

(1983) 10 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No. 362 of 1977 and Cross Objection No. 4-C-II of 1978

District Transport Co-operative Society Ltd. and Another

APPELLANT

Vs

Janak Rani and Others

RESPONDENT

Date of Decision : 25-10-1983

Acts Referred:

Citation : (1984) ACJ 477 : AIR 1984 P&H 317

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Judgement

1. Madan Lal Sharma, a Radio Operator at the Aeronautical Communication Station. Raja Sansi, Airport, Amritsar was on his way to Amritsar on his scooter with Tarlok Singh on the pillion seat thereof, when he was run over and killed in an accident with a bus proceeding towards Ajnala on the Amritsar-Ajnala Road. This happened at about 4 P. M. on May 14, 1976.

2. It was the case of the claimants that Madan Lal Sharma. deceased, was trying to turn his scooter on the correct side of the Amritsar-Ajnala Road, when the bus PNO-2720 coming from the opposite direction at a very fast speed. suddenly swerved towards its right without blowing any horn and struck against his scooter.

3. According to the counter version of this accident on the other hand, the fault lay entirely with Madan Lal Sharma. deceased, who it was said had suddenly come on to the main road from a side road and that too from its wrong side and struck against the bus. The bus driver tried to avert the accident, but failed to do so.

4. It was the finding of the Tribunal that the accident here had been caused by the rash and negligent driving of the bus driver, but there was also contributory negligence on the part of the deceased too. It being observed in this behalf. "It appears that he was also negligent for not slowing down the scooter before entering the main road. In case the deceased would have been slightly cautious. he would have stopped the scooter and looked towards the right and left before

entering the main road. It appears that he was also guilty of contributory negligence." A sum of Rs. 53,760/- was awarded as compensation to the claimants after making due allowance for the contributory negligence of the deceased.

5. The issue of negligence provides the main controversy in appeal. It was vehemently contended by Mr. V. P. Gandhi, counsel for the appellants that it was the deceased. who was wholly to blame for the accident. The argument being that this was an accident caused by a vehicle coming on to the main road from a side road and that too without the deceased slowing down his scooter or ensuring that the road was clear. Breach of Regulations 6 and 7 of the 10th Sch. of the Motor Vehicles Act, 1939 was pointedly attributed to the deceased in this behalf. It was thus said that on the face of it, the fault for the accident lay with Madan Lal Sharma, deceased.

6. The scooter involved in the accident had indeed come on to the main road from a side road and a reading of the evidence on record would show that before entering the main road the deceased had neither stopped nor slowed down the scooter. This was so deposed to by A. W. 4 Tarlok Singh. who was also on the scooter at that time. It is also apparent that deceased did not exercise due care to see if the main road was clear before proceeding to enter it. In the claim application it had no doubt been stated that the deceased coming from the Airport was trying to turn the scooter when the bus swerved towards the right and hit into it, implying thereby that the scooter had already crossed the main road and had gone on to the left side when the bus hit into it, but it deserves note that the scooter is not a vehicle which permits a right angle turn. The width of the road is stated to have been 15 to 20 feet which would mean that in order to turn and get on to the left side of the road, the deceased. would have had to begin turning the scooter from at least the Middle of the road if not earlier. This would appear to be so also with reference to the testimony of AW. 4 Tarlok Singh. In the first instance he had stated that the accident occurred just when the scooter touched the main road. Later, however, in cross-examination his version was that the scooter had covered half the portion of the road when the accident occurred. Here the swerving of the bus towards the right assumes importance. The circumstances clearly point to the bus driver having taken the bus towards his right in an attempt to avoid the accident. The manner in which the scooter had come on to the main road, it was inevitable that the accident would take place in the manner in which it did. Not without significance here, is the further fact on record that there were bushes on the side of the road coming from the Airport. which would mean that the view of the main road from the side road was obstructed thereby, a fact which rendered it all the more imperative for the deceased to have stopped or at any rate slowed down before proceeding to enter the main road. In a situation as has arisen in the present case Regulations 6 and 7 of the Motor Vehicles Act are indeed attracted and compliance with the requirements thereof cannot but be taken to be mandatory. This view is also supported by judicial precedent. In State of Punjab Vs. Roshnai Ram and Others,

there was an accident between two cars, one on the main road and the other which came on to it from a side road. A. D. Koshal, J. (as he then was) after adverting to Regulation 7 held that the driver of the car emerging from a by-lane was duty bound to allow the right of way to traffic proceeding on the main road. The driver of the car on the main road was well within his right to expect that the car coming from the by-lane would respect his right of way. Negligence for the accident thus rested squarely on the shoulders of the driver of the car emerging from the by-lane.

7. Similarly in *M/s. Hoshiarpur National Transporters v. Motor Accidents Claims Tribunal Hoshiarpur* (1979) 81 PLR 618, in dealing with Regulation 6 S. P. Goyal, J. held that no duty was cast upon the driver of a vehicle on the main road to slow down his vehicle while approaching a T junction. This duty, on the other hand, lay with the driver of the motor vehicle approaching the road inter-section or road junction from a side road that is, to slow down his vehicle before entering it.

8. It is, therefore, apparent that having regard to the provisions of Regulations 6 and 7 of the 10th Schedule of the Motor Vehicles Act, in the case of a T. Junction, the driver of a motor vehicle on the main road is neither required to nor expected to slow down his vehicle while approaching or going past the by-lane or side road joining it to from the T. junction. It is the driver of the motor vehicle coming on to the main road from the by-lane or side road, upon whom it is incumbent to slow down his vehicle and to enter it only on being aware that he can do so without endangering the safety of persons thereon and further it is the driver of such vehicle, who must give way to traffic on the main road. In the present case. the deceased came on to the main road wholly in disregard to the requirements of both these Regulations. The bus driver on his part was driving the bus on the correct side of the road. It has not been shown that the bus was proceeding at a speed beyond any permissible limit or in a manner which could be said to be rash or dangerous. Fast speed on a main road cannot by itself be treated as proof of negligence. The fact that the bus swerved to its right was obviously a measure designed to avoid the accident, not one which can be held against the bus driver. In these circumstances, there is no escape from the conclusion that the cause of the accident lay wholly with the deceased and consequently the finding of negligence recorded by the Tribunal against the bus driver cannot be sustained.

9. It follows that the claimants are not entitled to any amount as compensation in the present case. The award of the Tribuna1 is set aside.

10. This appeal is accordingly hereby accepted and the cross objections filed by the claimants are dismissed. In the circumstances, however, there will be no order as to costs.

11. Appeal allowed.