
(1966) 01 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. 121 of 1962

Joginder Singh

APPELLANT

Vs

Himachal Government Transport

RESPONDENT

Date of Decision : 18-01-1966

Acts Referred:

Citation : (1966) ACJ 191

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Advocate : A.S. Ambalvi, for the Appellant; Lalit Mohan Suri, for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh J.—This is an appeal against the order of the Motor Accidents Claims Tribunal, Punjab, dismissing the claim filed by Joginder Singh, "whose son Kaka Singh, aged about 16 died in an accident on 11th of December, 1959.

2. Truck No. HIM-1015, owned by the Himachal Pradesh Government, admittedly was sent to Surajpur to load cement and transport the same to Rampur Bushehr. After obtaining the supply of cement, instead of going towards Kalka towards the left after joining the main Ambala-Kalka Road, the driver of the truck turned to the right, came to Panchkoola and was proceeding towards Mani Majra when, according to the allegations of Joginder Singh claimant, this truck-struck a cycle on which his son Kaka Singh was going to the same direction towards Mani Majra. Another boy, aged about 9, Sadhu Singh was sitting on the bar of the cycle. As a result of this collision the two boys fell down and suffered injuries. The injuries of Kaka Singh were serious. One Surjan Singh, who was nearby raised a "raula"; (noise) on seeing the accident and shouted to the driver of the truck to stop, but the truck speeded away On his raising shouts Joginder Singh (different from Joginder Singh Claimant, hereinafter referred to as Joginder Singh I), who has land nearby and who had come with a pitcher to fill water nearby the culvert at a short distance from the place of accident, also came to

the spot and raised a "raula" (noise). Two trucks came thereafter also from the side of Panchkoola. According to Joginder Singh I, the occupiers of the latter of the two trucks were told on enquiry that an accident had taken place with a truck loaded with cement. Soon after Joginder Singh claimant came to the spot, and in a tonga the two injured boys were removed to the hospital, where Kaka Singh died. Sadhu Singh recovered after three or four days. First information report was lodged by Ajit Singh, grandfather of Kaka Singh deceased. According to the statement of Joginder Singh Claimant, he and others came to know that the truck in dispute had met with another accident near Mani Majra and was held up there.

3. The claim was put in against the Himachal Pradesh Government because they were the owners of the truck and it was stated in the claim that Dulo Ram driver by mistake turned towards Chandigarh and due to his negligence this accident took place and after a while his truck collided with another truck at Mani Majra.

4. In the written statement filed on behalf of the Himachal Pradesh Government the only point taken was that the Himachal Pradesh Government was not responsible for the alleged negligence of the driver resulting in the accident, because he had no authority to go towards Chandigarh and the accident, therefore, did not take place when he was acting for and on behalf of the Himachal Pradesh Government but when he was not on official duty and that his trip towards Chandigarh was a spree of his own. Thus no plea was taken that, in fact, the truck in question was not involved in the accident or if involved, there was no negligence on behalf of the driver. The following three issues were settled:-

1. Whether the accident was due to the rash and negligent act of the driver of vehicle No. H1M-1015 and, if so, its effect ?

2. Whether the Himachal Government Transport is liable in view of the objection taken up in para. 1 of the written statement filed by the Respondent, in case the facts stated therein are proved ?

3. What is the quantum of compensation due, if any, from whom to whom ?

5. During the course of evidence it appears that an application was made on behalf of the Respondent that they should be allowed to amend the written statement and an additional issue should be settled as to whether the accident took place with the truck in question. The case was adjourned for reply and arguments, but no order seems to have been passed, though according to the counsel for the Appellant before me, this application was rejected and that the order was announced orally to that effect. Be that as it may, the result is that no amendment of the written statement was allowed and no additional issue was settled. The learned Tribunal, however, based the entire judgment on the identity of the truck involved in the accident not having been established.

6. The learned Counsel for the Appellant in the first instance urged that this

position could not be taken by the Tribunal on behalf of the Respondent, because there was no pleading regarding the point and this point did not arise whether the accident did take place with the truck or not and the only point that had been put in issue was whether the accident took place due to the negligence of the driver or otherwise. I do feel that there is a good deal of force in this point. It appears that there was a criminal case started against the driver in respect of both the accidents, but the driver was acquitted of the first offence, though he was found guilty with regard to the second. The order passed in the criminal case is dated 30th of June, 1960, and the application for amendment was made on 30th of August, 1960 and it appears that taking a hint from the finding; of the Magistrate that it had not been proved beyond doubt that the accident had taken place with this truck, an effort was made to take this plea as well. In any case I have been taken through the evidence and I find that there is ample evidence on the record to establish the identity of the truck. On behalf of the claimant three witnesses were mainly examined A.W. I is the small boy who was sitting on the bar of the cycle. He has made a sort of confused statement, sometimes saying that the truck struck the cycle from the front and at others that: it struck from behind. The other telling that he said was that only Surjan Singh A.W. came to the spot. It is obvious that this small boy was under a great deal of shock immediately after the occurrence and he could not be expected to give many details because of the shock as well as extremely tender age, for which reason he was not even administered an oath. The statement of Surjan Singh is to the effect that he was at a distance of about 15 yards when he saw the accident and on his raising the "raula" (noise) Joginder Singh I A.W. and Teja Singh, uncle of Kaka Singh deceased, arrived at the spot. The time that elapsed, as given by him was 10 minutes, but it is obvious that this estimate of time cannot be taken to be absolutely accurate. Joginder Singh I A W has stated that his field is about 25 yards away from the place of occurrence and at the time he had come to fill a pitcher of water and was near the culvert from where he saw the accident. At this place the road is straight and he could see the accident. In cross-examination he stated as under:-

No truck passed at that time so long as I remained sitting. However two trucks passed the road five minutes after the accident and they had come from Panchkoola side. We stopped the subsequent truck and they enquired of the matter and I told them that the truck carrying cement had caused the accident and they started following that truck at fast speed.

7. No suggestion was made that the two trucks which came subsequently were also loaded with cement and consequently the truck in question was the only one which was carrying cement. The other two trucks had come, according to the witness, after the occurrence and, therefore, there could be no confusion or doubt about the matter that it was the truck which was carrying cement that had caused the accident. The learned Tribunal had placed great deal of stress on the fact that according to Surjan Singh and Joginder Singh I.A.W. the colour of the truck was yellow, whereas the evidence brought on the record on behalf of the

Respondent was to the effect that all trucks of Himachal Pradesh Government had their bodies painted white. The occurrence was seen by these persons from a little distance and only the back of the truck must have been noticed by them after the accident, and from a distance not much difference can be noticed whether the paint is yellow -particularly light yellow-or white, and I do not consider that this was a very important point to be given much weight. The real thing is that when they saw the truck after the accident they found that it was carrying cement and this is what, according to Joginder Singh I A.W" they told the occupiers of the latter of the two trucks that came subsequently. It is further clear from the statement of Joginder Singh claimant A W. 6, as already stated, that the truck was found standing at Mani Majra on account of the second accident. Consequently the witnesses must have got an occasion to notice the truck there and also notice the colour of the paint and if, inspite of this, they gave the colour as yellow, that only means that either the paint no longer remained very white due to the effect of weather or otherwise they were under the wrong impression that the paint was yellow.

8. Nothing has been stated on behalf of the Respondent with regard to the accident by the witnesses produced on behalf of the Respondent except the cleaner Shiv Dass R. W. 4. I have gone through his evidence and I have no doubt in my mind that his evidence is not worth the paper of which it is written. With regard" to the second accident he stated as follows:

While the ill-fated truck was standing on the left of the road, a truck came from the " opposite direction and as the road was narrow and some trucks were standing also on the left of that driver, so he struck against our truck.

9. In fact in the criminal case the driver of the truck has already been held guilty for having struck his truck against another truck when he was going from Surajpur to Mani Majra. Indeed it would be too much to expect that if this truck was standing on the roadside, its driver would have been held guilty if another truck had struck against it. It is obvious that Shiv Dass is still in the service of the Himachal Pradesh Government and he has tried to defend the position of the Himachal Pradesh Government. Unfortunately it is the tendency of an employer-even if it be a State Government or other public body-to try to ward off the blame. It is really significant that the driver was not produced in evidence at the earlier stages and subsequently he had died a natural death. Having gone through the evidence, therefore, I am already of the view that the balance of evidence is certainly in favour of the claimant. So far as negligence is concerned, that can easily be presumed from the fact that the cycle was on katcha portion when it was hit, and that after the accident driver ran away from the spot. This did not only show negligence but also showed inhuman way of acting. According to the evidence the two boys were going on the kacha portion and if the truck driver struck the cycle from behind while they were going on the kacha portion, this speaks volumes as to the negligence of the truck-driver.

10. I, therefore, accept this appeal, set aside the order of the learned Tribunal,

and hold that the accident did take place with the truck in question due to the rashness and negligence of the driver. That, however, does not finish the matter, because two more points still remain to be decided:

I. Whether, in the circumstances of the case, the Himachal Pradesh Government is not liable to pay the damages?

2. If so, what is the quantum of damages ?

11. To determine these matters the case has to go back to the Motor Accidents Claims Tribunal, Punjab. As the case has already taken very long time, the Tribunal will give one date and hear any further evidence that may be relevant and necessary and after hearing the arguments decide the case. I have every hope that the case would not be prolonged and the Himachal Pradesh Government may even see the desirability of amicably settling the matter by paying some reasonable compensation to the bereaved father, even ex-gratia.

The parties are directed to appear before the Tribunal on 21st of Feb. 1966 to take further date. The claimant will have his costs to this appeal from the Respondent.