
(2005) 03 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : F.A.O. No's. 183, 184 and 185 of 1994

Balak Singh and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Citation : (2005) 3 ACC 626 : (2006) ACJ 392

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Bhuvnesh Sharma and Aman Deep Sharma, for the Appellant; Anup Rattan, Addl. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—By this judgment three appeals being F.A.O. Nos. 183, 184 and 185 of 1994 are being disposed of as they arise out of the same accident.

2. Facts necessary for decision of these appeals are that one Naresh Kumar was riding his motor cycle No. HP 21-1087. His wife Nishi Kanta was the pillion rider and she was carrying their minor son Nishant, aged 7 months, in her lap. According to the petitioners on 21.6.1992 when the deceased was about 100 metres before Kangra tunnel as one travels from Kangra to Jawalamukhi, an army vehicle No. 88 P-9249 M with a trolley attached to it was going ahead of the motor cycle. Deceased Naresh Kumar who was driving the motor cycle blew horn to overtake the army vehicle. Driver of the army vehicle allegedly gave a signal with his hand allowing the motorcyclist to overtake the army vehicle. On seeking this the motorcyclist started overtaking the army vehicle. When he had only crossed half of the army vehicle the respondent No. 2 allegedly swerved the army vehicle to the right and struck against the motor cycle. As a result of this collision Naresh Kumar and his wife Nishi Kanta were crushed under the rear tyre of the army vehicle. The minor baby Nishant fell at a distance of the road. All the three died as a result of the injuries sustained by them. It is further alleged that the accident occurred due to rash and negligent driving of respondent No. 2.

3. Three claim petitions were filed by the present appellants Balak Singh and Krishna Devi. They are parents of deceased Naresh Kumar; parents-in-law of deceased Nishi Kanta and grandparents of deceased Nishant. These claim petitions were contested by the respondents who in their written statement took up the plea that there was no contact between the two vehicles. The defence taken was that after crossing the Kangra tunnel at about 12.30 p.m. the respondent No. 2 and the co-driver heard some sound from behind. Respondent No. 2 stopped the vehicle, got down and saw that a motor cycle with three persons, a man, a lady and a child were lying on the road about 200 yards behind the vehicle. It is also pleaded that the respondent No. 2 and co-driver No. 1536325 OF signman Babu Singh gave first aid to the injured and after seeing the critical condition of the injured the respondent No. 2 and his co-driver shifted them to Civil Hospital, Kangra for medical treatment. According to the reply no accident had taken place with the vehicle.

4. On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether respondent No. 2 was driving army vehicle bearing registration No. 88 P-9249 M on 21.6.1992, at about 12.30 p.m. near Kangra tunnel Tika Chakban? OPA

(2) If issue No. 1 is proved, whether the respondent No. 2 was driving the said vehicle rashly and negligently? OPA

(3) If issue Nos. 1 and 2 are proved then did the army vehicle aforesaid being driven by respondent No. 2 hit Naresh Kumar deceased who was driving motor cycle No. HP 21-1087? OPA

(4) If issue Nos. 1 to 3 are proved then did Naresh Kumar die instantaneously on account of being hit by the army vehicle? OPA

(5) If issue Nos. 1 to 4 are proved, then to what amount of compensation the applicants are entitled to and from whom? OPA

(6) Relief.

5. The learned Tribunal has decided issue No. 1 in favour of the claimants but has decided issue Nos. 2 to 4 against them and, therefore, awarded nil compensation. Aggrieved against this award the appellants have filed the present appeal.

6. Mr. Bhuvnesh Sharma, the learned counsel for the appellants has submitted that the finding of the learned Tribunal that the accident had not occurred is totally incorrect. He submits that the Tribunal has wrongly discarded the evidence of the eyewitness Bihari Lal, PW 4. He also submits that learned Tribunal has gravely erred in relying upon the contradictory statements of RWs 1 and 2. He also submits that the evidence led by the respondents is not in consonance with the case pleaded by them. He contended that the statement of RW 4 is totally unbelievable and should not have been relied upon.

7. I have heard the learned counsel for the parties and have also gone through the award and the entire evidence recorded in all the three cases.

8. The evidence with regard to negligence is identical in all the three cases. However, in each of the three claim petitions the post-mortem had been done by three different doctors and PW 1 is the doctor in each case.

9. The claim petition arising out of the death of Naresh Kumar was numbered as M.A.C. Petition No. 39 of 1992 which has given rise to F.A.O. No. 184 of 1994. The claim petition with regard to the deceased Nishi Kanta was numbered as M.A.C. Petition No. 38 of 1992 out of which F.A.O. No. 183 of 1994 arises. The claim petition regarding death of Nishant was numbered as M.A.C. Petition No. 37 of 1992 out of which F.A.O. No. 185 of 1994 arises.

10. In the case relating to the deceased Naresh Kumar, Dr. V.P. Mahajan was examined as PW 1. He had conducted the post-mortem on the body of the deceased. According to him the injuries in the case of the deceased were possible by crushing under tyre of the vehicle. He also states that such like injuries are possible in case of skidding of motor cycle and fall with heavy impact. He also states that no crush marks of tyre were noticed on the body or clothes of the deceased but has specifically denied the suggestion that the injuries could not be caused due to crushing under the tyres of the vehicle.

11. In this case Dr. D.P. Swami who is M.D. in Forensic Science, Medical College, Shimla has been examined as PW 2. He has 15 years experience in his field and according to him the injuries mentioned in the post-mortem of the deceased Naresh Kumar are not possible due to skidding of motor cycle or fall therefrom and such injuries are possible due to crushing under tyres of heavy vehicle. He has also stated that it is not necessary in every case of crush injuries that there should be tyre imprints on the body and clothes. He has specifically stated that even if motorcyclist was at high speed and struck a heavier object, the pillion rider and driver will not suffer such like injuries.

12. In the case of deceased Nishi Kanta, PW 1 is Dr. P. Shukla who is a gynaecologist. She conducted post-mortem of the body of the deceased. She has stated that multiple fractures was not possible due to the crushing of vehicle and according to her injuries on the deceased could not have been caused by crushing under the tyre of truck or trolley. In this case also Dr. D.P. Swami has been examined and he has categorically stated that the injuries could have been caused on the deceased if she was run over by another vehicle. He also states that these injuries could have been caused by striking against another vehicle.

13. In the case of Nishant there is no dispute with regard to the injuries. Admittedly the child died by hitting his head on the road and, therefore, the evidence of PW 1 is not material in this case.

14. Balak Singh, claimant has been examined as PW 3 in the cases of Naresh Kumar and Nishi Kanta and as PW 2 in the case of Nishant. His evidence is not

material for deciding the issue of negligence.

15. The most important witness is one Bihari Lal who is PW 4 in the first two cases and PW 3 in the case of minor. The relevant portion of his statement when translated reads as follows:

On 21.6.1992 at 12.30 p.m. I was grazing my cattle near Samela at a distance of about 35/40 yards from the tunnel near a curve. I was sitting. I saw a military truck attached with a trolley, followed by a motor cycle, having three occupants. Motorcyclist blew horn, then truck driver gave pass signal and when motorcyclist was crossing, then the truck came on the road and motor cycle struck against the truck. The truck driver swerved the truck towards the right. Due to striking the man and his wife fell towards side of the tyre and baby fell towards right side. The truck did not stop. Children raised noise. Then the truck was stopped at some distance. The woman and her husband were crushed beneath tyres of the truck. The child also sustained injuries. Both were run over by the rear tyres of the truck. Accident occurred due to negligence of the truck driver.

16. On the issue of negligence the respondents have examined number of witnesses. RW 1 is respondent No. 2 himself. He states that he was going from Yol to Chintpurni. According to him one Raghuvanshi was his co-driver and L/Naik Babu Singh was sitting behind. At about 12.30 afternoon when his truck had crossed the tunnel then he heard a loud sound and he saw in the rear view mirror and stopped his vehicle. Babu Singh had also shouted to him to stop the vehicle. He got down from the vehicle and found that about 200 yards back, one man, one lady and one child had fallen down from the motor cycle. He gave them first aid and then along with co-driver Raghuvanshi took them to Civil Hospital, Kangra. He has admitted in cross-examination that his vehicle is a right hand drive vehicle and that the rear view mirror is in the right side. He also states that Babu Singh had shouted to him to stop the vehicle. He has denied the presence of PW Bihari Lal at the spot. He has denied that there was any impact between the two vehicles or that the rear tyre had run over the deceased.

17. RW 2 is Babu Singh who states that he was sitting on the back of the army truck and that Raghuvanshi was sitting in the front. When they were before the Kangra tunnel he saw a motor cycle at a distance of about 200 metres on which one man, one lady and one child were sitting. According to him he saw the motor cycle skid on the grit and fall down. He then shouted for the driver to stop. He has been confronted with the suggestion that at the place of the accident there are many curves and there is no chance of seeing a spot 200 metres away. He has introduced a new version in his cross-examination that he had informed the driver of the vehicle on the intercom in the vehicle.

18. RW 3 has proved the report No. 28 recorded on 21.6.1992 with regard to the accident copy of which is Exh. RW 3A.

19. RW 4 is Inspector Pritam Singh, who at the relevant time was posted as the S.H.O. Kangra. He states that he came to know at about 1.30 p.m. about the

accident. He first sent ASI Prem Pal to the site and then himself went to the site. According to him as per his investigation there was no collision between the two vehicles. However, he states that as per his investigation when the motor cycle was trying to overtake the army truck he could not control himself on the curve and suddenly skidded on the grit. He has stated that Exh. RW 3A was written at his instance by ASI Prem Pal. According to him the army vehicle was 40-50 yards ahead of the motor cycle. He also admits that the accident had taken place about 70 yards before the tunnel. He has admitted that there are various sharp curves on the site. He also states that it is only his estimation that the motor cycle skidded at the site. He did not prepare any site map. He states that he did not find any bloodstained tyre marks on the spot. He has stated that village Sameila is far away from the accident site.

20. The learned Tribunal has picked holes in the story of the claimants. The Tribunal has basically relied on the statement of RW 4 and has held that Bihari Lal was not present on the site. Since the police did not find any bloodstained imprints on the tyres of the truck, therefore, the version of Bihari Lal that Naresh Kumar and his wife were run over by the truck has been held to be false. Learned Tribunal has also relied upon the doctors' statements to hold that the injuries caused to the deceased could not have been caused by being run over by the truck.

21. The learned Tribunal has not at all approached the case in a proper manner. On the one hand he has tried to pick holes, where there were none, in the story of the claimants and has cast doubt on the statement of Bihari Lal; on the other hand he has totally overlooked the clear contradictions in the statements of the respondents. He has only quoted that part of the statement of PW 4 which suited the respondents and has not taken the other factors into consideration. At this stage even if the statement of Bihari Lal is excluded, it is clear that PW 2 Dr. Swami who is a forensic expert has categorically stated that the injuries caused to Naresh and Nishi Kanta were crush injuries. In the case of Naresh Kumar this is the version given by PW 1 Dr. Mahajan who did his post-mortem. It is only in the case of Nishi Kanta that Dr. P. Shukla has stated that the injuries could not be caused by crushing under the tyres of a vehicle. Here also Dr. Swami is categorical that these injuries could be caused by being crushed under the tyres of the vehicle. Therefore, there were contradictions between the two doctors. PW 1 Dr. Shukla is a gynaecologist and PW 2 Dr. Swami is a forensic expert. It is the evidence of the forensic expert which should have got precedence. Learned Tribunal has gravely erred in discarding the evidence of the forensic expert.

22. I have also gone through the postmortem reports. Both the major deceased have suffered numerous fractures on their body and a number of bones have been fractured. Such injuries cannot normally be caused when a motor cycle skids and the person riding on the motor cycle falls on the road. In that event there would have been more abrasions than fractures. In this case there are so many fractures that the version of claimants seems more plausible.

23. When there is an accident between two vehicles the best persons to give evidence are the persons on the two vehicles. Unfortunately, in this case the persons riding one of the vehicles, i.e., the motor cycle are all dead. Therefore, one has to definitely take into consideration the statement of the persons in the other vehicle that is the army truck. It is well settled that evidence cannot be led contrary to the pleadings. The case set-up by the respondents in their written statement was that the accident had occurred after crossing the tunnel. This has been stated by RW 1 also while appearing as a witness. This is totally false since RW 2 and RW 4 have stated that the accident took place before the tunnel. Therefore, it is obvious that the respondent No. 1 was trying to hide something.

24. It may also be appropriate to notice that in the reply it was specifically stated that the driver and co-driver were sitting in the vehicle and the co-driver has been identified as "co-driver No. 1536325 OF signman Babu Singh". In the reply there is no mention that Havaladar Raghuvanshi was the co-driver or that he was sitting in the truck. In the evidence a new case has been built up that Havaladar Raghuvanshi was the co-driver who was sitting in front and Babu Singh was sitting at the back of the truck. This shows that in fact Raghuvanshi was not sitting in the truck and probably Babu Singh, RW 2, was sitting in front of the truck and later on the story has been concocted that he was sitting at the back of the truck. Babu Singh as co-driver would have obviously sat in the front of the truck.

25. The statement of RW 4 also does not inspire confidence. The accident took place at 12.30 p.m. at a place which is hardly 10 km. from Kangra. It cannot be believed that the police came to know about the accident only at 1.30 p.m. Even if that be assumed to be correct, the police should have reached the spot by 2 p.m. and after investigation would have gone back latest within one hour. In the present case the report, Exh. RW 4A, shows that the same has been recorded at 4.45 p.m. What the police was doing between 1.30 and 4.45 p.m. has not been explained in a case where all the persons injured in the accident had already been removed to the hospital by the time the police arrived and no oral witnesses have been examined much time could not have been taken on the spot. The investigation done by RW 4 is highly unsatisfactory. He has not even cared to make the site plan. The manner in which he has treated the serious accident in which 3 persons have died shows that he has been grossly negligent in the discharge of his duties. Therefore, no reliance can be placed on the statement of this witness.

26. On the other hand, the statement of Bihari Lal who is a rustic villager inspires confidence. He states that he was grazing his cattle between Samala and the tunnel when he saw the accident at 12.30 during the day time. According to him when the motorcyclist had blown the horn the driver of the army vehicle had given him signal to overtake. When the motorcyclist was overtaking the truck the driver of the army truck suddenly swerved his vehicle to the right and hit the motorcyclist. The motorcyclist and his wife fell toward the tyres of the vehicle

whereas the baby was thrown towards the roadside. According to this witness the tyres of the truck ran over the major deceased. He has stated in cross-examination that he does not know the petitioners. According to him the petitioner and his wife had come to village Samala 3-4 days after the accident. They had come to find out how the accident had occurred. They were directed to him and he informed them about the manner of the accident. In fact the statement of this witness has a ring of truth. The reasoning given by learned Tribunal for disbelieving this witness is totally incorrect.

27. In view of the above discussion, I am of the considered view that claimants have proved to the hilt that the accident had occurred at a place when there was a collision between the truck and the motor cycle. From the statement of PW 3 it is quite clear that the accident occurred due to rash and negligent driving of respondent No. 2 who after giving signal to overtake suddenly swerved his vehicle to the right. This finding is further confirmed by the false stand taken by respondent No. 2. He has firstly tried to change the site of the accident. Then he has introduced one head constable Raghuvanshi in his statement being the co-driver whereas in the reply Babu Singh is shown to be the co-driver.

28. In view of the above discussion, it is held that all the three deceased died due to rash and negligent driving of the respondent No. 2.

29. With regard to the question of compensation, claimant Balak Singh has appeared in the witness-box. He proved the salary of the deceased Naresh Kumar and his wife Nishi Kanta. According to him the entire family was residing together. He further states that he and his wife were fully dependent on the deceased. He was aged 72 years at the time of his statement. He had retired as Subedar from the Army and getting a pension of Rs. 2,000 p.m. He also has three other sons, one of whom is an Assistant Station Master in the Railways, one is running an electrical repair shop and one is stated to be unemployed. Therefore, it cannot be said that claimants were totally dependent upon the deceased Naresh Kumar.

30. PW 6 has proved the salary certificates of the two major deceased which show that the salary of Naresh Kumar was Rs. 2,802 and the salary of Nishi Kanta was Rs. 2,036 per month at the time of the accident.

31. One important fact to be taken into consideration while assessing compensation in this case is that the husband, wife and only child have all died in the accident. The husband and wife were both earning. The mother would definitely be dependent upon her son but it cannot be said that the father who was drawing pension of Rs. 2,000 was dependent upon his son. The parents-in-law also cannot claim to be dependent on the daughter-in-law in the facts of the case. Similarly, they could not have been dependent on their grandson. Therefore, the claimants are entitled to loss of dependency only with regard to Naresh Kumar. With regard to Nishi Kanta and Nishant they would only be entitled to loss to the estate and conventional damages. However, while

assessing these damages one cannot lose sight of the fact that by one stroke three human lives have been lost. These human beings were close relatives of the claimants.

32. Thus, taking the salary of deceased Naresh Kumar at Rs. 2,800 per month and keeping in view the fact that he was regularly employed government servant and he would have obviously been promoted in future and his salary would have been increased, his salary can be taken to be Rs. 4,000 p.m. and the dependency of the mother can be taken as Rs. 1,500 per month or Rs. 18,000 per year. The age of mother has not been proved on record but keeping in view the fact that Balak Singh is aged 72 years it would be reasonable to assume that the age of the mother is more than 65 years. Therefore, taking guidance from the Schedule annexed to the Motor Vehicles Act a multiplier of 5 would be reasonable. Therefore, the claimants would be entitled to Rs. 90,000 on this count.

33. One cannot lose sight of the fact that since both the deceased were earning members the loss to the estate in such a case would be on higher side and, therefore, the loss to the estate in this case is assessed at Rs. 15,000. The claimants are also entitled to the funeral expenses which are assessed at Rs. 5,000. Therefore, with regard to the death of Naresh Kumar the claimants are entitled to Rs. 1,10,000 out of which Rs. 90,000 shall be paid to appellant No. 2 and Rs. 20,000 to the father appellant No. 1.

34. As regards the daughter-in-law Nishi Kanta, I have already held that the claimants could not be said to be dependent upon her, however, they would be entitled to the loss to the estate and other expenses. Keeping in view all these facts a sum of Rs. 50,000 is awarded to them which shall be shared equally by them.

35. With regard to the death of the minor the accident had occurred in 1992 and even as per no fault liability the claimants would be entitled to Rs. 25,000 and, therefore, a sum of Rs. 25,000 is awarded to them to be shared equally by both of them.

36. The claimants shall also be entitled to interest at the rate of 9 per cent per annum from the date of filing of the claim petitions, i.e., 18.12.1992 till the date of deposit of the awarded amount on the aforesaid amounts.

37. In view of the above, F.A.O. No. 184 of 1994 is allowed and the award of the learned Tribunal in M.A.C. Petition No. 39 of 1992 dated 19.1.1994 is set aside and an amount of Rs. 1,10,000 along with interest at the rate of 9 per cent per annum w.e.f. 18.12.1992 till date of deposit is awarded in favour of the claimants. The respondents are held jointly and severally liable to pay this amount and respondent No. 1 being the employer of respondent No. 2 and is vicariously liable for the act of respondent No. 2 is directed to deposit this amount within 8 weeks from today failing which the interest would be 12 per cent per annum w.e.f. today.

38. F.A.O. No. 183 of 1994 is allowed and the award of the learned Tribunal in M.A.C. Petition No. 38 of 1992 dated 19.1.1994 is set aside and an amount of Rs. 50,000 along with interest at the rate of 9 per cent per annum w.e.f. 18.12.1992 till date of deposit is awarded in favour of the claimants. Respondents are held jointly and severally liable to pay this amount also and respondent No. 1 being employer of the respondent No. 2 and is vicariously liable for the act of respondent No. 2 is directed to deposit this amount within 8 weeks from today failing which the interest would be 12 per cent per annum w.e.f. today.

39. F.A.O. No. 185 of 1994 is allowed and the award of the learned Tribunal in M.A.C. Petition No. 37 of 1992 dated 19.1.1994 is set aside and an amount of Rs. 25,000 along with interest at the rate of 9 per cent per annum w.e.f. 18.12.1992 till date of deposit is awarded in favour of the claimants. Respondents are held jointly and severally liable to pay this amount also and respondent No. 1 being employer of the respondent No. 2 and is vicariously liable for the act of respondent No. 2 is directed to deposit this amount within 8 weeks from today failing which the interest would be 12 per cent per annum w.e.f. today.

40. The petitioners-claimants are also held entitled to the costs of the litigation which is jointly assessed at Rs. 5,000 in all the three cases.