
(1981) 09 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 46 of 1974

Balbinder Singh

APPELLANT

Vs

The Secretary to Government, Punjab and Others

RESPONDENT

Date of Decision : 02-09-1981

Acts Referred:

Evidence Act, 1872 — Section 114

Motor Vehicles Act, 1939 — Section 110A

Citation : (1982) ACJ 401 : AIR 1982 HP 50 : (1981) 10 ILR HP 400

Hon'ble Judges : T.R. Handa, J

Bench : Single Bench

Advocate : Chhabil Das, for the Appellant; Indar Singh, General, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Handa, J.—The appellant filed a claim petition u/s 110-A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal claiming a compensation of Rs. 2,50,000 against the respondents. The learned Tribunal vide its award dated 29-6-1974 dismissed that claim of the appellant. Feeling aggrieved the appellant has now approached this Court in appeal u/s 110-D of the Motor Vehicles Act.

2. The case for the appellant is that on 16-6-1968 at about 5 p.m. he along with his two friends Balbinder Singh son of Shri Dogar Singh (P.W. 2) and Sukh-dev Singh (P.W. 3) proceeded from Nan-gal towards Una in private car No. PNU 6483 belonging to his father. The appellant was himself driving the said car. Near a village known as Jalgran which falls between Nangal and Una and is about 1"6 kilometres from Nangal, the car of the appellant developed some mechanical trouble on account of which the appellant stopped the vehicle and parked it on the kacha road on his left side. He was in the process of getting down from his car in order to remove the defect after opening the bonnet when bus No. PNP 6494 belonging to Punjab Roadways and then driven by Didu Ram respondent

came from behind at a fast speed. The bus hit the appellant, knocked him down and threw him away up to a distance of 6 to 7 feet. After the accident the driver of the bus sped away without caring to stop the bus.

3. The appellant suffered compound fracture of left femur besides other injuries as a result of that accident. He was then removed to Nangal hospital where he remained admitted as an indoor patient for about four months. He claimed to have incurred an expenditure of about Rs. 25,000 on his treatment. He claimed a total compensation of Rs. 2,50,000 the details of which find no mention in his claim petition.

4. The respondents in their reply while admitting that bus No. PNP 6494 belonging to Punjab Roadways and then driven by Didu Ram respondent No. 3 did pass from village Jalgran after leaving Nangal at 5-30 p.m. on 16-6-1968, denied if this bus met with any accident en route or if it knocked down the appellant as alleged by him. According to the respondents, when this bus reached near village Jalgran its driver did notice a car standing in the middle of the road with two persons standing outside from a distance of about 200 metres. The driver of the bus blew horn several times as also slowed his vehicle in order to pass the standing car. Both the persons standing on the road by the side of the car then got aside and also gave signal to the driver of the bus to pass. The driver of the bus then passed his vehicle without meeting with any accident. The respondents in their reply further stated that even as per his own allegations made in the claim petition, the injuries if any suffered by the appellant were caused on account of his own carelessness and negligence inasmuch as he as per his own version opened the door of his car and stepped on the road without caring to ensure if there was any vehicular traffic approaching him.

5. The only two issues which were agitated before the learned Tribunal are as under:

Issue No. 4: Whether the accident occurred due to the negligence and rash act of respondent No. 3?

Issue No. 5 : Whether the petitioner is entitled to compensation? If so, to what extent and from whom?

6. On issue No. 4 the learned Tribunal found that the appellant had failed to establish if bus No. PNP 6494 of the Punjab Roadways was involved in the accident that resulted in injuries on the person of the appellant. He further observed that even if the version of the appellant was believed that the aforesaid vehicle of the Punjab Roadways was involved in this accident, the accident had resulted on account of the appellant's own carelessness and negligence and that the bus driver could not be held responsible for the same.

7. On issue No. 5 the learned Tribunal found that if at all it be held that the accident was the result of negligence on the part of respondent No. 3, the appellant was not entitled to recover more than Rs. 27,823-25 paise which was

the just amount of compensation that could be claimed in this case.

8. At the time of hearing the learned counsel for the appellant restricted his attack against the findings of the learned Tribunal on issue No. 4 alone. According to the learned counsel the evidence on record read with the plea of the respondents as taken in their written reply clearly established that bus No. PNP 6494 belonging to the Punjab Roadways and then driven by Didu Ram respondent was involved in the accident that resulted in injuries on the person of the appellant and that such accident had been caused on account of the rash and negligent driving on the part of the bus driver. He carried me through the evidence of the parties. After giving my due consideration to the evidence of either side as also to the respective pleading of the parties and hearing the learned counsel for the parties I find myself in complete agreement with the conclusion of the learned Tribunal that the appellant had failed to establish if bus No. PNP 6494 belonging to the Punjab Roadways was involved in the accident which resulted in injuries on his person. I am also inclined to agree further with the learned Tribunal that if at all this bus was involved in the accident, the liability for the accident cannot be fixed on the bus driver.

9. It is well settled that in a case of a claim for compensation made u/s 110-A of the Motor Vehicles Act in respect of an accident arising out of the use of motor vehicles, it is for the claimant to establish if there was negligence and/or rashness on the part of the driver of the vehicle against whom the claim is filed and also to establish direct connection of such accident with the injury sustained by the claimant and in respect of which compensation has been claimed. There may be certain cases in which the true cause of the accident may not be known to the claimant and the same may be solely within the knowledge of the opposite party who caused the accident. In such like cases the claimant can only prove the occurrence of the accident but cannot prove how it happened. He would thus be not in a position to establish the charge of negligence on the part of the opposite party. In such like cases, however, the principle of "res ipsa loquitur" would come to the aid of the claimant. Where this maxim is applicable it is for the opposite party to establish that the accident was not on account of its negligence or that the accident might have more probably occurred in a manner which did not connote negligence on its part. In the instant case admittedly this maxim "res ipsa loquitur" cannot be attracted inasmuch as the appellant and his witnesses claim to be in the full know of the facts and circumstances leading to the accident,

10. In the instant case there are three main witnesses who claim to be in the know of the facts and circumstances resulting in the accident in question. They are P.W. 1 Balbinder Singh appellant, P.W. 2 Balwinder Singh son of Dogar Singh and P.W. 3 Sukhdev Singh. All these three witnesses were in the car when it left Nangal and were also present on the spot at the time of the accident. The appellant has given two versions with respect to the manner in which the accident occurred and which in my view cannot be reconciled. His first version is

that after parking his car he was standing on the road by its side when the bus came from behind at a very high speed and he was pressed in between his standing car and the moving bus. His second version is that he had opened the door of his car and was in the process of getting down from it when the bus came from behind at a very high speed and directly hit him as also the door of the car as a result of which the car was damaged and he was thrown ahead up to a distance of 7 or 8 feet. The second version was, however, modified by him by saying that he had already closed the door of the car when he was hit by the bus coming from behind. The second witness P.W. 2 Balwinder Singh stated that after parking the car on one side of the road the appellant and the witness both got down from it. It was after the appellant had closed the door of the car that a bus came from Nangal side at a very high speed. The appellant got close to the window of the car but the bus hit him and he was thrown ahead up to a distance of 6 or 7 feet. The version of this witness, therefore, was that the bus directly hit the appellant without hitting the car and the appellant was thrown away up to a distance of 6 or 7 feet. P.W. 3 Sukhdev Singh was still sitting in the car when the accident occurred. According to this witness the appellant was standing on the road after closing the door of the car when the bus came from behind at a fast speed and knocked him down. There is yet another witness P.W. 4 Mohinder Singh who claims to have been travelling in the bus involved in the accident. As per his version the bus dashed into the standing car of the appellant and also hit its driver who was standing outside the car.

11. At this stage I may advert to the injuries alleged to have been suffered by the appellant in the course of the accident. It may be noticed that as per allegations made in the claim petition, the appellant had suffered "left thigh fracture up to knee and minor scratches on the face, arms, legs etc. etc". While in the witness-box the appellant simply, stated "I suffered grievous injury on my left leg which was fractured". Dr. Chatrath (P.W. 5) who examined and treated the appellant soon after the accident while deposing with respect to the injuries suffered by the appellant simply stated "he was suffering from compound fracture of left femur". The appellant's own evidence thus shows that he suffered only one injury in the alleged accident, that injury being fracture of his left femur.

12. Now it is to be seen whether this injury suffered by the appellant could be connected with the accident of the type narrated by him and his witnesses. In other words we have to see if the injury actually found on the person of the appellant was the probable result of the accident as narrated by the appellant and his witnesses. As already stated there are two versions of the accident found in the appellant's own statement. The first version is that he was pressed in between standing car and the moving bus which was then running at a very high speed. The second version is that he was directly hit by the bus which was then running at a very fast speed and as a result of such impact he was thrown ahead up to a distance of 7 or 8 feet. This second version finds corroboration from the testimony of P.W. 2 Balwinder Singh and P.W. 3 Sukhdev Singh and to some extent from P.W. 4 Mahinder Singh also. The question next arises is whether it is

possible that a person standing on a road and directly hit by a bus loaded with passengers and running at a very fast speed would be spared with a solitary injury on his left leg or if the allegations in the claim petition are accepted, with minor scratches on other parts of the body. In my view it looks not only improbable and unnatural but also impossible. Keeping in view, therefore, the appellant's own case that he suffered a solitary injury in the form of fracture of his left femur in the accident, I have no hesitation in straightway rejecting his entire evidence with respect to the manner in which the accident is alleged to have happened. I would find that the appellant and his witnesses even though they were in the complete know of the facts and circumstances in which the appellant suffered fracture of his left femur, they have intentionally concealed the truth from the court and tried to project a concocted version.

13. In a case of this type where a person who is in the full know of the facts and circumstances leading to the accident resulting in injuries on his person intentionally withholds the truth from the Court, it would be legitimate for the court to draw all adverse inferences against him. In these circumstances the Court would be justified in concluding that the accident was the result of the claimant's own doing. The learned Tribunal was thus absolutely justified in disallowing the claim of the appellant. With these remarks I dismiss this appeal with costs.