
(2006) 05 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 236 of 1991

Chander Kanta and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 03-05-2006

Acts Referred:

Citation : (2007) 1 ACC 274 : (2008) ACJ 362 : (2006) 144 PLR 551 : (2006) 3 RCR(Civil) 610

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Harkesh Manuja, for the Appellant; Amit Kaushik, Assistant A.G. for Respondent Nos. 1 to 3 and M.B. Singh, for the Respondent

Judgement

Vinod K. Sharma, J.—This appeal has been filed by the claimants against the judgment of the learned Motor Accident Claims Tribunal, Hisar (for short the Tribunal). Learned Tribunal after assessing the compensation payable at Rs. 6 lacs, by holding that the deceased was also negligent, awarded Rs. 3 lacs to the claimants alongwith interest and costs.

2. The brief facts leading to the case are that Som Parkash Mehta deceased, who was aged about 41 years and was an employee of State Bank of India, Thurana as Head Cashier, boarded Bus No. HYN-5918 being driven by Mithan Singh, respondent No. 3. He had boarded the bus from the rear window when Truck No. PJB-1701 being driven by Channa Singh, respondent No. 4 came at a high speed from, the side of Hisar and struck the window of the bus, as a result of which Som Parkash alongwith window fell on the road and died at the spot. The conductor, who was standing near the window of the bus, lodged First Information Report regarding this accident and he alongwith the driver of the bus took the deceased to Civil Hospital, Hisar. However, Channa Singh, driver of the truck ran away after leaving the truck at the spot. It was also the case of the claimants that due to the death of Som Parkash the claimants suffered mentally and financially and therefore, they claimed compensation of Rs. 6 lacs on

account of the death of the deceased.

3. In the written statement filed by respondent No. 1, it was alleged that the accident was caused on account of negligence of the truck driver and also the deceased who opened the window of slow moving bus and then boarded the bus and there was no negligence on the part of the bus driver. The driver of the bus, Mithan Singh, respondent No. 3 also took the same stand. Respondent Nos. 4 and 5 i.e. the driver and owner of the truck in their joint written statement denied the allegations of the petitioner and pleaded that Channa Singh driver was coming from the side of Delhi and was going towards Sirsa side on National Highway No. 10 and he was passing through Hisar City at normal speed. It is his further case that when he passed through Exit Gate of Hisar bus stand, some rickshaws were standing on the road and had blocked it, therefore, he had to stop the truck. It has further been pleaded that in the meantime bus of Haryana Roadways being driven by Mithan Singh, respondent No. 3, came from the exit gate of the bus stand in a very rash and negligent manner and took a sudden turn towards the left side i.e. Sirsa side and while the bus was coming from the exit gate the deceased tried to board the said fast moving bus from the rear window. It was also alleged that the conductor of the bus did not get the bus stopped nor its driver slowed it down and in this situation when he tried to overtake his truck the deceased, who was trying to board the bus from rear window, which was open at that time, struck right back portion of the truck forcibly, as a result of which window struck against the deceased and he along with window fell on the road and on these pleadings it was said that the accident had taken place due to negligence of the bus driver and also of the deceased himself. Therefore, neither the truck driver nor the owner could be blamed in this manner.

4. Respondent No. 6, Insurance Company also denied the allegations of the claimants and took a stand that the accident had taken place due to rash and negligent driving of the bus by the bus driver. It was said that it was the bus driver who lost control over the bus and could not avoid the accident. It was also the stand of the Insurance Company that the deceased himself was negligent and the truck driver was not at fault. The stand of the Insurance Company is that their liability is limited to the extent of Rs. 1.50 lacs only.

5. On the pleadings of the parties the learned Tribunal was pleased to frame the following issues:

1. Whether the accident in question took place due to negligent driving of bus No. HYN-5918 driven by Mithan Singh respondent or due to negligent driving of truck No. PJB-1701 driven by Channa Singh respondent or due to negligence of conductor of bus or due to fault of deceased himself? O.P. Parties.

2. If issue No. 1 is proved in favour of the petitioner whether they are entitled to get any compensation, if so, how much and from which of respondent? OPP

3. Whether the Insurance Company is liable to pay any compensation in view of

the preliminary objections taken in the written statement? OPR

4. Relief.

6. The learned Tribunal on issue No. 1 came to the conclusion that in spite of seeing the bus coming out of the main gate of bus stand he continued moving the truck and then tried to overtake the bus from left hand side and in this process, hit its rear window which was opened by the deceased, therefore, the only inference that can be drawn is that he was driving the truck in a negligent manner and he had no control over the same. Learned Tribunal further came to the conclusion that no fault could be found with the driver and conductor of the bus. However, learned Tribunal came to the conclusion that the accident was occurred on account of contributory negligence on the part of the deceased. In coming to the said conclusion learned Tribunal recorded the following findings:

14. It is argued that the learned Counsel for respondent Nos. 5 and 6 that as the deceased tried to board the moving bus on the main, after opening its window, he (deceased) was himself negligent and, therefore, respondent No. 5 cannot be held liable for this accident. In support of his contention, he has cited Sivakumar Transports Vs. Mani alias Palaniswamy and Others, . In this authority the claimant was waiting for a bus at the bus stop along with many other persons. The bus stopped at a distance of about 40 feet from the bus stop and many persons desired to catch that bus ran towards the same and the claimant also attempted to get into that bus through exit in the front portion of the bus; and that when he placed one foot on foot door, the driver started moving the bus as a result of which the claimant fell down and sustained some injuries. On these facts it was held by the Hon'ble Madras High Court that as the claimant attempted to enter into the bus through the exit which was by itself irregular and improper and in that sense, he was also partly responsible for the accident as well as sustaining of injuries therein. This authority fully applied to the facts of the case in hand. As stated above, the deceased boarded the moving bus by opening its rear window while it was on the main road where other traffic was also moving and where there was no bus stop. This act on the part of the deceased is sufficient to conclude that he was equally negligent in boarding the bus in question and accordingly I hold that this accident took place due to his contributory negligence. Taking into consideration the facts and circumstances of the case his contribution to the accident is 50%.

7. In view of the above findings, the learned Tribunal decided issue No. 1 by holding that the accident had taken place due to contributory negligence of respondent No. 1 Channa Singh and deceased Om Parkash Mehta and negligence of both these persons was assessed as 50% each. On the quantum of compensation, the learned Tribunal assessed the compensation payable to be Rs. 6 lacs. However, due to contributory negligence of the deceased, the compensation payable was assessed at Rs. 3 lacs which was directed to be paid jointly and severally by respondent Nos. 4 to 6 alongwith interest at the rate of 12 per cent per annum from the date of filing of the petition till its payment.

8. Learned Counsel for the appellants has challenged the findings of the learned Tribunal on issue No. 1. Learned Counsel for the appellants has argued that the finding recorded by the learned Tribunal to the effect that the accident had occurred while deceased was trying to board the moving bus is not borne out from the evidence. He referred to the statement of Channa Singh who appeared in the witness box as RW-1 and categorically stated that when the bus came near his truck its rear window was lying open because the said person could not close the window, to contend that it leads to the conclusion that the deceased was already in the bus. He also referred to the evidence of PW-5 wherein no such statement regarding the deceased trying to board the running bus was made. Rather, PW-5 has stated that the accident had occurred due to the negligence of the truck driver who had hit the rear window of the bus and dragged it up to a considerable distance. Learned Counsel has also referred to other evidence on record to show that no evidence was brought on record by either of the parties to show that the deceased was trying to board the moving bus.

9. Learned Counsel for the appellants next contended that no negligence could be attributed on the part of the deceased as the accident had occurred due to hitting of the window of the bus by the truck and the allegation that the deceased tried to board the running bus was not the cause of the accident and once the act complained is not attributable to the deceased, no negligence can be attributed to him.

10. I have considered the arguments raised by the learned Counsel for the parties and find that the findings of the learned Tribunal on the question of contributory negligence cannot be sustained. Learned Tribunal has given a positive finding that the accident had occurred due to the rash and negligent act of the truck driver as he had hit the window of the bus from behind and dragged it to considerable distance. In such a situation, it can hardly be said that any negligence could be attributed to the deceased. Learned Counsel for the appellants was right in saying that the act complained against the deceased was not of a nature which could be in any case be considered to be the cause of accident to contribute any negligence on his part. Even otherwise, there is no evidence on record to show that the deceased was trying to board a running bus and even if for the sake of argument the said contention is to be noticed in that event also the negligence would be attributed to the conductor or driver of the bus who had failed to perform their duty in getting the windows shut before starting the bus. In view of what has been stated above, the finding of the learned Tribunal on issue No. 1 is reversed and it is held that the accident in question took place due to rash and negligent driving of truck of PJB-1701 by its driver Channa Singh, respondent No. 4 and no negligence could be attributed to the driver of the bus or the deceased.

11. On coming to issues No. 2 and 3, learned Counsel for the appellants has argued that the compensation awarded was on the lower side as the dependency was taken to be much less as ought to have granted, keeping in view the salary

of the deceased. However, keeping in view the fact that the multiplier of 25 was applied by relying upon a judgment of Hon''ble Supreme Court in Jyotsana Day and Ors. v. State of Assam and Ors. (1987) 91 P.L.R. 646 which was a law at that point of time, no interference is required in this matter.

12. In view of the above findings, the compensation payable to the claimant comes to Rs. 6 lacs as assessed by the tribunal which shall be payable along with interest and costs already awarded. In addition, the claimants shall also be entitled to funeral expenses to the tune of Rs. 5,000/-.

13. Learned Counsel appearing for the Insurance Company argued that the liability of the Insurance Company should be limited to Rs. 1.50 lacs in view of the policy brought on record. However, this contention of the Insurance Company was rejected by the learned Tribunal and the said finding was not challenged by the Insurance Company and therefore, this contention needs to be rejected. It is held that the compensation shall be paid jointly and severally by respondent Nos. 4 to 6.

Resultantly, the appeal is partly accepted.