
(2016) 04 P&H CK 0209
In the Punjab And Haryana At Chandigarh
Case No : FAO No.4248 of 2014 (O&M)

Bimla Devi

APPELLANT

Vs

Surjeet Singh and others

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 128, 166

Citation : (2017) AAC 1334 : (2016) 6 ALLMR 61 : (2016) 2 LAR 355 : (2016) 3 PLR 755 : (2016) 3 RCRCivil 891

Hon'ble Judges : Darshan Singh, J.

Bench : Single Bench

Advocate : Sandeep Kotla, Advocate, for the Appellant; Neeraj Khanna, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Darshan Singh, J.—CM-12367-CII-2014 in FAO-4248-2014

1. There is delay of 121 days in filing the present appeal. The appellant has filed an application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay.
2. Heard on the application.
3. In view of the reasons mentioned in the application, same is allowed and the delay in filing the appeal is hereby condoned.

Main Appeals

1. This judgment of mine shall dispose of all the appeals mentioned above, which have been preferred by the appellants-claimants against the common award dated 07.10.2013 passed by learned Motor Accidents Claims Tribunal, Fatehabad (hereinafter called the "Tribunal"), vide which 50% of the compensation amount has been deducted towards negligence of the appellants-claimants.

2. The facts of the case are that on 03.04.2012 Smt.Shakuntla Devi appellant-claimant accompanied by her brother-inlaw Mandeep Kumar alias Deepu and aunt Bimla Devi were proceeding towards Dhani Binja Lamba from Fatehabad on motorcycle bearing registration No.HR-22F-7776 being driven by appellant-claimant Mandeep Kumar. The said vehicle was being driven on the left side of the road by observing all the traffic rules. At about 03:15 p.m., when they reached near village Ayalki at 'T' point Boswal, then a bus bearing registration No.HR-62-1501 being driven by respondent No.1 Surjeet Singh came from behind and struck the motorcycle. Due to its impact, all the three occupants of the motor cycle fell down and suffered multiple injuries on various parts of their body. The criminal case for this accident was registered bearing FIR No.170 dated 03.04.2012 under sections 279, 337 and 338 of the Indian Penal Code against respondent No.1 at Police Station Sadar Fatehabad.

3. Appellant-claimant Jai Ram was the passenger travelling in the bus. He also suffered the injuries. All of them have filed the separate four claim petitions for grant of compensation for the injuries suffered by them.

4. The learned Tribunal held that the motorcycle in question was being driven by Mandeep Singh alias Deepu in violation of Section 128 of the Motor Vehicles Act, 1988 (hereinafter called the "Act") with two passengers on the pillion. Thus, he held that it was a case of contributory negligence on the part of the occupants of ill fated vehicles and that of respondent No.1 in the ratio of 50% each. The learned Tribunal has computed the amount of compensation payable to Smt.Shakuntla the appellant of FAO No.5200 of 2014 to be Rs. 93,333/-, to Mandeep Singh alias Deepu the appellant of FAO No.5712 of 2014 to be Rs. 51,025/-, to Smt. Bimla the appellant of FAO No.4248 of 2014 to be Rs. 5000/- and the compensation payable to Jai Ram the appellant of FAO No.5201 of 2014 to be Rs. 97,955/- and further held that they will be entitled to 50% of the aforesaid amounts as compensation, obviously due to the alleged contributory negligence.

5. Learned counsel for the appellants contended that appellant Jai Singh was not travelling on the motorcycle. He was the passenger travelling in the bus. He further contended that mere this fact that three persons were riding on the motorcycle is also no ground to held them contributory negligent. The triple riding on a two wheeler may be a traffic offence but it does not constitute the contributory negligence. To support his contentions, he relied upon cases The New India Assurance Co. Ltd. v. T.K. Duraiswamy and another 2011 ACJ 2532, Smt. D.Vasheeda & others v. Smt. V. Babakka & others 2013(8) RCR (Civil) 344, Kumari K. Pushpa Latha and another v. E. Murali Manohar Rao and another 2014, ACJ 640 and Karnail Singh v. Balwinder Singh 2013(1) PLR 774.

6. On the other hand, learned counsel for the respondent- Insurance Company contended that there is no defect in the findings recorded by the learned Tribunal that triple riding on the motorcycle is prohibited under the provisions of the Act. He further contended that if three persons are riding on the motorcycle, which is

designed to carry two persons, the driver has to share the seat and will not be able to effectively control the vehicle. The over weight on account of the third passenger will also affect the stability of the vehicle. Thus, he contended that the appellants were also contributory negligent.

7. I have duly considered the aforesaid contentions.

8. Appellant-claimant Jai Ram was admittedly a passenger in bus bearing registration No.HR-62-1501. He was not travelling on the motorcycle No.HR-22F-7776 but it is surprising that even he has been declared to be contributory negligent by the learned Tribunal for this accident. A passenger travelling in the bus has nothing to contribute in the accident involving the bus wherein he was travelling. It shows the casual approach of the learned Tribunal in appreciating the legal and factual position. Appellant-claimant Jai Ram travelling in the bus cannot be held to be contributory negligent by any stretch of imagination.

9. Appellant-claimant Smt. Shakuntla Devi, Smt. Bimla Devi and Mandeep alias Deepu have been held contributory negligent on the ground that they were riding on the motorcycle, which was meant to carry two passengers i.e. one motorcyclist and other of the pillion. The triple riding may be a traffic offence but in order to fasten the liability of contributory negligence, mere triple riding is not sufficient. The respondents were further required to show the negligence on their part which had contributed to the cause of this accident. But admittedly, no such evidence has been adduced by the respondents. The respondent- Insurance Company has tendered in evidence copy of insurance policy Ex.P4. Respondents No.1 & 2 have examined Parveen Kumar Anand as RW2 and Ashok Kumar Administrative Officer as RW3 to prove the documents Ex.R3, Ex.R5 to Ex.R14. They have not examined respondent No.1 Surjeet Singh the driver of the bus or any passenger of the bus to depose that the motorcycle was being driven in a rash and negligent manner and it also contributed to the present accident. Moreover, as per the facts of the case the motorcycle being driven by appellant-claimant Mandeep alias Deepu was hit from behind which completely ruled out any contributory negligence on the part of the occupants of the motorcycle.

10. In case The New India Assurance Co. Ltd. v. T.K. Duraiswamy and another (supra), there was triple riding on the motorcycle. The accident has taken place between a truck and the motorcycle, resulting injuries to the pillion rider. It was contended before the Hon"ble Madras High Court the motorcyclist lost control due to triple riding and the same was violative of the traffic rules and provision of the Act, but no evidence was led that the accident was caused due to triple riding. The Insurance Company was held liable for payment of amount of compensation.

11. In case Smt. D. Vasheeda & others v. Smt. V. Babakka & others (supra), the Hon"ble Andhra Pradesh High Court has laid down as under:-

"7. * * * * The learned Tribunal attributed negligence to the rider of the

motorcycle, on the sole ground of triple riding on the motorcycle. There is no evidence adduced by the insurer that the accident occurred because of the triple riding of the motorcycle. In the absence of any evidence, it cannot be assumed or presumed that the accident resulted because of the triple riding of the motorcycle. The evidence of PW.2 is crystal clear that the lorry came in high speed and dashed the motorcycle and as a result, he and other two persons travelling on the motorcycle fell on road and sustained injuries. The finding recorded by the learned Tribunal that there was contributory negligence on the part of the rider of the motorcycle is not based on any evidence. Hence, I find that the accident occurred due to negligent driving of the driver of the lorry bearing No.APA 5805."

12. In case Kumari K. Pushpa Latha and another v. E. Murali Manohar Rao and another (supra), after taking the note of Section 128(1) of the Act, the Hon"ble Andhra Pradesh High Court has laid down as under:-

"4. In this case, except there being evidence of triple riding of motor cycle bearing No.AP 11B 5316, there is no further evidence to show that motor cycle rider was riding the motor cycle in a hap-hazard manner or in a zigzag fashion in order to contribute negligence for this accident. The fact that Maruti Car came from behind the motor cycle and dashed the motor cycle discloses that Maruti Car was being driven at higher speed than the motor cycle and dashed the motor cycle from back side when the motor cycle was going in front of the car was visible to the car driver. When the motor cycle was going in front of the car and there was no clearance of the road for the car to pass through the road overtaking the motor cycle, driver of the car should have slowed down the car and as and when there was clearance, he should have overtaken the motor cycle. Instead, the car driver has preferred to hit the motor cycle going in front of it. This undoubtedly shows that the car driver was at fault and the accident is the result of rash and negligent driving of the car driver solely and the motor cycle rider did not contribute any negligence for this accident. Therefore, in my opinion, the lower Tribunal came to an erroneous conclusion that the motor cycle also contributed negligence for this accident on the mere fact that there was triple riding on the motor cycle. The lower Tribunal erred in disallowing 50% of the compensation payable to both the appellants."

13. In case Karnail Singh v. Balwinder Singh (supra) also three persons were travelling on the motorcycle which was hit by Maruti car coming from behind, wherein this Court has laid down as under:-

"2. It is a case of three persons on a motorcycle having been hit by a maruti car coming from behind. The Tribunal while assessing the compensation found that the driver of the maruti car was guilty of negligent driving and all the same found contributory negligence for the three persons, who were coming on a motorcycle. This finding is clearly erroneous. The Court was not determining an imposition of a fine or offence under the Motor Vehicles Act. The three persons travelling on a motorcycle may have been guilty of traffic offence but there is no reason for the

Court to make any inference regarding negligence as contributory by the only fact that three persons were going on a motorcycle. This can be explained also by a different experience of a motorcyclist not having a driving licence at all but still coming by an injury in collision with another vehicle. The Courts have held in such a situation that the person, who did not have a driving licence shall not be taken as allowing for common inference of negligence. It is another way of saying that yet another vehicle will not be permitted to take advantage of a traffic offence committed by another person. If the evidence was brought before the Court that the driver of the maruti car was responsible for the accident, the Court could not have without any explanation from the driver of the maruti car itself that the accident took place by any negligent conduct of the motorcyclist also. A finding of contributory negligence is not a matter of conjectural inference in the manner done by the Tribunal but it shall be on the basis of specific evidence. The partial abatement of the respective claims to the extent of 50% was, therefore, erroneous and I set aside the same."

14. Case Karnail Singh v. Balwinder Singh (supra) was also cited by learned counsel for the claimants before the learned Tribunal but the learned Tribunal has ignored this binding judicial precedent without even discussing it, which is against the judicial discipline.

15. Keeping in view the consistent ratio of law laid down in the cases referred above, mere triple riding on a two wheeler/motorcycle without any further proof of negligence on the part of the motorcyclist contributing to the accident, is no ground to held the occupants of the motorcycle to be contributory negligent for the accident.

16. Thus, the finding of the learned Tribunal holding the appellants-claimants to be contributory negligent to the extent of 50% is wholly erroneous and perverse. The said findings are hereby set aside. On the basis of the evidence adduced by the appellants-claimants it is proved that respondent No.1 was sole negligent for this accident. So, the learned Tribunal was not justified to impose a cut of 50% on the compensation amount payable to the appellants.

17. Thus, keeping in view my aforesaid discussion the present appeals are hereby allowed. The appellants shall be entitled to the full amount of compensation computed by the learned Tribunal on account of the injuries suffered by them in this accident without imposing the cut of 50% along with interest on the rate determined by the learned tribunal.