

(1987) 08 P&H CK 0096
In the Punjab And Haryana At Chandigarh

Jamna Dass

APPELLANT

Vs

Mohan Lal and Another

RESPONDENT

Date of Decision : 11-08-1987

Acts Referred:

Citation : (1987) 2 ACC 392

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

J.V. Gupta, J.—This judgment will also dispose of F.A.O. No, 485 of 1983 as both these appeals have arisen out of one and the same award of the Motor Accidents Claims Tribunal Hoshiarpur, (hereinafter called the Tribunal) dated April 19, 1983.

2. According to the claimants, on January 8, 1982, Paramjit, deceased, and Bakshi Ram, injured, were returning to their village from village Cholang situated on the Jullundur-Pathankot Road. It was about 6.30 P.M. The said Paramjit and Bakshi Ram were going ahead of Jamna Dass and Balwant Ram. Paramjit, deceased, was the son of Jamna Dass while Bakshi Ram, injured, is the nephew of the said Jamna Dass. They were jointly running a shop at Chalong. They all were going on foot on the kutcha portion of the road when a bus came from the side of Jullundur driven at a very fast speed without blowing any horn and hit against Paramjit who further hit Bakshi Ram. The bus driver did not stop the bus and speeded it away. Both the injured were admitted to the civil hospital, Jullundur, Paramjit died whereas Bakshi Ram recovered after remaining admitted to the hospital for about 7 or 8 days. Jamna Dass, the father of Paramjit, deceased, filed claim petition claiming compensation to the tune of Rs. 1,50,000/- on the plea that Paramjit was about 22-1/2 years old and used to run a tubewell repair shop. He had a monthly income of about Rs. 2000/-. It was also pleaded that the bus involved in the accident had registration No. PBN-8015, which was coming from Jullundur to Pathankot and was being driven by Mohan Lai, respondent, rashly and negligently. Bakshi Ram, injured, filed a separate claim petition in which an amount of Rs. 50,000/- was claimed as compensation

on the plea that he was running tubewell business and was earning Rs. 1,000/- per month before the accident. After the accident his earning capacity had been reduced to one-half. According to him, Jamna Dass and Balwant Ram had eye-witnessed the occurrence. The bus driver had neither blown the horn nor had applied brakes to avoid the accident.

3. Mohan Lai, the driver of the bus, contested the claim petitions on the plea that his bus No. PNB-8015 was not involved in any accident and that he did not drive the same rashly and negligently. It was also stated in the written statement that on the day of the accident, the police was checking buses to find out the bus which was involved in the accident and that his own bus was also checked by the police of Police Station Dasuya. Enquiries were also made from the passengers as a result of which the police felt satisfied that his bus was not involved in the accident. The State of Punjab also contested the two claim petitions pleading that no accident, as alleged by the claimants, had taken place. On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the accident took place due to the rashness or negligence or both of Mohan Lai, respondent ?

(2) If issue No. 1 is proved, to what amount of compensation the claimants are entitled and from which of the respondents ?

(3) Relief.

Under issue No. 1, the Tribunal found that the claimants had failed to prove that the accident had taken place due to the rashness or negligence of Mohan Lai, driver. In view of this finding, both the claim petitions were dismissed.

4. The learned Counsel for the claimants-appellants submitted that the very next day, i.e., January 9, 1982, first information report, Exhibit P.2, was recorded at the instance of Bakshi Ram, injured PW 4, in which he had given the bus No. as well as the name of the driver. In this behalf, Jamna Dass also appeared as PW 5 and Balwant Ram appeared as PW 6. Both of them were the eye-witnesses to the accident as they were following the deceased and the injured when they were hit by the bus. Mohan Lai, driver, appeared as RW 1. He admitted in his cross-examination that his bus was checked by the Police at Dasuya. The Police made a note of his name and that they were allowed to go further. He was told by the Police that an accident had taken place at Cholang and that for that reason, checking had been done. He further stated that he, along with the conductor of the bus, had gone inside the Police Station also. He was arrested in the case of January 14, 1982. He admitted that the criminal case about this accident was pending against him at Dasuya. Oarshan Singh, conductor of the bus, appeared as RW 2. He stated that on January Section. 1982, he was the conductor on bus No. PNB-8015, and Mohan Lai, respondent, was its driver. According to the Tribunal, neither the evidence of Bakshi Ram, PW 4, nor the evidence of Jamna Dass, PW 5, inspired confidence. Their testimony rather gave the impression that some bus had hit against Paramjit, deceased and Bakshi Ram, injured, in

darkness and that the driver of the bus had speeded away the same before his identity and that of the bus could be known.

5. After going through the entire evidence and hearing the counsel for the parties, I am of the considered opinion that the whole approach of the Tribunal was wrong, illegal and misconceived.

6. Admittedly, first information report, Exhibit P. 2, was lodged by Bakshi Ram, the very next day, i e., January 9, 1982, wherein the bus No. and the name of the driver was given. There was no occasion for them to falsely implicate any other bus. Their testimony was discarded by the Tribunal merely on the ground that they did not state the registration No. of the bus, nor the name of its driver. Nobody is supposed to know the name of the driver when the accident takes place. It is only afterwards that one comes to know about it and that is why the name of the driver was given in the first information report the very next day. Mohan Lai driver, appeared as R.W. 1. He admitted that he was arrested by the Police for this very accident and a criminal case in this behalf was pending at Dasuya. It has been wrongly observed by the Tribunal:

The pendency of a criminal case against him about the accident cannot be taken as a proof for his involvement in the accident in these proceedings.

The very fact that the Police arrested Mohan Lai, driver of the bus and chalaned him for rash and negligent driving prima facie goes to show that the offending vehicle was involved in the accident in which Paramjit died and Bakshi Ram was injured. From the evidence on the record, it could be safely concluded that the accident had taken place due to the rash and negligent driving of the offending bus by the Mohan Lai, driver.

7. As regards the amount of compensation in the case of Bakshi Ram, injured, he appeared in the witness-box as PW 4. According to his statement, he remained admitted to the hospital for 7 or 8 days because of the injuries sustained by him in the accident. As a result of the accident, he could not do his job of a borer as effectively as he could do it before. There is no other evidence except the said statement of Bakshi Ram in that behalf. In the claim petition, he stated that he used to earn Rs. 1,000/- per month and after the accident, his income had fallen to Rs. 500/- per month because of the injuries sustained therein. He also stated that he spent Rs. 2,000/-for his medical treatment. Since there is no medical evidence to show that he suffered any permanent disability, Bakshi Ram, claimant, will be entitled to compensation only for pain and sufferings and for the expenses he incurred on his treatment. As her remained in the hospital for 7 or 8 days according to his statement, he is entitled to a sum of Rs. 3,000/- only for his treatment as well as for pain, and sufferings. He will be entitled to this amount from the respondents along with interest at the rate of 12 per cent per annum from the date of application till realisation.

8. As regards the amount of compensation payable to Jamna Dass, the father of Paramjit, deceased, he claimed Rs. 1,50,000/- towards compensation in the

claim petition. He appeared as PW 5 and stated that Paramjit, deceased, was working jointly with him at his shop. He used to earn Rs. 80/- to Rs. 100/- per day. He himself also used to work at the shop, but mainly he was dependent upon Paramjit, deceased.

9. Paramjit, deceased, was about 22-1/2 years of age at the time of his death. His mother had already died as stated in the petition. He was unmarried. Thus, Jamna Dass, being his father, is the only person who has claimed the amount of compensation being his legal heir and also being dependent upon him. In the absence of any documentary evidence about the income of the deceased, one can safely conclude that at least he was earning Rs. 300/- per month and out of the same he may be giving Rs. 200/- to his father to support him. Thus, the annual dependency comes to Rs. 2,400/-. Jamna Dass, claimant, is aged about 50 years. Thus, taking into consideration the facts and circumstances of the case, the multiplier of 10 (ten) is most suitable. The total amount comes to Rs. 24,000/-. Thus, he will be entitled to compensation of Rs. 24,000/- with interest at the rate of 12 per cent per annum from the date of application till realisation.

10. Consequently, both the appeals succeed and are allowed as indicated above with costs. All the respondents will be liable to pay the amounts of compensation jointly and severally as determined above.