

(1996) 04 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No"s. 106 and 156 of 1991

Himachal Road Trans. Corpn. and Another

APPELLANT

Vs

Atma Ram and Another

RESPONDENT

Date of Decision : 25-04-1996

Acts Referred:

Citation : (1997) ACJ 946 : (1996) 2 ShimLC 213

Hon'ble Judges : R.L. Khurana, J;P.K. Palli, J

Bench : Division Bench

Advocate : Deepak Gupta, for the Appellant; B.K. Malhotra and Rakesh Jawal, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Palli, J.—Both these appeals have been filed by the Himachal Road Trans. Corpn. against the award of the Motor Accidents Claims Tribunal (I), Mandi, Kullu and Lahaul & Spiti Districts at Mandi (hereinafter referred to as "the Tribunal"), dated 1.4.1991.

2. Two separate claims were filed which had arisen out of the same accident. Both these claims were consolidated and have been disposed of by a common award. Two separate appeals (F.A.O. Nos. 106 and 156 of 1991) have been filed against the award and are proposed to be disposed of by a common judgment.

3. On 15.6.1989, Dharam Pal had come to the town of Mandi along with his friend Manohar Lai, since deceased. Dharam Pal was driving the motor cycle and Manohar Lai was sitting on the pillion. Both these persons had started from Mandi for their village at about 9.00 at night and on their way, bus belonging to the appellant was spotted coming from the opposite direction. Dharam Pal at that point noticed that some debris of a landslide were lying on the road and when the bus was seen coming from the opposite side, he used dipper to apprise the driver of the bus who did not pay any heed to this signal. It is said that the driver of the bus did not even move towards the left side nor slowed down the speed.

In this situation, Dharam Pal, in order to avoid the accident, turned the motor cycle towards the hill side, i.e., towards the left hand side and the motor cycle, after hitting the hill, deflected towards the road hitting into the bus. Manohar Lai, who was sitting on the pillion, fell in front of the bus and was over run by it. Dharam Pal and the motor cycle got entangled in the bumper and he was dragged to some distance before the bus could actually stop.

4. The deceased as well as Dharam Pal, injured, were found lying under the chassis. Manohar Lal had died at the spot. Dharam Pal, who suffered multiple injuries and fractures, was shifted to the hospital and survived. It may be noticed here at this stage that Manohar Lal was only 25 years of age and had qualified in the draftsmanship diploma. Two separate claims were filed, one by the parents of Manohar Lal deceased and the other by Dharam Pal who received multiple injuries in the said accident.

5. The learned Tribunal, on issue No. 1, recorded a finding that the fault lay with the driver of the bus. It was held that the driver of the bus did not pay any heed to the signal of dipper and hit the motor cycle. It was observed that the accident could be avoided in case the driver of the bus was slightly cautious, whereas the accident had actually taken place due to his rash and negligent driving. On the issue of quantum, the learned Tribunal gave the award of Rs. 51,000/- to the parents of Manohar Lal, deceased and in respect of Dharam Pal, a total amount of Rs. 10,000, on account of damages, stands awarded.

6. Assailing the impugned judgment, the learned Counsel appearing for the appellant has very fairly not touched the other findings recorded by the learned Tribunal except arguments on issue No. 1 and the thrust of the arguments proceeds that the accident did not take place due to the rash or negligent driving on the part of the driver of the bus. Learned counsel is at pains to stress that the fault absolutely lay with Dharam Pal who was driving the motor cycle and the moment he saw that a part of the road was blocked due to debris lying there, he should have halted there itself when he had seen that the bus was coming from the opposite direction. Learned counsel further proceeds to submit that there was a lot of variance between pleadings and proof and that the claimants had made considerable improvements in their versions during the trial of the case and what was pleaded by them in the claim petitions, was a different story.

7. In order to persuade us that driver of the bus was not at fault, the learned Counsel has taken us through the statements of Gulab Chand, PW 2, Dharam Pal 1997 (petitioner), PW 5 and Roop Lal Saini, RW 2, Assistant Public Prosecutor who was examined by the appellant. We have carefully gone through these statements.

8. A reading of the evidence, placed on record, does show that there has been a slight variance in the pleadings and the proof. At this stage, we cannot refrain from observing that the appellant too had made considerable improvements during the trial and what they had pleaded, is totally different. The driver of the

bus has stated, on oath, that the vehicle did not touch the motor cycle and after hitting the hill-side, the motor cycle fell on the road and resultantly, Manohar Lal died. In the written statement, the collision is admitted. A word of "caution" needs to be given here that the high degree of standard of proof and the law relating to pleadings as in civil suits, is not to be applied in the same manner in cases of this nature. The admitted position is that the motor cycle collided with the bus. This too has been admitted by the driver that the motor-cyclist had given the signal by way of dipper but in turn, he also gave a dipper. It is here that the bus driver was expected to go cautiously and should have stopped the bus or taken it slightly on the other side where, admittedly, there was a space of about 5 ,to 6 feet, as stated by RW 2.

9. In the statement of Roop Lal Saini, RW 2, it has been said that no time was there for the driver of the bus to stop it and all this happened in a fraction of a second and the bus crossed over the motor cycle. It was thereafter that the bus was brought to the left side and stopped at the edge of the bank of "khud". He also says that the motor cyclist was at a considerable distance and when he noticed, it was 70-75 metres away from the bus. If that was the distance, as said by this witness, there was sufficient time and space for the driver of the bus, which was a heavy vehicle, to stop it or to slow it down in order to avoid the accident. This witness strangely gives a new version that the driver of the motor cycle did not use the dipper but switched off the light after turning the motor cycle towards his extreme left. This witness, thus, totally belies the version set up by the appellant.

10. Learned counsel appearing for the respondents have cited case law on the subject reported as *Rajeswari Transports (Firm) Vs. M.G. Rajan and Others*, *Supriti Dean v. Pratap Steel Rolling Mills Pvt. Ltd.* 1983 ACJ 533 ; *Suraj Narain v. Sneh Lata Jain* 1985 ACJ 581 ; *Shivalik Agro Poly Products Ltd. Vs. Jagdish Raj Mago and Others*, and *Kishanlal Vs. Shriram and Others*, . All these decisions are on the point that the strict principles of pleadings are not applicable in cases resulting out of accidents and it was not necessary that there should be specific averments on the point in the claim petition. We have already made observations above that such a type of pleading is not required as is done in civil cases. This legislation, in our view, is towards the social welfare of the citizens and to provide them security resulting out of unforeseen and unfortunate accidents.

11. Once we hold that strict rules of pleadings and proof are not applicable, it would also have to be observed that discrepancies made in the statements of the witnesses who are being examined at a much later stage which are not of much value or of serious nature, have to be ignored in order to reach a just decision. It is further too well-known and has been held in a large number of judgments that greater care and caution has to be taken by the driver of the heavier vehicle as against smaller and light vehicle.

12. We further cannot shut our eyes to the basic realities that life of a young person, who was only 25 years of age, was brought to a halt. He was a qualified

person having a diploma in draftsmanship. He had a long way to go in his life and career.

13. The other claimant, i.e., Dharam Pal, who had sustained multiple injuries and fractures, has been awarded a sum of Rs. 10,000/- only towards damages. The parents of the deceased Manohar Lal have been awarded Rs. 51,000/- only which, in our view, is on the lower side. The learned Counsel appealing for the appellant rightly has not touched this aspect of the matter, i.e., the quantum.

14. After analysing the pleadings and the evidence placed on record, we are of the firm view that the driver of the bus if had taken precautions, could have avoided the accident. No care was taken when, admittedly, the motor cyclist used dipper. There was, thus, no choice left with him to avoid head-on collision except to take the motor cycle to the extreme left, i.e., hill-side, where it struck and turned resulting in collision. This is also an admitted position that the bodies of both these persons, along with the motor cycle, were taken out from underneath the chassis. The driver of the bus has further falsified himself when he says that he had brought the bus to the extreme side of the road and there was hardly one foot distance on the portion of the road towards left whereafter there was a khud. We have already noticed above that their own witness RW 2 has admitted that there was ample space which was wide enough to the extent of 5 to 6 feet towards the left side of the bus and, in our view, with a slight caution if the bus could have been taken a little towards that side, the accident could be avoided. Resultantly, the driver of the bus failed to exercise due care and caution and is found guilty of rash and negligent driving.

15. We, thus, find no force in the arguments raised by the learned Counsel for the appellant nor we find that the impugned award, in any way, suffers from any illegality, impropriety or mis-reading of evidence.

No other point was urged by the learned Counsel for the parties.

Consequently, in view of what has been said above, the appeals have no merit and are ordered to be dismissed with costs which are assessed at Rs. 2,000/- to be paid to the claimants in each of these appeals.