

(1968) 09 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 410 of 1961

Joginder Kaur

APPELLANT

Vs

The Punjab State and Others

RESPONDENT

Date of Decision : 19-09-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Penal Code, 1860 (IPC) — Section 304A

Citation : (1968) 09 P&H CK 0045

Hon'ble Judges : Sodhi, J;S.B. Capoor, J

Bench : Division Bench

Advocate : Ram Rang, for the Appellant; Hira Lal Sibal and D.C. Ahluwalia, for the Respondent

Judgement

1. This is a Plaintiff's appeal filed against the judgment and decree of the senior Subordinate Judge, Ambala who on 25.7.1960 dismissed the Plaintiff's suit praying for the award of Rs. 10,000/- as damages against the Defendants Respondents 1 to 3 because of the fatal accident caused by the collision of two vehicles in which the Plaintiff's son Ranjit Singh aged about nine years died.

2. The case of the Plaintiff, who is the mother of the deceased boy and filed the suit in forma pauperis, is that on 4.8.1957 Police lorry No. PNJ-3387, owned by the State of Punjab Defendant Respondent No. 1 and driven by constable Sher Singh No. 3278 Defendant Respondent 3 at about 3.30 P.M. came at a fast speed from the Arya High School side in Ambala City and was just near the crossing when a Punjab Roadways bus No. PNE-4678, owned by the same Defendant Respondent, coming from the bus stand and driven at a terrific speed by Iqbal Singh Defendant Respondent No 2, collided against the back side of the Police lorry as a result whereof the latter turned turtle causing the death of Ranjit Singh who was grazing cattle nearby.

3. Hari Singh Defendant No. 4, father of the accused, has been arrayed as a Defendant, but the suit is, obviously, for his benefit as well. The State of Punjab

is the principal Defendant being the owner of both the vehicles involved in the accident and also the employer of Defendants 2 and 3 who were driving the vehicles at the time of the accident. It has been pleaded in the plaint that Defendants 2 and 3 are personally liable as well, as it was owing to their rash and negligent acts in the discharge of their official duties that the death of Ranjit Singh took place. The Plaintiff served a notice u/s 80 of the CPC on Defendants 1 and 3, but Iqbal Singh, driver of the Punjab Roadways bus, refused service of the notice.

4. The State of Punjab Defendant Respondent raised several objections in its written statement including some preliminary ones. It denied its responsibility for the tortious acts, if any, of its employees and that there was any negligence on the part of Defendants 2 and 3. It also pleaded that even these Defendants were not liable for damages.

5. Iqbal Singh Defendant No. 2 filed the written statement denying his liability, whereas proceedings were ex-parte against Sher Singh Defendant No. 3 in as-much as he filed no return, though he made a statement before issues and also appeared as a witness. On the pleadings of the parties, the following issues were framed:

1. Whether on 4th August, 1957, the Police lorry No. 3387-PNJ driven by Sher Singh Defendant No. 3 collided with Punjab Roadways bus No. 4678-PNE driven by Iqbal Singh, Defendant No. 2 on account of rash and negligent driving by both or any of them as a result of which the Plaintiff's son Ranjit Singh received injuries and died instantaneously on the spot at the Arya High School Chowk. Ambala City ?

2. Whether the Punjab State is responsible for the tortious acts of its employees, Defendants Nos. 2 and 3 ?

3. Whether the Fatal Accidents Act applies to this case ?

4. Relief.

Iqbal Singh, driver of the Punjab Roadways bus No. PNE-4678, was challenged as well in a criminal Court but ultimately acquitted. The trial Court found under issue No. 1 that there was no evidence to fix liability on any particular driver out of Defendants Nos. 2 and 3 and was of the opinion that in the absence of a specific finding being given as to which of the two was really proved to be guilty of rash and negligent driving, the suit could not be decreed. It did not, as a matter of fact, hold that there was no rash or negligent act on the part of Defendants 2 or 3 and was rather of the view that either of them was guilty of negligence or may be both. As regards issue No. 2, relying on a case reported as State of Bihar Vs. Rani Sonabati Kumari, it held that the State was not liable for the tortious acts committed by its employees and that it was only when an employee has done such act in the conduct of some commercial undertakings that the State could be made liable. The driving of the Police lorry was

considered to be an act in the exercise of the sovereign power of the State. Fatal Accidents Act was held to apply, but in the matter of compensation it took somewhat queer view suggesting that since it was not proved that there was any direct and immediate pecuniary loss sustained by the Plaintiff as a result of the death of her son Ranjit Singh, no compensation could be legally awarded. The suit was accordingly dismissed. Hence the present appeal by the Plaintiff.

6. It has been contended by the Learned Counsel for the Plaintiff Appellant that there is abundant evidence on the record to establish that at least Iqbal Singh, driver of the Punjab Roadways bus Defendant No. 2, was driving the vehicle rashly and negligently, though it is submitted that both he and Constable Sher Singh Defendant No. 3-were, as a matter of fact, driving their respective vehicles at a high speed regardless of the safety of the pedestrians and the occupants of the vehicles. The submission is that, in the circumstances of the instant case, it makes no difference whether Defendant No. 2 is guilty of rash and negligent act or Defendant No. 3, when both are employees of Defendant No. 1, which is liable for the torts committed by its employees. As regards the award of compensation, it has been contended that the approach made by the trial Court was erroneous in law and that reasonable compensation was due to the Plaintiff.

7. The Plaintiff produced Krishan Lal (PW-1) and Sunder Lal (PW-2) both shopkeepers, as witnesses of the occurrence. They run their shops quite close to the scene of occurrence. Sohan Lal (PW-3) prepared the site plan which was attached to the criminal case registered against Iqbal Singh u/s 304-A of the Indian Penal Code. It may be mentioned that this case was registered on the statement of Krishan Lal (PW-1). The other witness of the Plaintiff is Chanchal Singh (PW-4) who was produced only to show that Ranjit Singh deceased was a school-going boy. and used to learn tailoring from him after the school hours. According to this witness, the deceased was an intelligent young boy who would have picked up tailoring, which could enable him to earn about Rs. 5/- per day. Hari Singh Defendant No. 4, father of the deceased, also appeared as a witness for the Plaintiff. He stated that the boy was studying in third class and was learning tailoring, though Joginder Kaur Plaintiff said in her cross-examination that the boy was not reading in any school and that he had gone out for grazing the cattle when the accident took place.

8. The evidence of the Defendants consists of Head Constable Sohan Lal (DW 1), who had also appeared as P.W. 3. Head Constable Lal Singh (DW 2) who was in-charge of the Police guard seated in the Police Lorry when the accident took place. Constable Sher Singh appeared as D.W. 3 and Vijay Kumar, Motor-Vehicle Inspector, as D.W. 4, who had inspected both the vehicles PNJ-3387 and PNE-4678 on 22.8.1957 and found PNJ-3387 defective for transport purposes. He did not have the defect form and the nature of the defect in the vehicle is, therefore, not known. The other evidence of the Defendants consists of Asa Singh (DW 5), Gurdial Singh (DW 6) and Rup Singh (DW7), who stated that they were travelling in the bus of the Punjab Roadways when the accident took place.

Iqbal Singh Defendant also went into the witness-box as D. W. 8.

9. We have been taken through the entire evidence and have also examined the rough site plan exhibit D. 2. In our opinion, it is clear from a proper appreciation of the evidence on the record that Iqbal Singh, driver of the Punjab Roadways bus No. 4678 was certainly driving the bus rashly and negligently and was mainly responsible for the accident which resulted in the death of Ranjit Singh. It is stated by Krishan Lal (PW 1) that the Police lorry was struck from behind by the Punjab Roadways bus which was coming from the bus stand side and that the Police Lorry turned turtle causing the death of Ranjit Singh who was grazing the cattle at a distance of 5/6 feet from the bank of the pucca (metalled) road, while the Punjab Roadways bus struck against the culvert and damaged its wall. To the same effect is the statement of Sunder Lal (PW 2). Both these witnesses are quite independent and there is no reason to disbelieve them. They have, of course, stated that the Police lorry was also coming at a high speed and may be so, but the fact remains that the accident could be avoided if Iqbal Singh had not been driving his vehicle rashly and negligently. Iqbal Singh Defendant was coming in his vehicle from the side of the bus stand and the Police lorry had gone somewhat further from the crossing when it struck against the same from behind. Head Constable Sohan Lal, incharge Police guard who was going in the Police lorry in connection with the Hindi agitation, stated as DW 2 that it was the Punjab Roadways bus which struck against the rear portion of the Police lorry from behind and that Iqbal Singh Defendant No. 2, who was driving the bus of the Punjab Roadways did not blow any horn near the crossing, and that the same was coming at a high speed. These are all eye-witnesses to the occurrence whose testimony cannot be doubted, more so when the circumstances too go to show that accident must have taken place in the manner as stated by them. It cannot be disputed that it was the bus of the Punjab Roadways that struck the Police lorry from behind and that the impact was so great as to turn the Police lorry turtle so much so that it hit against the boy Ranjit Singh grazing the cattle at a distance of 5/6 feet from the pucca (metalled) road. The sign-post and the culvert were sufficiently damaged when this bus struck them. The site plan also shows that the Police lorry had hardly gone just a little distance from the crossing when the bus of the Punjab Roadways struck against it. Even if there were some defects in the Police lorry it had not turned turtle on that score because it is no body's case that it was before the impact of the two vehicles that the Police lorry overturned. The testimony of Asa Singh (DW-5), who claims to have been travelling in the Punjab Roadways bus from Ambala to Chandigarh, does not inspire any confidence when we find that he went to the extent of denying even the presence of the dead boy there. Gurdial Singh (DW-6); who was also one of the passengers in the Punjab Roadways bus, seems to have given his evidence on some wrong impression. He states that the Police lorry coming from Jagadhari side at a high speed struck against the front portion of the bus which is not supported by the circumstances of the case. The version given by another occupant of the bus Rup Singh (DW7), who is the Manager of

the Karnal Transport Cooperative Society, Karnal, cannot be safely relied upon as it is improbable. The Police lorry could not have struck against the front portion of the bus when latter reached the crossing and the indications in the plan exhibit D. 2 do not support him. It is admitted by this witness that Iqbal Singh Defendant had been in service of the Karnal Transport Cooperative Society before joining the the Punjab Roadways establishment, when the witness was the traffic Manager. It cannot, therefore, but be held that Iqbal Singh, driver of the Punjab Roadways bus No. PNE-4678 owned by the State of Punjab Defendant Respondent No. 1, was driving the bus rashly and negligently and that it was his act which caused the accident resulting in the death of Ranjit Singh. It makes no difference if the Police lorry was also being driven at a high speed and contributed towards the cause of the accident, since the main question to be deter, mined in the case is as to who caused the accident.

10. In the matter of liability of the State for the torts committed by its employees, it is now the settled law that the State is liable for tortious acts committed by its employees in the course of their employment. A reference in this connection may be made to the observations of their Lordships of the Supreme Court in the case reported as *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, , this Court had also taken a similar view in the Full Bench cases reported as *Rup Ram Kalu Ram Aggarwal Vs. The Punjab State and Another*, , and *The Union of India v. Shrimati Jasso* 1962 P.L.R. 318 . The only exception is where the act alleged to be tortious was done by an employee of the State in the exercise of the sovereign power of the State. All these cases were of torts committed by the drivers of vehicles belonging to the State. *State of Bihar Vs. Rani Sonabati Kumari*, case relied upon by the trial Court does not lay down correct law in view of the Supreme Court judgment.

11. It is nobody's case that neither of the drivers was guilty of any rash and negligent act and the only difficulty that the trial Court felt was that it could not make up its mind as to who could be fixed with that responsibility. It observed that it may be that both the drivers were responsible or either of them. In the circumstances of the present case it makes no difference so far as the liability of Defendant No. 1 is concerned whether the driver of the Police lorry caused the accident or that of the Punjab Roadways bus, since it is not disputed before us and is borne out from the record that both are employees of the State, Defendant No. 1, and the vehicles are also owned by the latter. If either or both of them are guilty, the State Defendant Respondent No. 1 is certainly liable whether individual liability can be fastened on any Defendant or not.

12. The trial Court has again taken rather a curious view in holding that no damages could be awarded to the Plaintiff, as no pecuniary loss had been established. Learned Counsel for the Appellant in support of his contention that damages must be awarded even if no immediate pecuniary loss is proved and that prospective-loss is good enough has cited before u& cases reported as *Hira Lal and Another Vs. State of Punjab*, , *Concord of India Insurance Co. Ltd.,*

Calcutta and Others Vs. C.K. Subramonia Iyer and Others, , Abdul Mohamad Agra and Another Vs. Peter Leo D'Mello and Another, , and K.M. Krishna Gounder Vs. P.N. Narasingam Pillai and Others, . P.C. Pandit, J. while delivering judgment of this Court in Hira Lai's case (Supra), has very elaborately and exhaustively discussed the principles regarding the award of damages under the Fatal Accidents Act, 1855. The basic rule to entitle the relations of the deceased in their own right to recover damages under the law is that the deceased must be capable of giving pecuniary advantage to such relations. It is preposterous to suggest that there can normally be a person whether a child or a grown up, from whom no reasonable expectations of any pecuniary advantage can ever be had. The law could not be so illogical or cruel as to give immunity against any damages when a child who is not school going and belongs to a humble family in society is killed as a result of a tortious act like rash and negligent driving. It may be that difficulties arise in determining the quantum of damages, but not that no damages are to be awarded at all when the child is not shown to be giving any pecuniary benefit to the designated relation or relations. There is always expectancy or pecuniary benefit for the parents of a child, whatever the status or vocation of the family be and whether the child is on way to a certain career or not. An element of speculation in assessing the amount of damages will surely creep in, but the fact remains that liability to pay damages is always there. There are large number of factors to be considered in assessing the amount of damages and immediate pecuniary benefit is just one of them. In the case before us, the Plaintiff and Defendant No. 4, who are parents of the deceased Ranjit Singh, could have reasonable expectations of pecuniary advantage from the boy at least when he became major and attained the age of eighteen years. The evidence led by the Plaintiff is that he would have become a tailor earning about Rs. 4 or 5 a day and it is also in evidence that he had started going to school, though the Plaintiff in cross-examination has stated, may be inadvertently, that he was not school-going. It is needless to go into the question whether he was school-going or not, but even without getting any education and even as a labourer, he would not have earned less than Rs. 100/- a month on attaining the age of eighteen years. He could be expected to give help to his parents to the extent of one-half of his income for about 9/10 years. If the probable income of the deceased is considered to be Rs. 100/- a month and he were to give half of his income to his parents for their maintenance and support for ten years, the pecuniary loss suffered by his parents would come to about Rs. 6,000/-. Keeping all these considerations in view, we award the Plaintiff Rs. 5,000/- as damages. The judgment and decree of the trial Court are, therefore, set aside and the suit of the Plaintiff for damages decreed for a sum of Rs. 5,000/- against Defendant Nos. 1 and 2 with costs throughout. It is also hereby ordered that since the suit was in forma pauperis, the proportionate amount of the Court fee, on the amount decreed, shall be recovered by the State from the Plaintiff out of the decretal amount.