
(1969) 08 DEL CK 0017
In the Delhi High Court
Case No : F.A.O. No. 14-D of 1965

Jagjit Singh

APPELLANT

Vs

Ram Chander and Others

RESPONDENT

Date of Decision : 01-08-1969

Acts Referred:

Citation : (1969) ACJ 306

Hon'ble Judges : V.D. Misra, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : D.R. Sethi, for the Appellant; H.S. Dhir, for the Respondent

Final Decision : Allowed

Judgement

Hardayal Hardy, J.—This first appeal is directed against an order made by the Motor Accidents Claims Tribunal Delhi whereby the Appellant's petition u/s 110A of the Motor Vehicles Act, 1939 (hereinafter to be referred to as the Act) has been rejected on the ground that the petition does not disclose any cause of action. The order under appeal was made as far back as on 26.11.1964 and the appeal against the order was admitted on 1.3.1965. Ordinarily, such appeals are to be heard by a Single Bench but on 23 5.1968 the learned Chief Justice made an order that the appeal be heard by a Division Bench.

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2. The Appellant met with an accident with truck No. RJL 8635 driven by Mr. Ram Chander (Respondent No. 1) which was owned by Mr. Lal Chand (Respondent No. 2) and was insured with Respondent No. 3. As a result of the accident, the Appellant received certain injuries on 24.10.1962. On 24.12.1962 he filed a petition u/s 110A of the Act claiming Rs. 25,000/- as compensation for the injuries received by him in the said accident. The petition was opposed and it was pleaded inter alia, that it did not disclose any cause of action inasmuch as it was not alleged that the accident had been caused due to rash and negligent driving of the vehicle by the driver. On this plea the Tribunal framed the following

preliminary issue:

Whether the petition discloses the cause of action.

3. When the case was fixed for arguments on this issue, the Appellant filed an application for amendment of the petition under Order 6 Rule 17 read with Section 151 CPC stating that he had given in the petition all necessary particulars of the accident but owing to inadvertence he had omitted to mention the allegation that the driver was driving the vehicle rashly and negligently at the time of the accident. He therefore sought leave to add those words in the amended petition. This application was rejected by the Tribunal with the observation that the principle of liability in torts when death or injury had been caused to a person was negligence or failure to take requisite amount of care required by law and in the absence of any statutory provision fixing liability irrespective of negligence one had to turn to the Law of Torts according to which negligence in causing accident was essential to hold the negligent person liable for damages. The Tribunal further held that although it had the right to allow an amendment of the petition, in the present case the amendment would cause irreparable injury to the other party because it would allow the Appellant to put up a fresh claim in respect of a cause of action which since the institution of the proceedings had become barred by time.

4. Having refused the application for amendment, the Tribunal decided the issue against the Appellant and rejected the petition holding that the petition did not disclose any cause of action.

5. It appears to us that this was a fit case in which the application for amendment of the petition should have been allowed. The Tribunal is no doubt right in observing that the right of the injured person to claim compensation arises only when it is alleged and proved that the driver of the motor vehicle had failed to take care as enjoined by law and that it is only a breach of that duty which gives the aggrieved party a cause of action against him. We however find that the Appellant had correctly mentioned in his petition the time and place of the accident, the injuries suffered by him, the name of the driver, the owner of the vehicle with its number and the insurance company with which it was insured. All that he had omitted to mention was that the accident had been caused as a result of rash and negligent driving of the vehicle by the driver. This omission, the Appellant sought to rectify and his prayer was refused on the ground that he was thereby seeking to put a fresh claim in respect of a cause of action that had since become barred by time.

6. In our opinion, the amendment sought by the Appellant does not at all amount to putting up a fresh claim. The Appellant's claim for compensation was in respect of an accident involving injuries to his person and it arose out of the use of the motor vehicle by Respondents 1 and 2. What he was seeking to introduce by way of amendment, was a mere ground for liability which he had inadvertently omitted to mention although all other particulars had been stated

in the petition. The cause of action was the happening of the accident which had resulted in the injuries suffered by the Appellant and that fact had been clearly stated in the petition. It is therefore, incorrect to say that the Petitioner was seeking to put up a fresh claim or a fresh cause of action.

7. It is no doubt true that as a rule the Court would decline to allow an amendment if a fresh suit on the amended claim would be barred by limitation on the date of the application. But as held by Supreme Court in *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, , "that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered. and docs not affect the power of the Court to order it, if that is required in the interest of justice." We are of the view that this is a fit case in which discretion should have been exercised in allowing the amendment which, as has been held by the Tribunal itself, would have made up the deficiency and supplied the necessary ground for fastening liability on the Respondents in respect of the injuries suffered by the Appellant.

8. We therefore allow the appeal and order the case to be remanded to the Tribunal with a direction to allow the amendment prayed for by the Appellant and to proceed to try the case on the basis of the amended petition. There will be, however, no order as to costs.

9. (After the judgment had been pronounced it was brought to their Lordship notice by Mr. H.S. Dhir and accordingly it was added:) The same view as taken by us, has been taken by a learned Single Judge of the Punjab High Court (Gurdev Singh,]) in *Kartar Devi v. The Oriental fire and General Insurance Company Limited* 1966 A.C.J. 45.