

(1988) 07 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 907 of 1983

Dharam Pal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-07-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1990) 97 PLR 608

Hon'ble Judges : M.S. Liberhan, J

Bench : Single Bench

Advocate : S.C. Kapoor and Naresh Katyal, for the Appellant; M.S. Jain, Addl. A. G., for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, J.—This judgment of mine shall dispose of F.A.O No. 907 of 1983 filed by the claimant and F.A.O. No. 34 of 1984 filed by the State.

2. The claimant claimed Rs. 40,000/- as compensation on account of causing permanent disability to the claimant of his right leg and arm by respondent No. 3 on account of his rash and negligent driving.

3. It was stated that on 1-3-1982 at about 10-30 A.M. the claimant was going on his cycle on Sonapat-Rohtak Road on the left side of the road. The bus No. HRJ-1505 driven by respondent No. 3 struck him from behind as a result whereof he suffered a head injury on account of which his right arm has been completely paralysed and he lost his power of speech. The disability was claimed to be 90%. He was working on a brick kiln as a labourer and was getting Rs. 500/- per month.

4. The Tribunal after appreciation of the oral evidence of P. W. 1 Dharam Pal, P. W. 2 Hoshiar Singh and Shri Krishan R.W 1 came to the conclusion that the bus was being driven rashly and a negligently. The counsel for the State has challenged the said finding. I have been taken through the statements of P. W. 1.

Dharam Pal, P. W. 2 Hoshiar Singh and R.W. 1 Shri Krishan.

5. P. W. 2 Hoshiar Singh supported the version of the claimant. It was stated by him that he lodged the First Information Report. He further stated that at about 10 30 A. M. the bus struck against the claimant who was going on his cycle on the left side of the road near the school. The bus struck him from behind. The road was stated to be 20/25 feet wide near the school where the accident took place. On account of the impact of striking of the bus against the cycle of the claimant, he fell down at a distance of 4-5 feet on pucca portion of the road. Nothing has been elicited from the witness in the cross-examination nor any plausible reason has been pointed out to disbelieve him. The version of the claimant as well as the witness further finds corroboration from the statement of the driver, P. W. 1 Dharam Pal, inasmuch as in defence in the written statement he contended that the cycle of the claimant struck against the rear side of the bus, however while appearing in Court as a witness he did not stick to his defence and stated that the cyclist struck against the bus and thus lost control of the cycle. No report was sent by him with respect to the accident to his office. For the reasons best known to the State, the conductor of the bus was not examined who could have been the best witness. Reasonably an adverse inference was raised on account of the non examination of the witness who could be one of the eye witnesses. Apart from the statements of the witnesses, the very fact and circumstance that the bus struck from behind and near a school where the driver of the bus was supposed to slow down the bus, and further the falling of the claimant at a distance of 6/7 feet on the road on account of the impact leads to an only inference that the driver of the bus was rash and negligent in driving the same at the time of accident. No other reason has been pointed but to reverse the finding of the Tribunal I confirm the finding of the Tribunal that the accident was caused due to rash and negligent driving of the driver and the claimant suffered the injury on account of the said accident.

6. The counsel for the appellant contends that the amount of compensation awarded is too meagre when admittedly he was earning Rs. 500/- per month and his disability is 90%. He relies upon *Somabhai Ruvabhai Gamit v. Ayyubhai Mmtufabhai Sheikh* 1987 A. C. J. 666., and *L.T. S. K. Ganguly v. State of Haryana* (1986) 90 P.L.R. 444. I find that the Tribunal has assessed the loss of earning on the lower side particularly for 90% disability of a person earning Rs. 500/- per month. In my considered view an amount of Rs 32,000/- would be the reasonable amount by all standards in the present age of high prices. I, therefore, modify the award and grant Rs. 32,000/- as compensation on account of loss of earning. For mental shock and body pain the amount of Rs. 5,000/- is quite reasonable. Again, Award Rs. 3,000/- on medicines and treatment of the appellant is not on higher side in any way.

7. Resultantly the award is modified as observed above. The appellant is awarded Rs. 40,000/- as compensation with interest at the rate of 12% per annum from the date of application till the date of realisation of compensation. In view of my

above observation, the appeal is disposed of. No order as to costs.

8. In view of my above finding, the appeal filed by the State has no force and is dismissed.