
(1980) 04 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 22 of 1979

Bija Ram

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 29-04-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A
Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (1980) ACJ 352 : (1980) 9 ILR HP 183

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

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; A.G. and S.S. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gupta, J.—This appeal is directed against the order dated 27th July, 1978, passed by the Tribunal under the Motor Vehicles Act by which the petition of the Appellant u/s 110A of the Motor Vehicles Act was dismissed.

2. The brief facts of the case are that the Appellant filed a petition u/s 110A of the Motor Vehicles Act, claiming a sum of Rs. 20,000/- as compensation for the injuries suffered by the Appellant. The Appellant alleged that he was carrying a load of grass on his head and was coming on foot from village Androl towards Simla when bus HIL 5644 owned by the State of Himachal Pradesh and driven by Shri Om Parkash Respondent, hit him on his back and due to this hitting the Appellant sustained injuries. It was alleged that the driver was driving the bus rashly and negligently and that this accident is due to the rash and negligent driving of the vehicle by the driver or in any case due to the contributory negligence of bus No. HPB 119 which was crossing the said bus HIL 5644, at the place of the accident from the other side. It was also alleged that Shri Om Parkash driver had been convicted in the criminal case under Sections 279/337 I.P.C. for this accident and that it was impliedly admitted by Shri Om Parkash that he was driving the vehicle rashly and negligently.

3. The petition was contested by the Respondents and it was alleged by the Respondents that the Appellant sustained no injuries due to the hitting of bus HIL 5644 and that in fact this bus was never involved in any accident. It was further alleged that the conviction of Om Parkash was on the basis of a confession and that this confession was made under police pressure and that the proceedings and the findings of the criminal Court are not admissible or relevant for the present proceedings. The right of the Appellant to claim compensation and the quantum of compensation was also disputed.

4. On the pleadings of the parties, the following issues were struck:

1. Whether the accident occurred as alleged in the petition? O.P.P.

2. If issue No. 1 is found in affirmative, whether accident occurred due to the negligent driving of the driver of H.P. Transport bus No. HIL 5644 and the driver of bus No. HPB 119 as set out in the petition, if so, its effect? O.P.P.

3. Whether the Petitioner is entitled to any compensation, if so, how much and from whom? O.P.P.

4. Whether Respondent No. 2 Shri Om Parkash was employed on daily wages as set out in the preliminary objection of reply of Respondent No. 1. If so, its effect? O.P.R. 1.

5. Relief.

5. The Tribunal vide its order dated 27-7-1978, held that the Appellant was not involved in any accident and that in fact no accident took place. Issue No. 1 was decided against the Petitioner and in view of the findings on Issue No. 1, Issues No. 2 and 3 were not decided. Under Issue No. 4, it was decided that Respondents No. 1 and 2 would have been liable to pay compensation if Issue No. 1 had been decided in favour of the Appellant.

6. Aggrieved from this order of the Tribunal, the Appellant has come up in appeal and the Counsel for the Appellant Shri K.D. Sud contended that there is sufficient evidence on record to prove that the Appellant was involved in the accident and was hit by bus HIL 5644, which was being driven rashly and negligently by Om Parkash driver and that the Appellant sustained injuries due to this accident. He has referred to the statements of the witnesses produced by the Appellant and has also drawn my attention to the copy of judgment Ex. P. 1, the medical certificate Ex. P.W. 1/A and the copy of the F.I.R. Ex. P.W. 2/A.

7. It was further contended by the Appellant's Counsel that the confession of Om Parkash Respondent, the driver of the vehicle, is on record and this confession should be allowed to be proved by taking additional evidence, because it will help the Court in deciding the case in a more satisfactory manner. It was further contended that the Respondent Om Parkash did not come in the witness box and that an adverse inference should be drawn against him and the version of the Appellant should be believed.

8. The Counsel for the Respondent Shri S.S. Mittal contended that it is not at all proved on record that the Appellant received any injuries due to any alleged accident and that the evidence on record is quite insufficient to prove that the Appellant was hit by vehicle HIL 5644. It was further contended by the Respondents Counsel that the evidence on record is sufficient to dispose of the case effectively and that the documents, which have not been proved by the Appellant, cannot now be allowed to be proved and that the Appellant cannot be allowed to fill up the lacuna in evidence at the appellate stage. It was further contended by the Respondents Counsel that the confession by Om Parkash, if any, has no relevancy for deciding the present case under the Motor Vehicles Act and that the proceedings in a criminal case have no relevancy and are not admissible for the present purposes. It was further contended by the Respondents Counsel that the non-appearance of the Respondent Om Parkash in the witness box is immaterial in the circumstances of the present case as the Appellant has altogether failed to prove the case as alleged by him.

9. I have considered the contentions of the learned Counsel for the parties and have also gone through the record of the case carefully.

10. So far as the first contention of the learned Counsel for the Appellant is concerned, I find from the evidence on the record that the evidence which has been produced by the Appellant is quite insufficient to prove that the Appellant was hit by bus No. HIL 5644 and that due to this hitting the Appellant sustained the injuries. The Appellant has produced two witnesses, that is, Shri Janki Ram P.W. 4 and Shri Mast Ram P.W. 5 to prove the fact that the Appellant was hit by bus HIL 5644. If the statement of Shri Janki Ram is perused then from his statement it is clear that this witness is not an eye witness to the alleged occurrence, that is, the accident and he has clearly stated that when he reached the place of accident, then bus No. HIL 5644 and bus HPB 119 were standing parallel to each other on the spot in the opposite direction and that the alleged accident had already taken place.

11. Shri Mast Ram P.W. 5 stated that he was traveling in the bus which hit the Petitioner, that is, HIL 5644, but the reading of his statement clearly shows that this witness is not a reliable witness. He has not been able to state the particulars of the bus or the names of the drivers and has stated that the Appellant suffered injuries on his legs, arms and chest. He was not able to give the names of any of the passengers of the bus and has further stated that the Appellant received injuries on the right side of his body due to collision with the bus and on the left side due to striking against a hill after the said collision. It is very important to note that although these two witnesses claimed to have seen the accident at the earliest but a perusal of the F.I.R. Ex. P.W. 2/A shows that the name of P.W. 5 Mast Ram is not mentioned in the F.I.R. The name of Mast Ram P.W. 5 was also not mentioned as a prosecution witness by the police during the course of the criminal case under Sections 279/337/338 I.P.C. If P.W. 5 Mast Ram was a witness to the alleged accident, that is, if he was the person who had seen

the bus hitting the Appellant then he was the most important witness for the prosecution in the criminal case against driver Om Parkash but his statement clearly proves that the police did not record his statement during the investigation. Naturally it leads to the conclusion that P.W. 5 Mast Ram never saw the accident.

12. The name of Janki Ram P.W. 4 finds mention in the F.I.R. Ex. P.W. 2/A but as has already been discussed he is not a witness to the actual alleged accident. Similarly the statement of Janki Ram P.W. 4 also suggests that his statement was not recorded by the police during investigation of the criminal case against Om Parkash driver. P.W. 4 Janki Ram has further stated that the bus crushed the Appellant which is a totally false statement.

13. In the light of the above circumstances both the above said witnesses, that is P.W. 4 and P.W. 5, cannot be relied upon and as such their statements have to be ignored. The Appellant himself has appeared in the witness box as P.W. 6 and his version is that his body was pressed between the hill and the bus HIL 5644 and that the said bus hit him from the back. The two versions, that is, as given in the petition filed by the Appellant and his statement as a witness are quite conflicting. The statement of the Appellant is also not believable in view of the medical certificate Ex. P.W. 1/A which has been duly proved by Doctor Subash Aggarwal as P.W. 1. A perusal of this medical certificate shows that the injuries which have been suffered by the Appellant are such that they could not be the result of the two versions which have been given out by the Appellant. There is no injury on the back of the Appellant, meaning thereby that the story of the Appellant that the bus hit him at his back is false. Similarly the second story that the Appellant was pressed between the bus and the hill is also false because there are practically no injuries on the right side of the body of the Appellant except injury No. 10. If the Appellant had been pressed between the bus and the hill, then there should have been serious injuries on the right side of the body of the Appellant also.

14. It is clearly stated by Doctor Subash Aggarwal P.W. 1 that the injuries which have been mentioned in the medical report Ex. P.W. 1/A could be the result of a fall. There is another very important fact that the alleged accident was never reported with the transport authorities as is proved by R.W. 1 Shri Ashwani Kumar.

15. The result of the above discussion is that the Appellant has miserably failed to prove the allegations of the petition, that is, that he was hit by bus HIL 5644 in the back and that as a result of this hitting he received the alleged injuries.

16. The Counsel for the Appellant next argued that even if the Appellant had fallen on the road due to the fact that the driver of bus HIL 5644 in order to avoid the accident/collision with bus HPB 119 turned his bus towards his side then too the Respondents are liable because the fall of the Appellant will be deemed to be the result of the accident which the Respondent wanted to avoid. I

have not been able to agree with this contention of the Appellant's Counsel. If any person receives any injuries due to some act on his part or due to the fact that he wants to avoid the accident and to save himself from being the victim of the accident, then it cannot be said that the said injuries have arisen out of the use of motor vehicle or that the same arise out of an accident. It might be that the Appellant may have noticed that the two vehicles HIL 5644 and HPB 119 may not be involved in an accident and as a matter of abundant caution in order to save himself he might have fallen on the road, and in that act the Appellant may have received certain injuries, but claiming of compensation for such injuries which are due to a fall only, cannot be within the purview of Section 110A of the Motor Vehicles Act. I have already held that there was no accident or collision, between the two vehicles and that the Appellant was never hit by bus HIL 5644. In these circumstances even if he is able to prove that he had a fall out of the fear only, that an accident might take place, he is not entitled to claim any compensation under the provisions of the Motor Vehicles Act. The Motor Vehicles Act can only be made applicable, if the injuries sustained by the Appellant are the result of an accident or arise out of an accident.

17. So far as the next contention of the Appellant's Counsel is concerned that the Appellant should be allowed an opportunity to produce additional evidence, and to prove the confession of Shri Om Parkash Respondent made during the course of the criminal proceedings, I find that there are no good or sufficient grounds to allow any such additional evidence. The confession, at best is an admission and the same could be explained by the person making the confession. In fact in this case Om Parkash Respondent has specifically pleaded that the same was made under police pressure and to save himself from harassment of criminal proceedings. The petition for compensation was filed on 11th September, 1973, and the Appellant had been producing his evidence from 19-6-1974 to 22-2-1978 when the Appellant closed his evidence. From the proceedings on the file, I find that sufficient time was allowed to the Appellant to produce his evidence and the Appellant cannot now be allowed to re-open his case, specially when the evidence which has been produced by the Appellant, on facts has not been believed by me. The evidence on record is quite sufficient to dispose of the case in an effective manner and as such this contention of the Appellant's Counsel is also repelled.

18. The Appellant's Counsel also contended that Ex.P. 1, the copy of the judgment in the criminal case, establishes that Om Parkash Respondent had admitted his guilt. The judgment of the criminal case is not admissible or relevant for any other purpose except for showing that a conviction or acquittal had taken place in a particular case. Moreover, this judgment can only show that the vehicle driver Shri Om Parkash was driving the vehicle rashly or negligently and it does not prove the fact that the Appellant was involved in this accident or that the Appellant sustained any injuries due to his being hit by the said vehicle. As such I hold that Ex.P. 1 is of no value in the present proceedings.

19. The next contention of the Appellant's Counsel that an adverse inference should be drawn against the Respondents due to the fact that the Respondent, Om Parkash has not appeared in the witness box as his own witness, is also without force. After having gone through the record of the case I find that the Appellant has failed to prove his case and, therefore, it was not necessary for Shri Om Parkash Respondent to have appeared in the witness box. If the Appellant had proved his case and the Respondent had failed to appear in the witness box to rebut the same, then an adverse inference could have been drawn against him. Thus, this contention of the Appellant's Counsel is also without any force and is also repelled. No other point was urged before me.

20. In view of the above discussion, I do not find any force in this appeal and the same is hereby dismissed. The order of the Tribunal dated 27-7-1978 is upheld. In the circumstances of the case, the parties are left to bear their own costs.