

(1982) 08 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No's. 176 and 246 of 1976

Bachan Singh alias Gurbachan Singh and Others	APPELLANT
Vs	
Dharam Pal and Others	RESPONDENT

Date of Decision : 26-08-1982

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1983) ACJ 686

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : M.L. Gupta, for the Appellant; L.M. Suri, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—This judgment will dispose of the appeal referred to above as also the cross appeal F.A O. No. 246/1976 The New India Assurance Company Ltd. and Ors. v. Bachan Singh alias Gurbachan Singh. Both these appeals were directed against the same award of the Motor Accidents Claims Tribunal and were consequently heard together.

2. The accident in this case took place on 7.9.1974 at about 3 p.m. on the dual carriage way opposite the Kesar Motor Garage in Jullundur City. The deceased in this case was Jit Singh alias Jagjit Singh and the claimants here are his parents Bachan Singh and Swaran Kaur who filed an application u/s 110-A of the Motor Vehicles Act seeking Rs. 10 lacs as compensation for the loss suffered by them on account of the death of their deceased son.

3. According to the claimants, Jit Singh deceased was going on his cycle towards Kesar Motor Garage when a Fiat car No. PUQ: 4888 which was being driven in a rash and negligent manner came and struck into the cycle of the deceased as a result of which he sustained serious injuries which led to his death a few hours later.

4. Negligence on the part of the car driver was denied by the Respondents and

thus, the Respondents pleaded that they were not liable to pay any amount as compensation in this case.

5. The Tribunal came to the finding that the accident in the present case took place due to the rash and negligent driving of the car driver and proceeded thereafter to award a sum of Rs. 13,990/- as compensation to the claimants. Both the Respondents as also the claimants had challenged this award in appeal. The Respondents questioned the finding of the Tribunal on the ground of negligence while the claimants sought enhanced compensation.

6. The evidence on record relating to the issue of negligence in this case consists of the testimony of PW2 Jagir Singh and PW3 Jarnail Singh, the brother of Jit Singh deceased who deposed that they were at the Kesar Motor Garage when the accident took place and it was, in fact, when Jit Singh deceased was coming towards them that the car hit into his cycle. The Respondents, on the other hand, besides examining the driver of the car RW3 Dharampal also sought to rely upon the testimony of RW1 Karnail Singh and RW2 Rajinder Kumar who deposed that they were standing near the Kesar Motor Garage when they saw this accident.

7. A reading of the testimony of the witnesses examined in this case with regard to the manner in which the accident took place would show that the car was proceeding on the dual carriage way on its correct side from Jullundur City towards Jullundur Cantt. Whereas the deceased cyclist was coming from the opposite direction i.e., from Jullundur Cantt. to Jullundur City when he turned towards right to go to the Kesar Motor Garage which was on the other side of the dual carriage way. It is important to note here that this Kesar Motor Garage was on the left hand side of the road on which the car was travelling and the cyclist had to go across this road to get to this garage. Both PW2 Jagir Singh and PW3 Jarnail Singh stated that on seeing them, Jit Singh deceased came towards them when a car coming from the side of Jullundur City struck against him. It was said that this car was coming at a very fast speed and no horn was blown by the driver thereof.

8. It is a well established rule of the road rendered imperative by considerations of safety that before one proceeds to cross a road, more so a busy road like the one where the present accident took place, it must be ensured that the road can be crossed without endangering any road user. In other words, due care and caution must be taken by the person seeking to cross a busy road to do so only if the road is clear and it can be crossed without risk or danger to anyone. On the face of it no such care and caution can be said to have been taken by Jit Singh deceased in this case. It is also in this behalf significant to note that neither PW 2 Jagir Singh nor PW3 Jarnail Singh in their testimony gave any estimate of the distance between the car and the cycle when Jit Singh deceased entered the road on which the car was travelling. This distance would have been relevant for considering whether or not there was any opportunity available with the car driver to avoid the accident. If suddenly, without warning a cyclist comes in front of a car travelling on its correct side of the road no negligence can be imputed to

the car driver if he happens to strike against such a cyclist unless it can be shown that there was time and opportunity available to the car driver to avoid the accident. No such evidence is forth coming in this case. It will be seen therefore, that from the statement of the claimants' witnesses themselves no case of negligence on the part of the car driver stands established. The testimony of the car driver RW3 Dharampal as also that of RW1 Karnail Singh and RW2 Rajinder Kumar is again to the effect that the cyclist suddenly came on the road. It is significant that here again no attempt was made to seek to show that there was any opportunity available with the car driver to avoid accident.

9. Counsel for the claimants sought to lay great stress upon the fact that all the witnesses examined by the Respondents had stated that the cycle had hit into the back side of the car whereas the photographs of the car taken soon after the accident show no such damage to the car. The damage on the other hand was indicative of the car having hit into the cycle. In this behalf the testimony of PW8 Wazir Chand photographer was also referred to. This aspect of the matter is not, however, of any significance. Even if it be taken that it was the front of the car that hit into the cycle this would not in any manner alter the situation to hold the car driver guilty of negligence having regard to the evidence and the circumstances pointed above.

10. There is, thus, no escape from the conclusion that the claimants have failed to establish any negligence on the part of the car driver in this accident and in this view of the matter no compensation can be awarded to them.

11. In the result the appeal filed by the Respondents insurance company and car owner is hereby accepted while that of the claimants is hereby dismissed. The award of the Tribunal is consequently set aside. In the circumstances, however there will be no order as to costs.