

(1977) 01 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Misc. Appeal No. 8 of 1969

Ghanshyam Singh

APPELLANT

Vs

Veera Devi and Others

RESPONDENT

Date of Decision : 15-01-1977

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1977) ACJ 173

Hon'ble Judges : U.N. Bhachawat, J;C.M. Lodha, J

Bench : Division Bench

Advocate : Swamisaran, for the Appellant; S.K. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—This is an appeal u/s 110D of the Motor Vehicles Act by Ghanshyam Singh whose claim for compensation on account of injuries sustained by him has been negated by the Claims Tribunal.

2. The facts of the case are that the Appellant entered into a contract for supply of fodder to one Nanoomal Sindhi of Lashkar. Nanoomal Sindhi hired truck No. 5095 MPG owned by Mrs. Veeradevi and got the fodder loaded at village shakh-nor, the place of residence of the Appellant. Nanoomal Sindhi asked Ghanshyam Singh to come in the truck to Lashkar where he would pay the price of the fodder. Consequently, Ghanshyam Singh got into the truck. It is alleged, that while the truck was proceeding on Bombay-Agra road near Panihar, it got overturned as a result of which the Appellant sustained injuries so much so that his right leg had to be ultimately amputated.

3. The Appellant's case is that the accident took place on account of the rash and the negligent driving by the respondeat No. 2 Bharat Singh. He filed the present claim before the Claims Tribunal for Rs. 2,55,400/- against Mrs. Veeradevi owner of the truck, Bharat Singh, driver of the truck and the Secretary, Indian Insurance Companies Association Pool, Bombay with whom the

truck was insured. The claim was resisted by all and after recording the evidence adduced by the parties disallowed the claim.

4. The first point urged by the learned Counsel for the Appellant is that the accident had taken place on account of rash and negligent driving and that the driver had not taken reasonable care in driving the vehicle, and, therefore, the Respondents are liable to pay damages to the Appellant. We have, therefore, scrutinised the evidence led by the parties in this connection. A.W. I Govind Singh has stated that at Shivpuri the driver and the cleaner had taken some liquor and after the truck had left Shivpuri both the wheels of the truck got burst at a distance of about 25 miles from Shivpuri and the driver repaired them and the truck again started, after they had covered about 4 miles, it is said, that the truck overturned near Barai-Panihar, but the witness is unable to state how and why the accident had taken place. The only other witness from the side of the Appellant on the point is the Appellant himself. He states that the truck was going at a high speed, but he could not say as to why the truck got overturned. He further states that the injuries were caused to his leg as the leg got entangled in the door of the truck. It is, however, significant that neither Govind Singh nor Ghanshyam Singh has stated approximately as to what was the speed of the truck when it got overturned. Besides this evidence, the Appellant got produced the entry of the Roznamcha of Panihar Police Station Ex. P. 1 in his evidence. It is mentioned therein that the left rear wheel had suddenly burst and on that account the spring of the truck gave way and the truck got overturned on the left side. From the aforesaid evidence, the learned lower court came to the conclusion that there was a mechanical break-down in the truck over which the driver could have no control. In our opinion, this finding cannot be said to be erroneous. The learned Counsel for the Appellant failed to point out any circumstance to us from which it may be inferred that the accident took place on account of rashness or negligence on the part of the driver. It appears to us that the accident was a result of vis-major. The lower court has also found that the truck got overturned on the road itself and did not swerve on either side of the road. This fact also confirms our conclusion that there was no rashness or negligence on the part of the driver.

5. We may, here mention that the Appellant's counsel has laid much store on the fact that the driver and the cleaner had taken liquor at Shivpuri and that is why the accident took place. There is, however, nothing on the record to show that the driver was not normal when he was driving the vehicle. The driver was not subjected to medical examination. In these circumstances, the bald statement of the Appellant that the driver had taken liquor cannot be accepted. Besides that, we also find force in the lower court's observation that the accident had taken place after about 7 hours of the alleged taking of liquor by the driver at Shivpuri and the effect of liquor, if any, had completely vanished at the time when the accident is said to have taken place. We do not mean by this observation, to hold that any driver would be justified in driving the vehicle after he has taken liquor in whatever small quantity. But in the present case, we are not inclined to accept

the version of the Appellant that the driver was driving the vehicle in a state of intoxication.

6. Learned Counsel for the Respondent has raised an interesting legal argument before us that since it was a case of vehicle meant for carrying goods and the Appellant had accepted gratuitous ride which was prohibited in case of vehicles meant for carrying goods, no claim for damages is sustainable. But we do not think it necessary to examine this point, in view of our finding that no rashness or negligence has been proved on the part of the driver and, therefore, none of the Respondent's can be held liable.

7. In the result, we dismiss the appeal but make no order as to cost.