

(1983) 10 P&H CK 0018
In the Punjab And Haryana At Chandigarh

Haryana Milk Foods and Others

APPELLANT

Vs

Santokh Singh

RESPONDENT

Date of Decision : 20-10-1983

Acts Referred:

Citation : (1984) 1 ACC 374 : (1985) ACJ 269

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

Bench : Single Bench

Judgement

S.S. Sodhi, J.—The claimant Santokh Singh sustained injuries when a car came and hit into him while he was crossing the road. This happened on December 14, 1974 near Baldev Nagar, Ambala-Kalka road. The Tribunal holding that this was a case of negligence on the part of the car driver, awarded a sum of Rs. 7500/- as compensation to Santokh Singh.

2. The challenge in appeal was to the finding of negligence returned against the car driver.

3. It was the case of the claimant that the accident had been caused by the rash and negligent driving of the car driver. It was said that he was going on foot when the car came at a high speed and struck against him. According to the car driver, on the other hand, the accident occurred when the claimant all of a sudden came on to the road without caring for the traffic thereon. A plea was also raised that the claimant had admitted in the First Information Report recorded on January 14, 1975 that the accident had occurred due to his own negligence when he was crossing the road without seeing the oncoming car and further that the driver of the car was not negligent. This plea was denied in the application filed by the claimant. It was stated there that the Head Constable had written something on a paper and got his signatures thereon, but he did not know what had been written on it.

4. The claimant Santokh Singh when he appeared in the witness box as AW. 4 deposed that on reaching the road junction, he looked towards his right and saw

that a bus was coming from the side of Kalka which was about a furlong away, he then looked to the other side and proceeded to cross the road. He had almost reached the kacha portion of the road on the opposite side, when suddenly the car came and struck against him. It was further his testimony that about 4/5 days after the occurrence, he had sent a report Exhibit A. 3 to the Police Station through AW. 1 Rattan Singh and later he had also sent a notice Exhibit A. 4 under registered cover to M/s Haryana Milk Food, who were the owners of the offending car. It was thereafter that the police came to the hospital and recorded his statement. In cross examination he admitted that Exhibit Rule 1 which he had filed in Court was the report recorded in the rozenamcha on the basis of his statement made to the police. In this statement, it was recorded that he had seen a bus coming from the side of Chandigarh which was at a distance of about a furlong and as he thought that the bus was at some distance and he would be able to go across the road that he attempted to cross it, but then suddenly the car came from the side of Chandigarh and struck against him. At that time he was concentrating on the oncoming bus. He also admitted that he had stated that he had not seen the car approaching towards him. When confronted with the further statement recorded in Exhibit Rule 1 that there was no negligence of Sohan Lal, the driver of the car and that he had proceeded to cross the road without looking towards either direction, he denied having made any such statement. It is pertinent to note here that there was no suggestion by the claimant that there was any obstruction to his vision with regard to the traffic on the road when he proceeded to go across the road. In other words, there is no explanation from him to account for the fact that if he could see the bus, what prevented him from seeing the car too, considering that both these vehicles were coming from the same direction. It may be noted here that in his examination-in-chief, he had mentioned that the bus that he had seen coming was from the side of Kalka. When the car driver Sohan Lal came into the witness box, he deposed that there was a bus coming from the opposite direction, that is, from the side of Ambala. No suggestion was put to him with regard to any bus coming from the side of Chandigarh.

5. In dealing with the statement Exhibit Rule 1, counsel for the claimant was very vehement in his contention that this was a false and fabricated report. He could, however, point to no material or circumstance to lead to any such conclusion. No motive or interest of the police in doing so could be detected from the evidence on record nor indeed is there any mention of any such suggestion even to any of the witnesses concerned. The only point made by him in this behalf was that the statement contained in Exhibit Rule 1 was contrary to the notices Exhibits A. 3 and A. 4 where blame for the accident was placed entirely upon the car driver. This by itself is not a circumstances to attribute falsity and fabrication of such a serious nature to the police or to par driver or its owner. Coming back to the accident itself, it was incumbent upon the claimant to proceed to cross the road only it was clear. The car could not have suddenly, emerged put of no where and struck against the claimant. If he could see the

but he could also have seen the car. On the face of it, therefore, negligence here must be attributed to the claimant himself. There is a ring of plausibility in the version of the car driver that the claimant had suddenly come to the road and this is what led to the accident. It would appear that this was indeed the manner in which the accident took place.

6. The claimant had also examined Jetha Singh as an eye witness to this occurrence. Jetha Singh had stated that the claimant had almost crossed the road when the car struck into him. In dealing with his testimony, it would be pertinent to note that Jetha Singh was a co-villager and neighbour of the injured claimant. It is significant to note that he neither accompanied the injured to the hospital nor did he inform his house-hold about this accident. He made no statement to the police and it was for the first time in Court that he came-forth to make such a statement. It would clearly not be safe to rely upon his testimony.

7. Seen in the totality of the circumstances of the case no negligence can be attributed to the car driver and in this view of the matter, it cannot but be held that the claimant is not entitled to any compensation for the injuries received by him. The award of the Tribunal is accordingly set aside.

8. This appeal is consequently hereby accepted and the cross-objections are dismissed. In the circumstances, however, there will be no order as to costs.