act, 1939. It is against the above judgments and decrees dated the 25th June 1956, passed by Shri G.D. Jain, Senior Sub Judge, Gurgaon, that the aggrieved defendants have filed four appeals already mentioned above.

9. The most important issue in this case is No. 2 which is "whether the said bus (No. RJL. 2817) collided with truck No. PNJ 633 as a result of negligent driving of the drivers of the two vehicles or any of them as detailed in paras. 7 and 8 of the plaint ?" Before dealing with this issue, the facts which are admitted by the parties, may be mentioned. The accident took place at about 11.30 a.m. on the road running between Alwar and Delhi as mentioned in the plaint. While the truck in question was carrying a load weighing about 150 maunds, the bus was carrying a large number of passengers. It is also admitted that the metalled portion of the road at the place of the accident was only about 9 feet wide and further that there were a number of turns before and after the blind curve where this occurrence took place. This is apparent from the site plan prepared by Didar Singh Sub Inspector of Police who reached the spot immediately after this

accident.

10. Mr. Nayyar, appearing for the appellants in R.F. As. 117 and 118 of 1956, submitted that there is no satisfactory evidence on the record to show that the driver of the bus at that time was driving the bus rashly or negligently and it was because of that that this accident took place. He maintained that the fault actually lay with the truck driver who in spite of heavy load did not leave the road and banged into the rear portion of the bus. He also submitted that the bus at that time was being driven at a very slow speed. The argument, however, is not supported by the evidence on the record. In this case the first information report was lodged by Thela Ram bus driver himself at the police station. In that report he stated that the bus at that time was being driven at a speed of 30 or 35 miles per hour. The counsel submitted that the speed of 30 or 35 miles per hour was permissible and cannot be said to be excessive. This argument, however, appears to be fallacious on the face of it when we find that at the time of this occurrence it was drizzling the road was narrow and there were a number of turns before and after the curve where the fatal accident took place. Ordinarily a speed of 30 or 35 miles would perhaps not be excessive, but in view of the factors enumerated above we cannot say that the speed was not excessive : See in this connection Gobald Motor Service Ltd. and Another Vs. R.M.K. Velusami and Others, . A speed of even 40 or 50 miles an hour on the Grand Trunk Road running between Delhi and Chandigarh perhaps would not be excessive, but a speed of 30 or 35 miles may be highly objectionable if the vehicle was to be driven in some congested area or where there are a number of turns and the road is wet. None of the witnesses of the defendants appellants in this case had stated that on the turn in question the bus driver slowed the speed. Another circumstance which goes against this appellant is that the bus started from Alwar at about 9-30 a.m. and the occurrence took place at about 1 30 a.m. The distance between Alwar and the place where the unfortunate incident happened was about 50 miles. It is also in evidence that there were a number of stoppages on the way and passengers were allowed to get down and board the bus there. Making allowance for all the above, it cannot be said that the speed of the bus was in any case less than 30 or 35 miles per hour. It is also stated by P.W. 16 that neither the driver of the bus nor that of the truck blew any horn and that it was only when the truck was at a distance of 3 or 4 yards from the bus when it was seen. It was also stated that no attempt was made to apply the brakes and that there would have been no collision if both the drivers had been careful. It may also be mentioned that even in the written statement the speed of the bus was mentioned as 30 or 35 miles per hour, and it was not indicated that the speed of this vehicle was slowed down. The learned trial Court after discussing the evidence of the witnesses examined by the parties came to the conclusion that both the drivers were at fault. Moreover, Thela Ram, the bus-driver, was challaned and convicted u/s 304-A of the Indian Penal Code for rash and negligent driving in connection with this accident.

11. It was vehemently argued that Pooran Singh, driver of the truck, at the time

of this accident was under the influence of drink and that after the accident a bottle of liquor was handed over by him to another truck-driver. But there is no satisfactory evidence on that point. It is just an allegation which remains unproved. It was then contended that the truck driver was also at fault and that if the driver of the truck contributed towards this accident the bus driver cannot be absolved of his contributory negligence. But the plea of contributory negligence is of no avail in a suit of this nature by the representatives of the victims. Issue No. 2 has, therefore, been rightly decided by the Court below by giving adequate reasons which need no repetition here.

12. The counsel then argued that the finding of the Court below on issue No. 7 was erroneous. Issue No. 7 as framed by the trial Court in Hazari Lal's suit runs as under :

Has the plaintiff no right to bring the suit, if the above issues are decided on his favour ?

While arguing this point he submitted that Hazari Lal plaintiff was not competent to institute this suit on behalf of his other family members. This argument is fully answered by section 1-A of the Fatal Accidents Act, 1855, which lays down that "whenever the death of a person shall be caused by wrongful act, neglect or default and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured * * * * Every such action or suit shall be for benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased; * *" Hazari Lal was the representative of the other members of the family and as such was competent to bring the suit on their behalf, and for their benefit. This was so held in Jeet Kumari Poddar and Others Vs. Chittagong Engineering and Electric Supply Co. Ltd. and Another, . In that case also a similar objection was taken when the Division Bench of that Court took the view that "the word "representative" in section 1 means not the legal representative of the deceased but the wife, husband, parent and children of the deceased. A suit for damages u/s 1 can be brought by any of the following persons, namely, the executor, administrator or representative that is the wife, or husband or parent or child of the deceased." Reliance in that case was also placed on Johnson v. The Madras Railway Co. ILR 28 Mad. 470, Nani Bala Sen Vs. Auckland Jute Co. Ltd., , E.V. Penheiro Vs. M. Minney, and Pym v. The Great Northern Railway Co. (1863) 4 B & S. 396.

13. The next argument of the counsel was that in any case the damages allowed against his client were excessive. For deciding this point the observations of the Supreme Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, , will be great assistance. The learned Judges in this case have laid down that in calculating the pecuniary loss to the dependants many

imponderables enter into the calculation. Therefore, the actual extent of the pecuniary loss to the dependants may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained. The burden is certainly on the plaintiffs to establish the extent of their loss. When the Courts below have, on relevant material placed before them, ascertained the said amount as damages the Supreme Court cannot in second appeal disturb the said finding except for compelling reasons." The same view was taken by a Division Bench of this Court in *The State of Punjab v. Mst. Guranwanti* (1969) 62 P.L.R. 571, where it was observed that "it is essentially for the trial Court to determine the amount of damages and the appellate Courts generally do not interfere with the amount so awarded unless in determining this amount the trial Court has failed to notice any principle on which such amount is to be fixed." In estimating the damages on account of loss to the beneficiaries, there must be loss sustained, either actual or expected evidenced by proof of reasonable expectation of pecuniary benefit. But sympathetic damages or solatium for loss of companionship, etc., are not relevant. The main criterion is the loss of reasonably expected pecuniary benefit. The probable earnings and future prospects of the deceased are taken into consideration since the extent to which a man can benefit others depends largely on his earning capacity. See in this connection *Jeet Kumari v. Chittagong Engineering & Electric Supply Co. Ltd.*

14. In the light of the principles enunciated above we have to see whether the damages awarded in this case were proper. The learned trial Court after discussing the evidence on the record came to the conclusion that the daily income of Tara Chand deceased, who was running a stall at motor-stand Ghaziabad where eatables were sold, could not be less than about Rs. 4/- to Rs. 5/- per day at least. It is also clear from the evidence of P.W. 7, medical practitioner, that the deceased, before this accident, was in perfect health, and that he was about 32 years of age. The lower Court also came to the conclusion that the net actual financial benefit which the family of the deceased derived from him was Rs. 1,000/- per annum. It is also to be remembered that in assessing the net actual income of the deceased of which the family was deprived of is to a considerable extent a guess work and in fact it is difficult to be very precise about it, but from the evidence it appears that Tara Chand deceased was running a sweets shop and selling cigarettes, coffee, tea, aerated water etc. The motor-stand at Ghaziabad is quite frequented and I have no doubt that the deceased did a good business there. If it was otherwise, there was hardly any reason for him to leave his own home and family at Sonapat and take up shop keeping there at the stand. Bearing the above in mind, the amount of Rs. 12,000/- allowed to the family of the deceased by way of damages cannot be

said to be excessive. Similarly, the amount allowed to Roshan Lal plaintiff by way of damages is proper.

15. Mr. Mahajan, arguing this case on behalf of M/s. Deepak General Insurance Company Ltd. submitted that Deepak Insurance Company was only liable to pay anything if the decree was passed against Harbans Singh respondent No. 4. He further submitted that before this accident the ownership of the truck in question had passed to Makhan Singh respondent No. 3, and thus his client was not liable. In support of his argument he relied on *Shri Nand Singh Viridi v. Punjab Roadways, Amritsar* (1962) 64 P.L.R. 917, which lays down "that the third party has first of all to establish the liability of the assured and it is only then that it can recover amount of compensation awarded against the assured from the insurer. If he is unable to prove his claim against the assured, he cannot get any compensation from the insurer. u/s 96 of the Motor Vehicles Act, the decree has to be obtained against the assured and it is only then that the same can be executed against the insurer." Admittedly the ownership of this truck was transferred to Makhan Singh respondent No. 8 on the 9th January, 1954 while this occurrence took place on the 4th February 1954. The counsel submitted that no information was given by Harbans Singh respondent that the ownership of the truck had been transferred to Makhan Singh, and, therefore, there was no privity of contract between Makhan Singh and the Insurance Company. In support of his contention he cited *Des Raj v. Concord of India Insurance Co.* AIR 1951 P&H. 114, and *B. Ramaswamy v. B. Satyanarayana* AIR 1958 A. P 309. The arguments above-mentioned find support from these authorities. It is admitted that no decree was passed against Harbans Singh. Under the circumstances it appears that the Insurance Company cannot be made liable for any sum for the reason that the truck in question was insured with them. Moreover, Harbans Singh respondent No. 4 is dead and the suit had been dismissed against him. The appeals filed by Deepak General Insurance Company Ltd., therefore, succeed, so far as their liability is concerned.

16. Nothing has been said on the point whether respondent No. 3 Makhan Singh, was in any way responsible for this accident as admittedly he was not the owner of the truck and, therefore, could not be held liable under Order 41 rule 33, Civil Procedure Code. It was, however, agitated by Mr. Nayyar that Makhan Singh should be made liable under the above-mentioned provisions of the Civil Procedure Code. But in view of *The British India General Insurance Co. Ltd. Vs. Seth Ramnath and Others*, and *Motor & General Insurance Co. v. Hota Ram* AIR 1961 P&H. 190, this request cannot be entertained, as the course suggested is only adopted in very special circumstances which are lacking in the present case.

17. It was contended by the appellant's counsel that the decision of the Court below allowing the amount of Rs. 6,000/- to the children of Roshan Lal for the death of Kanta Devi, their mother, was erroneous. He submitted that Roshan Lal. ematried in the month of June while this occurrence took place on the 4th February 1954. It is not doubt true that Roshan Lal did engage a servant for

these few months for which he must have paid Rs. 50/- per mensem at least, and then his second wife entered into the house Under the circumstances, the children could only be allowed Rs. 200/- and no more But we find that Rohan Lal in obtaining another wife also incurred an expenditure of about Rs. 3000/-. This expense he would not have incurred if Kanta Devi had not met her tragic end. We, therefore, feel that Roshan Lal and his children should be paid the amount of Rs. 3000/- plus Rs. 200/- besides the amount of Rs 500/- which has been allowed by the Court below to Roshan Lal in respect of the personal injuries suffered by him Evidently, after the second marriage of Roshan Lal, his children would be looked after by their step-mother and there would thus be no necessity of engaging a servant. Accordingly, we allow Rs. 8700/- instead of Rs. 6500/- under issue No. 4 in the suit filed by Rohan Lal.

18. In view of the foregoing, we allow the appeals to the extent indicated above, but in the peculiar circumstances of the case leave the parties to bear their own costs in this court.

Capoor, J.

19. I agree.