

(1988) 10 P&H CK 0092
In the Punjab And Haryana At Chandigarh

Haryana State Electricity Board and Another	APPELLANT
Vs	
Chhotu Ram and Others	RESPONDENT

Date of Decision : 14-10-1988

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1989) 2 ACC 400 : (1989) 96 PLR 26

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Judgement

G.R. Majithia, J.—This appeal is directed against the award of the Motor Accident claims Tribunal, Narnaul. The learned Tribunal awarded a sum of Rs. 36,000/- as compensation to the parents of the deceased.

2. The brief facts as unfolded in the pleadings of the parties are Devinder Kumar, aged 15 years on the date of accident, a student of 8th Class studying in Government High School, Rewari. On July 15, 1981 he was coming to village Motla Kalan on a bicycle. When he reached near village Berli he met Budh Ram son of Jug Lal and Jug Lal son of Chunni residents of village Khushpura. The deceased stopped there and started talking to them. They were standing five feet away from the edge of the pucca road. A pick up van HRG 6040 belonging to Haryana State Electricity Board came from the side of village Daroli on its way to village Berli. It was being driven by Kali Ram driver employed in the Haryana State Electricity Board. The vehicle was being driven by Kali Ram in course of his employment. The vehicle was turned towards the deceased all of a sudden. As a result thereof, he was hit by the vehicle and he died at the spot. The deceased was a good sportsman and had represented the school in State level matches.

3. The Haryana State Electricity Board and its Executive Engineer, who were arrayed as respondent Nos. 2 and 3, filed written statement controverting the allegations made in the petition. Driver Kali Ram filed separate written statement. It was denied that the vehicle was involved in the accident or it caused the death of Devinder Kumar- The driver additionally also pleaded that he was prosecuted

in a case u/s 304A of the Indian Penal Code and was acquitted by the Court.

4. The learned Tribunal framed the following issues:

(1) Whether the petitioners have locus standi? OPP.

(2) Whether Devinder Kumar son of Chhotu Ram resident of village Motla Kalan died of any automobile accident involving vehicle No. HKG-6040 as alleged? OPP.

(3) If issue No. 2 is answered in the affirmative whether the aforesaid accident took place on account of recklessness, negligence or any other fault on the part of the driver vehicle No. HRG 6040? OPP.

(4) Relief.

5. Issue No. 1 was answered in favour of the applicants. It was held that the applicants were the parents of the deceased and were entitled to maintain the application. Under issue No. 2, learned Tribunal gave a firm finding that Kali Ram caused death of Devinder Kumar by rash and negligent driving of the vehicle. The learned Tribunal awarded a sum of Rs. 36000/- as compensation to the parents of the deceased.

6. Haryana State Electricity Board has come in appeal against the award of the learned Tribunal.

7. The learned Counsel for the appellants submitted that the driver of the vehicle was acquitted of the charge u/s 304A of the Indian Penal Code by the Judicial Magistrate, Rewari and in view of that judgment it ought to be held that the driver was not driving the vehicle in a rash and negligent manner. He further submitted that the compensation awarded by the learned Tribunal is excessive.

8. The submission of the learned Counsel is not tenable. It is correct that the driver was acquitted of the charge. A perusal of the judgment reveals that the complainant at whose instance the first Information Report was lodged and two eyewitnesses turned hostile and expressed their total ignorance about the accident. In these circumstances, the learned Magistrate was left with no alternative but to acquit the accused. A judgment rendered by a Criminal Court is not relevant before (he civil court. A Full Bench of Lahore High Court dealt with this matter in a judgment reported as B.N. Kashyap v. Emperor AIR 1945 Lah. 23, wherein it was held as under:

A finding on certain facts by a Civil Court in action in per-sonam is not relevant before the Criminal Court when it is called upon to give a finding on the same facts. Similarly, the finding on certain facts by the Criminal Court is not relevant before the Civil Court when it is called upon to a finding on the same facts.

9. I have gone through the evidence produced by the claimants. PW 1 Jug Lal had witnessed the occurrence. He supported the claimants' version and I am satisfied that he is a truthful witness. His non-examination by the police during the investigation of the criminal case is not material. His presence at the time of

accident is probable. The claimant version has received indirect corroboration from the statement of Kali Ram driver. In his written statement he denied the involvement of the vehicle, which he was driving in any accident. But at the trial when he appeared as his own witness he took altogether a different stand. He admitted that he drove vehicle No. HRG 6040 from Bidholi to Daroli and while coming from Bidholi to Daroli he found the dead body of a young boy lying by the roadside. He went to the Police Station Jatuseana to inform the police having seen the dead body of a young boy lying near village Khushpura. The Police falsely implicated him. His statement goes to establish that he drove vehicle No. HRG 6040 and his vehicle was in the area of village Khushpura about the time when the accident took place. He was arrested by the police in the evening on the day of occurrence for causing the death of the deceased. The fact lends credence to the applicants version. The testimony of Kali Ram does not inspire confidence.

10. Kali Ram came with another version that after he was falsely implicated in the criminal cases he reported to his employer that he has been falsely implicated. No report was lodged by Kali Ram in writing to his employer and no department official was produced in evidence to substantiate his version that he reported to the department officer that he was wrongly implicated. The cumulative effect of all these facts when taken together leads to preponderance of probability that Kali Ram driver caused the death of Devinder Kumar by rash and negligent driving of the vehicle.

11. On the quantum of compensation, no meaningful argument could be advanced that the compensation awarded was excessive. The deceased was aged 15 years and was studying in 8th Class at the time of accident. He was sportsman. The learned Tribunal awarded a sum of Rs. 36,000/- by way of compensation and I do not find it excessive warranting interference. The appeal is dismissed, however, leaving the parties to bear their own costs.