
(2001) 08 P&H CK 0189

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 826 of 1985

Haryana State

APPELLANT

Vs

Krishan Kumar

RESPONDENT

Date of Decision : 20-08-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 166

Citation : (2003) ACJ 549

Hon'ble Judges : R.C. Kathuria, J

Bench : Single Bench

**Advocate : Sultan Singh, Assistant Advocate General, for the Appellant;
Sandeep Katla, for the Respondent**

Final Decision : Dismissed

Judgement

R.C. Kathuria, J.—This appeal is directed against the order dated 15.5.1985 of the Motor Accidents Claims Tribunal, Hissar, whereby the claim of Krishan Kumar-respondent No. 1 was accepted and he was awarded compensation amounting to Rs. 14,745/-. The essential facts to focus the controversy involved in this appeal have to be noticed in nutshell.

2. On 11.2.1984, truck bearing No. HRF 7098 driven by Des Raj in company of conductor Satbir Singh, started from Rawalwas Oil Mills at about 8.00 p.m. after loading "Khal" for Delhi. It was being driven at the normal speed and on left side of the road. When the said truck reached near the sand-dunes of village Mayyer, the driver noticed a truck bearing No. HRB 3245, being driven by Sujjan Singh in a rash and negligent manner, coming on the wrong side of the road. The driver of truck No. HRF 7098 slowed it down by the applying the brakes. In the meanwhile, the driver of truck No. HRB 3245, by bringing it. on the wrong side of the road, struck against truck No. HRF 7098, thereby causing extensive damage to truck No. HRF 7098. Report of the accident was lodged with the Police Station Hissar on 12.2.1984 at 00.40 a.m. by Des Raj, driver of truck No. HRF 7098. The truck No. HRB 3245 belonged to Haryana Roadways, Hissar.

3. In the claim petition filed before the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal"), a compensation of Rs. 40,000/- was claimed. The claim petition was contested by the State of Haryana and Haryana Roadways, Hissar through its General Manager, respondent Nos. 1 and 2 respectively in the claim petition (herein appellants 1 and 2 respectively). In the joint written statement filed by the respondents, the factum of accident was admitted, but it was disputed that the accident had occurred on account of negligent driving by Sujjan Singh, the driver of truck No. HRB 3245. Sujjan Singh-respondent No. 3 also denied the version given by the claimant. It was pleaded by him that on 11.2.1984, he was driving the truck HRB 3245 from Hansi, Hissar and at about 7.00 a.m., when he reached village Mayyer, he noticed that a private truck was coming from the opposite direction at a very high speed. But suddenly the main leaf of the front right side of the "Kamani" of the truck No. HRB 3245 was broken and the truck swerved to the right side with a jerk. In the meantime, the truck No. HRF 7098 coming from the opposite direction at a very high speed, dashed against the right side of truck No. HRB 3245 resulting into damage to the truck and injuries to him. Thus, he maintained that it was an inevitable accident and could not have been avoided even after exercising due care and caution. He, therefore, pleaded that the cause of accident and the damage to the truck could not be attributed to him.

4. On the above pleadings of the parties, the following issues were framed by the trial Court :-

"(i) Whether the accident took place due to rash and negligent driving of Bus No. HRB 3245 by respondent No. 3 ?

(2) To what amount of compensation is the petitioner entitled and from whom ?

(3) Relief."

5. While deciding issue No. 1 in favour of the claimant, the trial Court came to the conclusion that the accident took place due to the rash and negligent driving of the driver of truck No. HRB 3245 and thus, determined compensation of Rs. 14, 745/- under issue No. 2. The claimant was also awarded the interest at the rate of 19% per annum and costs assessed at Rs. 200/- for which the respondents were held liable jointly and severally, as per award dated 15.5.1985. It is this order which has been impugned in the present appeal.

6. I have heard learned counsel for the parties. Learned Assistant Advocate-General for the State of Haryana, while assailing the findings of the Tribunal under issue No. I, contended that the learned Tribunal has overlooked the circumstances which led to the accident as pleaded by the Sujjan Singh-respondent No. 3. According to him, no fault can be found with the driver of truck No. HRB 3245 when the main leaf of the front right side of the "Kamani" of this truck had broken down all of a sudden, as a result thereof the truck swerved on the right side. Further, it was also submitted by him that it was the duty of the driver of truck No. HRF 7098 who had noticed the truck No. HRB 3245

coming from the opposite direction, to slow down the truck and take all precautions to avoid the accident. Therefore, it is a case where apart from the contributory negligence of driver of truck No. HRF 7098, the defence put forward by driver of HRB 3245 that it is a case of inevitable accident should have been accepted by the learned Tribunal.

7. There is absolutely no merit in the submissions made by the learned Assistant Advocate-General because the stand taken by the appellant has not been proved by the evidence brought on record. The driver of truck No. HRF 7098 has in clear terms, testified that he was driving the truck on the left side of the road and had also given "dipper" so as to caution the driver of the truck coming from the opposite direction, but still the driver of truck No. HRB 3245 brought the truck on his side and struck it against the window of truck No. HRF 7098. His version finds mention in the FIR lodged by him with the Police Station Hissar. Hardly anything has come out in cross-examination to dislodge his version in this regard. Sujjan Singh-respondent No. 3 appeared as RW-1 and narrated his version of the accident. The version of the accident was never put to Des Raj during his cross-examination. There is no other evidence of expert which had been examined from the side of the respondents-appellants to establish the condition of the truck on the date of accident, which led it to swerve to the right side of the road on account of breaking down of the main leaf of the front right side of the "Kamani" of the truck. The learned Tribunal took notice of the observation made in *Simla Devi and Ors. v. Pepsu Road Transport Corporation* 1984 A.C.J. 473 that where mechanical failure is pleaded as a defence as the cause of accident, then the onus is on the driver to satisfy the conscience of the Court that such mechanical failure had resulted despite due care and caution on their part from time to time to keep the vehicle in a roadworthy condition. As no such evidence was produced to show that the mechanical failure has resulted despite due care and caution exercised by the respondents-appellants, the stand taken by the driver of HRB 3245 was negated.

8. Regarding compensation awarded to the claimant, the Tribunal has taken into account report of the mechanic which enlisted the items of damage caused to truck No. HRF 7098. This report was prepared by the mechanic of Haryana Roadways, Hissar. Chander Bhan, PW-4 proved the receipt Ex.P-6 for Rs. 17,000/- in respect of the work undertaken for the replacement of cabin and body of truck No. HRF 7098. While considering the ambiguity in receipt Ex.P-6, only a sum of Rs. 2000/- was awarded as compensation on that account. With regard to the spare parts purchased by Sohan Lal PW-5, who carried out repairs on the truck, against the claim of Rs. 3375/-, only Rs. 875/- were awarded as compensation on that account while taking into account that no evidence has been led regarding the purchase of spare parts to the extent of Rs. 2500/-. Rs. 700/- were allowed on account of expenses incurred towards painting the body of the truck. Amount of Rs. 2950/- claimed vide receipt Ex.P-9 given by Ramesh Kumar PW-7 for replacement of sone tyre which had burst in the accident, was considered reasonable and awarded. Despite the statement of Rajinder Singh

PW-8, who had proved the receipt Ex.P-10, charges of Rs. 3324/- for carrying out repairs on the electric parts of the truck in question, the same was found to be not worthy of complete reliance no Indication was given of the source from which the replaced material was purchased and thus, only Rs. 2000/- were allowed on this account. Payment of Rs. 1170/- made vide receipt Ex.P-11 for welding etc. of the truck was accepted as correct by the Tribunal and so was the receipt Ex.P-12 for Rs. 1050/- for removing the dents, as proved by Raj Kumar PW-12. Taking into account all these items, a total compensation of Rs. 10745/- was allowed to the claimant. In addition, Rs. 3000/- was allowed for loss of income for the period of one moth for which the truck could not play on account of damage caused by accident. Another Rs. 1000/- was allowed as depreciation cost. In all, the claimant was held entitled to recover Rs. 14,745/- as compensation from the appellants. No fault can be found with the finding of the learned Tribunal, which are fully supported by the evidence brought on record. It is not the case where the Tribunal has overlooked the factual or the legal position or has ignored the parameters for determining a reasonable compensation. Therefore, the findings of the tribunal are upheld. There being no infirmity in the impugned award, the same is sustained.

9. For the aforesaid reasons, there is no merit in the appeal and the same is accord ingly dismissed. In the circumstances, the parties are left to bear their own costs.