
(1986) 03 P&H CK 0015
In the Punjab And Haryana At Chandigarh

Balbir Singh

APPELLANT

Vs

Parmila Devi and Others

RESPONDENT

Date of Decision : 27-03-1986

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1986) 2 ACC 201 : (1986) 90 PLR 21

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Judgement

D.V. Sehgal, J.—This judgment will dispose of F.A.O. No. 385 of 1982 filed by Balbir Singh, owner of four-wheeler No. 1 HRS--1632, F.A.O. No. 386 of 1982 filed by the Haryana Roadways, a Government of Haryana Undertaking, and the State of Haryana--owners of the bus No. HRR--4167, and Cross-Objections No. 40-CII of 1982 filed by Parmila Devi, widow, and Vikramjit and Rajesh Kumar--minor sons of Mohinder Singh, who died as a result of collision between the aforesaid two vehicles. The appeals as also the Cross-objections arise out of the award dated 17-3-1982 of the Motor Accident Claims Tribunal, Sonapat.

2. A claim petition u/s 110-A of the Motor Vehicles Act was filed by the claimants for recovery of Rs. 1,50,000/- as compensation on account of the death of Mohinder Singh in the accident involving the bus and the four-wheeler on 27-4-1979 at about 9.30 AM on the Sonapat-Gohana road at a distance of about 2 kms. from village Barwasni towards Gohana and within the jurisdiction of Police Station, Sadra Sonapat. It was alleged that Mohinder Singh who was aged 28 years and 7 months on the date of accident was a Graduate and was employed as an Upper Division Clerk in the Haryana State Electricity Board and was posted at Sonapat. He was drawing Rs. 520/- per month towards his pay and allowance. He however, used to reside in his village Mohana along with the claimants. They pleaded that on 27-4-1979 the deceased was waiting at Mohana bus-stand for a bus to take him to Sonapat to enable him to reach his office in time but the bus did not arrive. In the meanwhile, the four-wheeler owned and driven by Balbir

Singh appellant insured with the National Insurance Co. Ltd., respondent No. 6 came there and it was proceeding towards Sonapat. The deceased boarded it and while on way to Sonapat a collision took place between the four-wheeler and the bus which was coming from the side of Sonapat and proceeding towards Gohana. The bus was being driven by Bhim Singh, its driver, respondent No. 5. It was alleged that the collision was the result of rash and negligent driving of the four-wheeler and the bus by their respective drivers. The deceased suffered fatal injuries. A lady passenger in the bus like wise suffered fatal injuries. Both of them died at the spot. It was claimed that the deceased (Mohinder Singh) would have earned at least Rs. 2,17,000/- during his life" time which he would have spent on the maintenance of the claimants. Since his life had been cut short by the fatal accident, the claimants had suffered monetary loss to this extent besides suffering mental agony. On this basis of the claim for compensation was made which was contested by the respondents. The State of Haryana, the Haryana Roadways, as also Bhim Singh, the driver of the bus, in their written statement did not deny the factum of the death of Mohinder Singh in the accident or the fact that he was travelling in the four-wheeler at the time of occurrence. They, however, denied that the accident took place due to the rash and negligent driving of the bus was being driver. It was instead pleaded that the bus was being driven at a normal speed and that the accident had taken place because of the breaking of the front right side leaf of the bus as a result of which the bus turned turtle and while it was so lying the four-wheeler coming from the opposite direction and being driven rashly and negligently struck against the bus. It was alleged that the accident had taken place due to the negligence of the driver of the four-wheeler who had been challaned by the police and a case was registered against him vide first information report No. 50 dated 27-4-1979 at Police Station Sadar Sonapat. Balbir Singh in his separate written statement also did not dispute that Mohinder Singh died in the said accident. He also did not dispute the fact that the deceased was travelling in the four-wheeler being driven by him when he suffered the fatal injuries. He, however, denied that he was driving the four-wheeler rashly and negligently or that the accident had taken place on that account. He instead pleaded that the accident was the result of rash and negligent driving of the bus which had struck against the four-wheeler being driven by him at a low speed and on correct side of the road. He alleged that the police had wrongly challaned him instead of registering case against the bus driver. He further pleaded that in any case the four-wheeler was insured with the Insurance Company respondent No. 6. He, thus, repudiated his liability to pay any amount on account of compensation. The Insurance Company respondent No. 6 in its written statement denied that the deceased was travelling in the four-wheeler at the time of accident. In the alternative, it was pleaded that the four-wheeler was a goods vehicle and the risk of a passenger in the goods vehicle was neither covered nor required to be covered under the insurance policy or under the Motor Vehicles Act, and as such it was not liable for the payment of any compensation.

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

1. Whether the petitioners are the L.Rs. of deceased Mohinder Singh and entitled to file this claim petition ? OPP.

2. Whether Mohinder Singh died while travelling in tempo bearing registration No. HRS--1632, as a result of rash or negligent driving by respondent No. 2 of bus No. HRR--4167 in the course of employment of under respondent No. 1 or rash or negligent driving of tempo No. HRS--1632 or both on 27-4-1979 on Gohan Sonapat road within the jurisdiction of this Court as alleged ? OPP.

3. To what amount, if any, the petitioners are entitled to recover the compensation and against whom ? OPP.

4. Whether under the Insurance Policy issued by respondent No. 4 is in respect of tempo No. HRS--1632 respondent No. 4 is liable to pay compensation for the death of the person being carried in the tempo as a passenger. If not, its effect ? OPR 3 and 4.

5. Whether the claim petition is within limitation ? OPP.

6. Whether the claim petition is bad for non-joinder of necessary parties as alleged ? OPR.

4. Issue No. 1 was decided by the learned Tribunal in favour of the claimants and it was held that they are the legal representatives and dependants of the deceased and were thus entitled to maintain the claim petition. Issue No. 2 was also decided in favour of the claimants and it was held that the death of Mohinder Singh was caused due to the collision between the bus and the four-wheeler and that both the said vehicles were being driven rashly and negligently by their respective drivers when the accident took place. Under issue No. 3, the learned Tribunal concluded that the claimants are entitled to compensation amounting to Rs. 64,000/-. Issue No. 4 was decided in favour of the respondent Insurance Company and it was held that the said Insurance Company was not liable for involvement of the four-wheeler in the accident because it was a goods-carrier and the passengers carried by it was not covered by the insurance policy. Issue No. 5 was decided in favour of the claimants. The claim was held to be within limitation. Issue No. 6 was decided against the respondents and it was held that the claim-petition was not bad for non-joinder of necessary parties. As a consequence, the learned Tribunal vide its award dated 17-3-1982 awarded Rs. 64,000/- as compensation to the claimants alongwith interest at the rate of 10% per annum from the date of filing of the claim petition till realisation of the amount from Balbir Singh appellant, the Haryana Roadways, the State of Haryana and the driver of the bus Bhim Singh, who were held jointly and severally liable for the payment of the said amount.

5. I have heard the learned counsel for the parties. No arguments were addressed before me on issues Nos. 1, 4, 5 and 6. The findings of the learned Tribunal on

these issues are accordingly affirmed.

6. The learned Counsel for the appellant, however, seriously disputed the finding of the learned Tribunal on issue No. 2. Having gone through the evidence on the record as also the finding returned by the learned Tribunal. I find no ground to interfere with its conclusion. The fact that the collision between the two vehicles took place because of rash and negligent driving by their respective drivers has been deposed to by Barua Mal PW 4 Sher Singh PW 5 Siri Chand PW 6 and Manga Ram, PW 7 who are all residents of village Mohana, the place to which the deceased belonged. All of them have stated that Mohinder Singh died in the accident involving the bus and the four-wheelers. The post-mortem report, copy of which is Ex. P. 1 has been duly proved by Dr. P.K. Sikka PW 1 which also shows that Mohinder Singh had died in the vehicular accident on 27-4-1979. Sher Singh PW 6 stated that he was also travelling in the four-wheeler along with the deceased and a few other persons from Mohana to Sonapat and that the deceased was sitting on the front seat by the side of the driver. According to him, the four-wheeler was being driven rashly and at a fast speed by Balbir Singh appellant in spite of the protested of the passengers travelling therein. The bus was also being driven at a fast speed and coming from the opposite direction collided with the four-wheeler resulting in the instantaneous death of Mohinder Singh. Siri Chand PW 6 and Mange Ram PW 7 who were travelling in the bus from Sonapat and were going to their village Mohana also stated that the bus was being driven at a fast speed. Mange Ram PW 7 stated that in spite of the protests the driver of the bus continued driving it rashly and did not reduce the speed. Barua Mal PW 4 was driving his camel cart from Mohana to Sonapat and was a witness to the accident. He later identified Mohinder Singh deceased at the spot of the accident. Bhim Singh driver of the bus no doubt stated that while travelling, the bus had started from Hulla Hari bus-stop after dropping some passengers there and when he had put the bus in the 3rd gear he suddenly heard the sound of cracking coming from the bus. He then put his feet on the brakes of the bus but suddenly the bus turned on one side and fell on the road. He got down from the bus and started pulling out the passengers from it, when something hit the bus. He then saw the four-wheeler standing at the back side of the bus. He initially thought that the four-wheeler had arrived to take the injured but on coming near the four-wheeler he saw that its hood was damaged probably as a result of the injuries sustained in the accident. His version is, however, not worth credence when it is tested on taking into account the statement of Sher Singh PW who is Lambardar of village Mohana as also the consistent statements of Barua Ma!, Siri Chand, Mange Ram PW 5 and Balbir Singh, owner and driver of the four-wheeler. I find that the learned Tribunal has recorded cogent reasons for discarding his version. It therefore, affirm the finding of the learned Tribunal on issue No. 2.

7. Now, coming to the question of quantum of compensation under issue No. 3, the learned Counsel for the claimants, who have preferred Cross-objections has vehemently contended that since it was proved on the record that the deceased

was only 28-1/2 years old and he had left behind a young widow and two minor sons aged 5 to 7 years, it was incumbent on the learned Tribunal to have applied a multiplier of 20 years instead of a multiplier of 16 years to work out the amount of compensation payable to them. He has further submitted that in view of the testimony of K.B. Gandhi PW 2 the deceased was drawing a salary of Rs. 540/- per month inclusive of allowances which means that his annual income was Rs. 6480/-. He submitted that the learned Tribunal was wrong in its conclusion that the deceased would be spending Rs. 2480/- on himself and working out the dependency of the claimants on the deceased at Rs. 4000/- per annum only. Since the deceased was still in his twenties and had many years to work and his life had been cut short by the fatal accident and he has left behind two minor children and a young widow, in my view the multiplier of 18 years should be applied for working out the amount of compensation payable to the claimants. At the same time, no fault can be found that with the conclusion of the learned Tribunal in working out the dependency of the claimants on the deceased at Rs. 4000/- per annum because the deceased was a daily commuter from his village to the place of his employment i.e. Sonapat. He must be spending something on his daily journey to and from the place of his employments and also incurring expenditure on his meals during the day and other incidental expenses. Consequently, taking the dependency of the claimants on the deceased at Rs. 4,000/- per annum as worked out by the learned Tribunal and applying the multiplier of 18 years the amount of compensation payable to the claimants would come to Rs. 72,000/-. I hold that the claimants are entitled to an amount of Rs. 72,000/- as compensation. They are also entitled to interest at the rate of 12% per annum instead of 10% per annum as awarded by the Tribunal from the date of the claim application till the realisation of the amount awarded. Since the driver of the four-wheeler and the driver of the bus are the joint tort feasers, the liability of the State of Haryana, the Haryana Roadways, Bhim Singh the driver of the bus, and Balbir Singh owner and driver of the four-wheeler, shall be joint and several.

8. Consequently FAO No. 385 of 1982 and 386 of 1982 are dismissed and Cross-objections No. 40-CII of 1982 are allowed to the extent indicated above. The parties are, however, left to bear their own costs.

Ordered accordingly.