
(1984) 04 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 442 of 1978

Harnam Singh and Another

APPELLANT

Vs

Aar Pee Auto Aid and Others

RESPONDENT

Date of Decision : 04-04-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1986) ACJ 396 : (1987) 61 CompCas 619

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

Bench : Single Bench

Advocate : S. Maharaj Bakhsh Singh, for the Appellant; L.M. Suri and V.P. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—A car travelling on the main highway between Amrit-sar and Pathankot suddenly went off the road and hit into a tree resulting in the death of the car driver and two others travelling in it, one of whom was Sarbjit Singh, Section Officer in the Mechanical Drainage Division, Ferozepore, Punjab. This happened near Pathankot soon after midnight on May 22, 1974.

2. The Tribunal negated the claim for compensation of the parents of Sarbjit Singh, deceased, holding that this was an inevitable accident caused by a tyre burst and not due to any rash or negligent driving by the car driver.

3. The claimants blamed this accident upon the rash and negligent driving of the car driver. It was their case that the car was being driven at a very high speed, as a result of which the driver lost control and hit against a tree on the wrong side of the road. The plea of the owner of the car as also the respondent-insurance company with which the car had been insured, on the other hand, was that this was an accident pure and simple as it occurred on account of the left front tyre of the car bursting, resulting in loss of control over the vehicle and it hitting into the tree on the right side of the road.

4. The only eye witness to the occurrence was PW-3, Murli Dhar, who was travelling in the ill-fated car at the time of the accident. According to him, he was dozing when the accident occurred. He was woken by the sound of the tyre bursting and stated that he did not know what had happened thereafter as he became unconscious.

5. It will be seen that by his testimony, PW-3, Murli Dhar, has supported the version of the car owner that the tyre burst preceded the accident. The question, however, arises does such tyre burst absolve the respondents from liability for the accident ?

6. The claimants led evidence with a view to establish that the condition of the tyres of the car was poor and it was on account thereof that the tyre burst and accident occurred. In this behalf, reference was in the first instance made to the statement of PW-5, Inspector, Karam Chand, who reached the spot the next morning on learning of the accident. He clearly stated that he did not find the tyres of the car to be in good condition. PW-8, Sub-Inspector, Harbans Singh, who was at that time posted as Station House Officer, Police Station Sadar, too deposed that the condition of the punctured tyre was very bad and further that he saw skid marks on the road 55 paces long from the road towards the tree against which the car struck. There is then the testimony of the claimant, PW-6, Harnam Singh, who too deposed that he found the tyres of the car in a poor condition when he saw the spot on May 23, 1974. As against this evidence, the respondents examined RW-3, B. H. Pestonji, surveyor of the insurance company, who deposed that he had inspected the car on May 28, 1974, in order to assess the damage to it. He stated that he found the tyres of the car to be in perfect condition. He also proved his certificate, exhibit R-1, to this effect.

7. In dealing with the conflicting evidence relating to the condition of the tyres of the car, it would be pertinent to note that no evidence was led to show when the tyres of the car had been purchased and how much mileage they had covered. Mr. L. M. Suri, counsel for the car owner, was also not able to suggest any reason to doubt the testimony of the two police officials, PW-5, Inspector, Karam Chand, and PW-8, Sub-Inspector, Harbans Singh, who had both categorically deposed to the poor condition of the tyres. As regards, RW-3, B. H. Pestonji, he was obviously interested in the respondent-insurance company, being a surveyor thereof. Further, it is also worthy of note that he surveyed the car almost after a week after the accident and as regards the certificate, exhibit R-1, it was issued two and a half years thereafter, on November 3, 1976. There is no explanation why this certificate was issued at such a belated stage. In the circumstances, it must be taken as established that the condition of the tyres of the car at the time of the accident was indeed poor.

8. Further, the fact that the skid marks were noticed extending to a distance of 55 paces is manifestly indicative of the high speed at which the car was travelling at the time of the accident. With the condition of the tyres being poor and such being the speed of the car, whether this was a case of a puncture of a tyre or

tyre burst, negligence of the car driver is clearly writ large. Indeed, the doctrine of *res ipsa loquitur* would clearly be attracted shifting the burden thereby upon the respondent-car owner to dispel the inference of negligence arising on that account, a burden which he has not been able to discharge.

9. Having regard to the totality of the circumstances of the case, therefore, there is no escape from the conclusion that the accident here was caused by the rash and negligent driving of the car driver.

10. The question now arises as to the amount payable as compensation to the parents of Sarbjit Singh, deceased.

11. Compensation in such cases has to be determined in keeping with the principles laid down by the Full Bench in *Lachhman Singh and Others Vs. Gurmit Kaur and Others*, . In this context, it would be relevant to note that Sarbjit Singh, deceased, was only about 28 years of age at the time of his death. He was employed as Section Officer, but on ad hoc basis only for a period of six months. The fact that he was only an ad hoc employee is not really a matter of such significance, as considering his qualifications, it would not be a wrong assumption to hold that he had the capacity to earn Rs. 400 to Rs. 500 per month. The deceased was unmarried at the time of his death, but had he lived, there is every likelihood that he would have got married and that too not in the too distant future. Marriage would have brought upon the deceased, the expenses of looking after his wife and family. These aspects are being mentioned as the claimants here are the parents of the deceased. The contribution that the deceased would have made to the parents would naturally have got curtailed by the family expenses of the deceased. The father of the deceased was about 54 to 55 years of age at the time Sarbjit Singh died, while his mother was about 50 to 51 years of age. Parents do harbour reasonable expectations of financial support from their earning sons and it would, therefore, be correct to assume that if the deceased had not been killed in this accident, he would have provided to his parents to the extent of at least Rs. 1,500 per year, for a period of 15 years or so. On this basis, it would be reasonable to hold the claimants entitled to a sum of Rs. 22,500.

12. Mr. V. P. Gandhi, appearing for the respondent-insurance company, sought to question the liability of the insurance company to pay the amount awarded. The argument being that Sarbjit Singh, deceased, was a passenger in the car. u/s 95 of the Motor Vehicles Act, 1939, an insurance policy is not required to cover the risk to passengers. Risk to passengers can be covered on payment of extra premium, but there was no evidence in this case that such risk to passengers had been so covered. This argument has to be repelled on the short ground that it is for the first time in appeal that such a point has been raised. No such objection had been taken in the return filed by the insurance company nor had it been raised before the Tribunal. The matter whether or not risk to passengers is covered by a policy of insurance is a question of fact which is to be considered in the light of the evidence on record. When no such objection is raised and there is

no material on record to show that such risk is not covered, such objection cannot be allowed to be raised for the first time in appeal.

13. The claimants are accordingly hereby awarded a sum of Rs. 22,500 as compensation for the loss suffered by them on account of the death of their son, Sarbjit Singh. They shall be entitled to this amount along with interest at the rate of 12 per cent. per annum from the date of the application to the date of the payment of the amount awarded. The liability for the payment of the amount awarded shall be joint and several of the respondent car owner as also the insurance company.

14. This appeal is accordingly hereby accepted with costs. Counsel's fee Rs. 300.