
(1984) 04 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 217 of 1974

Bhag Singh

APPELLANT

Vs

The Manager, Sewak Bus Service Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 05-04-1984

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 110(1)

Citation : AIR 1984 P&H 418

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

1. This appeal is directed against the Award of the Motor Accident Claims Tribunal, Ludhiana dt. 3-6-1974, whereby the claim petition was dismissed awarding no compensation for the damage caused to the tractor of the appellant.

2. Bhag Singh filed the claim application on 21-8-1971 for claiming compensation amounting to Rs, 50,000/ on account of an accident which took place on 26-6-1971. It was alleged that the appellant was driving his tractor GJY-9123 when bus No. PNO-7274 driven by Gurbachan Singh came there and by striking against the tractor, caused damage to it. Some minor injuries were also said to have been received by the claimant Bhag Singh. The accident took place at about 7.30 P.M. and, a report with the police was lodged. The bus was said to have been driven in a rash and negligent manner and it had come on its wrong side and thus hit the tractor. The claim petition was resisted on behalf of the respondents. The Insurance Company took the same pleas which were taken by the owner of the bus, i.e. the Manager, Sewak Bus Service Pvt. Ltd., Moga. However, on the pleadings of the parties, the Tribunal framed the following issues:--

(1) Whether the accident resulting into injuries to the claimant, was due to wrongful act i.e. rash and negligent driving of Bus No. PNO-7274 by Gurbachan Singh respondent?

(2) Whether tractor GJY-9123 driven by the claimant at the time of accident was damaged due to wrongful act of Gurbachan Singh, referred to in issue No. 1, if so, what is its effect?

(3) Whether the accident, resulting into injuries to Bhag Singh and to the tractor was due to his negligent driving of the said tractor?

(4) Whether the claimant had not license for driving the tractor, if so, what is its effect?

(5) To what amount of compensation the claimant is entitled and from whom?

3. Under issue No. (1), the Tribunal found that the bus was driven in a negligent manner and by exercising some more care, the driver of the bus could have avoided the accident. It was also observed that Gurbachan Singh driver was also convicted by the Criminal Court for this offence. Under issue (2), the learned Tribunal found that the claimants suffered a loss of Rs. 5,000/- on account of the damage to his tractor. The findings on the other issues are that the petitioner was not negligent and was holding licence. Under issue No. (5), the learned Tribunal held that no compensation could be allowed for the damage to the tractor because the Tribunal could only adjudicate for the claims of compensation in respect of accidents involving death or bodily injuries to the persons arising out of the use of the motor vehicles. It was also observed that the amendment effected in the year 1969 in S. 110 of the M. V. Act that the claims for compensation of damages to any property could be filed before the Tribunal, was of no help to the claimant because no separate notification has been issued authorising the Tribunal to adjudicate such a claim. In view of this finding the claim application was dismissed. Dissatisfied with the same, the claimant has filed this appeal in this Court.

4. The main question to be decided in this appeal is as to whether the Tribunal had the jurisdiction to award compensation for the damages to the property, i.e. tractor as provided under S. 110 of the M. V. Act, (which was amended by Act No. 56 of 1969, which came into force with effect from Mar. 2, 1970) without there being a separate notification authorising them to that effect after the said amendment. Learned counsel for the appellant contended that no separate notification after the said amendment was necessary and that the Tribunal was competent to award the damages with regard to the property as well. According to the learned counsel, the amendment by virtue of Act No. 56 of 1969 was by way of clarification, otherwise the Tribunal had the jurisdiction earlier as well to award compensation with regard to the property. In support of his contention, he relied upon a Division Bench judgment of this Court in Haryana State Vs. Pusa Ram and Others, and Union of India, v. Bakhtawar Singh (1978) 80 PLR 558 : AIR 1978 P&H. On the other hand, learned counsel for the respondents submitted that unless a separate notification was issued after the said amendment, the Tribunal had no jurisdiction to award any compensation with regard to the damage, to the property. According to the learned counsel,

separate notification has been issued by certain other States but no such notification has been issued in the State of Punjab after the earlier notification dt. Sept. 9, 1968. Thus argued the learned counsel, that the Tribunal had rightly found that in the absence of any fresh notification after the amendment, the Tribunal had no jurisdiction. In support of his contention, he referred to B.S. Nat Vs. Bachan Singh and Others, and Ved Prakash Sethi v. Musfir Transport Co. Ltd. Mansa 1974 AC.J. 367. Reference was also made to a decision in L. P. A. No. 550 of 1980 (Gurmel Singh v. Smt. Updesh Kaur Deepak) decided on 11-8-1983.

5. I have heard the learned counsel for the parties and have also gone through the relevant case law cited at the bar. The two judgments relied upon by the learned counsel for the respondents are clearly distinguishable because in both the said cases, the accident had taken place prior to the amendment in the year 1969 which came into force with effect from Mar. 2, 1970. In B. S. Nat's case (supra), the accident had taken place on 3-10-1961 whereas in Ved Prakash Sethi's case the accident took place on 14-9-1965. As stated earlier, the amendment in S. 110 of the M. V. Act was made by virtue of Act No. 56 of 1969 which came into force with effect from Mar. 2, 1970. The mere fact that certain other States have issued a separate notification after the said amendment, is of no consequence. I am of the considered view, that no separate notification as such was required after the said amendment conferring the jurisdiction on the Tribunals for adjudicating upon claims for compensation on account of damage to any property etc. At this stage, the reproduction of S. 110 of the M. V. Act, 1939, as amended, is necessary and it reads as under:--

"110. Claims Tribunals.-(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunals (hereinafter referred to as Claims Tribunals) for such areas as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both:

Provided that where such claims include a claim for compensation in respect of damage to property exceeding rupees two thousand, the claimant may, at his option, refer the claim to a Civil Court for adjudication, and where a reference is so made, the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claims.

(2) x x x x x x x x"

The notification required under the said Section is for the purposes of "for such areas as may be specified in the notification." The other two clauses i.e., for the purposes of adjudicating upon claims involving the death of, or bodily injury to, person arising out of the use of motor vehicles or damages to any property of a third party so arising, or both, go together and cannot be read separately. Of course, in the earlier notification dt. Sept. 9, 1968, only mention "for the

purposes of adjudicating for the claims for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicles" has been made, but since the latter part has been added by Act No. 56 of 1969, the same could not naturally form part of that notification. The amendment has been made in the Act itself. The earlier notification which is primarily issued for such areas as may be specified therein for adjudicating claims regarding human deaths and injuries will include the claims as to the damages to any property etc. also.

6. As regards the judgment in L. P. A. No. 550 of 1980 (Gurmel Singh v. Smt. Updesh Kaur Deepak) decided on 11-8-1983, suffice it to say that before the Letters Patent Bench, this point was never agitated. Rather the counsel for the claimant there conceded that the claimants would seek their remedy afresh with respect to the damages to the property. Therefore, it could not be cited as a precedent for this proposition. Moreover, it is based on the two judgments cited above which have no applicability to the facts of the present case.

On the other hand, the judgments relied upon by the learned counsel for the appellant fully support his contention. In Haryana State Vs. Pusa Ram and Others, the Division Bench of this Court observed in para-5 thereof, as under:--

"---The bare reading of the amended S. 110(1) would show that the Tribunal is now authorised to adjudicate upon claims or compensation involving the death or bodily injury to persons or damage to any property or both. The claim for damage to property simpliciter is, therefore, within the cognizance of the Tribunal. The Legislature probably did not deem it necessary to make any corresponding amendment in S. 110-A because the word injury is a word of very wide amplitude and includes both bodily injury and injury to property. According to dictionary meaning of the word, "injury" means, "damage or hurt done or suffered by a person or thing". As a general term, therefore, it means, hurt of any sort whether suffered by a person or a thing and the person whose property has been damaged in a motor accident would therefore, be the person who has sustained the injury within the meaning of Clause (1)(a) to S. 110-A of the Act."

Moreover, the earlier judgment relied upon by the learned counsel for the respondent i.e. B.S. Nat Vs. Bachan Singh and Others, , has also been noticed therein, and it has been observed, that the observations made therein that same corresponding amendment consequential to the changes made in S. 110 should have been made in the clauses of S. 110-A(I), are in the nature of obiter dicta and "can hardly be said to contain any expression of opinion on the interpretation of the provisions of section 110-A(1) and, therefore, are also of no help".

7. Similarly in Union of India v. Bakhtawar Singh (1978) 80 PLR. 58 : AIR P&H 321 the learned Judge held that though the accident took place on 7-7-1969 and the claim petition was filed on 2-9-1969 when the Tribunal was not vested with the jurisdiction to decide about the compensation as regards the damage to the

property but since the same was vested in the Tribunal by effecting an amendment in S. 110 of the M. V. Act, w.e.f. 2-3-1970, the fact remains that by the time the Tribunal passed the award regarding damage to the property (which claim was made in the application) it had the jurisdiction to do so. Thus the contention that the Tribunal had no jurisdiction to try the claim regarding damage to the property was repelled.

8. In this view of the matter, I find that the approach of the learned Tribunal was wrong in not granting compensation for the damage to the tractor, to the claimant.

9. As regards the quantum, the learned Tribunal under issue No. (2) found that the appellant suffered a loss of Rs. 5,000/- on account of the damage to his tractor. Though the evidence on the record led on behalf of the claimant was that the damage was to the extent of Rs. 40,000/- but the learned Tribunal observed that since there was no evidence for showing as to what was the price of a new tractor and there was nothing to show that how old the tractor was, he took the view that the tractor could be got repaired at the cost of Rs. 5,000/-. Learned counsel for the appellant referred to the statements of P.W.6 Bhag Singh the claimant himself. P.W. 7 Avtar Singh and P.W. 4. Natha Singh, Mechanic. They have categorically stated in their statements that the estimate of the damage was to the extent of Rs. 40,000/-. Avtar Singh P.W. 7 has further stated that the tractor was purchased one year earlier to the accident. Therefore, it was wrong to say that there was no evidence to show how old the tractor was. There was no rebuttal to this evidence and their testimony in the examination-in-chief was never challenged in their cross-examination. The learned counsel for the respondents contended that as a matter of fact, the claimants never claimed any amount of compensation for damages to the tractor as such in the claim application and therefore, there was no occasion for them to lead any evidence. As regards this contention, I do not find any merit therein. There was a specific issue No. (2) framed by the Tribunal in this respect and a finding has been given thereunder. Thus, under these circumstances it could not be successfully argued on behalf of the respondents that there was no specific claim made in the claim application with regard to the damage to the tractor. In the concluding Para-24 of the Claim Application, it has been specifically pleaded that the said bus totally smashed the tractor and the claimant received injuries. Thus the claim was very much there in the claim application. In any case, as observed earlier, there was a specific issue to this effect and the parties have led their evidence in that behalf. From the evidence led as a whole, I am of the considered view that the finding of the Tribunal under this. issue is wrong. The tractor was only purchased one year earlier to the accident. According to the statement of Natha Singh, Mechanic Punjab Roadways, (P.W. 4), he examined the damaged tractor. He found that its engine, tyres, and body etc. were completely damaged. He has further stated that the tractor was damaged as a whole. No question was put to him in the cross-examination. The extent of damages was given by the claimant Bhag Singh, P.W. 6 and Avtar Singh P.W. 7. To them also no question was put in the

cross-examination as to the extent of the damage to the tractor. In this view of the matter, the damage to the tractor could not be held to be Rs. 5,000/- as assessed by the Tribunal. After assessing all the evidence in this respect, I am of the considered opinion that it could not be less than Rs. 25,900/- in any case even if the amount of Rs. 40,000/- as given by the claimant is not accepted as such.

10. No other point arises nor has been argued.

11. Consequently this appeal succeeds. The Award is set aside and the compensation is allowed to the extent of Rs. 25,000/- on account of damage to the tractor involved in the accident against the respondents. In case the said amount of compensation is not paid within three months from today, the appellant will be entitled to the interest at the rate of 6 per cent per annum from the date of this order till realization.

12. Appeal allowed.