
(1985) 07 AHC CK 0009
In the Allahabad High Court

Khazani

APPELLANT

Vs

Sobaran Singh and Others

RESPONDENT

Date of Decision : 26-07-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Motor Vehicles Act, 1988 — Section 110D

Motor Vehicles Act, 1988 — Section 110D

Citation : (1986) 1 ACC 288 : (1987) ACJ 29

Hon'ble Judges : B.D. Agrawal, J

Bench : Single Bench

Judgement

B.D. Agrawal, J.—This appeal u/s 110-D of the Motor Vehicles Act is directed against an award of the Motor Accident Claims (III Additional District Judge) Aligarh dated 6th November, 1977.

2. The accident giving rise to this proceeding occurred on August 30, 1973 around 10.00 A.M. on the G.T. Road near Varshaney Degree College, Aligarh. The college faces north. Facing the college is sewer line running from east to west. To the north of the sewer line there is road of the width of nearly 7" only. To the further of this road is Kachchi Patri to the width of nearly 3" running from east to west. The case set up by the claimant-appellant is that at the relevant time Jai Chand had emerged out of the college and was on bicycle. His friend Rakesh Chandra also a student in the college, was sitting on the bar of the cycle. The cycle was to his extreme left and Jai Chandra was at the moment on the bicycle with his leg placed on the earth placed over the sewer line, truck No. UST 9583 belonging to the respondent No. 2 and driven by Sobaran Singh respondent No. 1 came from western direction. It took a turn to the north-east and in the process Jai Chandra besides Rakesh Chandra were placed under the rear wheels of the truck. Lacerated wound was caused on the right thigh of Jai Chandra besides abrasion on the right leg and lacerated wound on the right foot. Rakesh Chandra was also injured. Both were admitted to the hospital where Jai Chandra developed tetanus and died on September 9, 1973. He was then about 23 years

of age and a student of B. Com. The claimant is mother of the deceased. The claim was resisted refuting that the accident occurred. due to the rash or negligent act of the driver and that the compensation claimed is excessive.

3. The Tribunal dismissed the claim being of the view that the claimant did not establish that the driver had been rash or negligent. On the issue relating to the quantum of compensation the Tribunal expressed the view that the Claimant would be entitled to a sum of Rs. 10,000/- only. Aggrieved against the award the claimant has preferred this appeal.

4. Learned Counsel for the claimant argued that on the material placed on the record, it is clearly borne out that the accident took place due to negligence of Sobaran Singh, the driver of the truck in question. I have been taken to the evidence of PW Rakesh Chandra besides PW Deependra Kumar and also through the statement given by Sobaran Singh driver on the other side. There appears no dispute in regard to the photography of the relevant spot where the accident occurred. On both sides it is admitted that there is the college facing north. To the immediate north thereof there was sewer line, as stated above, running from east to west. To the north of this sewer line runs. G.T. road running east to west and the width of the road at that place is merely 7 to the north of this road is a kachchi Patari of the width of about 3. DW Sobaran Singh states too that there was a bullock-cart on this Kachchi Patri at this moment Jai Chandra deceased accompanied with PW Rakesh Chandra had emerged from the college and were on bicycle which was being driven by Jai Chandra. It has been admitted by Sobaran Singh in his statement on oath that the boys were to their extreme left. In face of the sewer line being there facing the college gate opening to the month, the boys riding the bicycle could not have been elsewhere then to their extreme left. It is also not in dispute that the truck proceeded from west to east. The Tribunal has laid emphasis on pointing that it was being driven at a slow speed. DW Sobaran Singh said that this was at about 20 to 25 Km. per hour. Assuming this to be so, the question remains whether this was enough in itself. It was not difficult to foresee boys, emerged from the College gate towards north on bicycle or therewise. The road particularly was extremely narrow being about 7" bony in width at the spot, then there was the Kachchi Patari which too is narrow and in addition there was admittedly a bullock cart over there. The sewer line and the earth placed on the same towards the south of the road must have further made the free movement difficult. In face of this, it was evidently incumbent upon the truck driver to have brought the truck to haul in order that the casualty do not occur. The truck had been seen coming towards the east from a distance of nearly 150 paces. The road at the spot being straight from west to east, it does not appear that at about 10 00 in the morning. The driver will not have been in position to spot the boys move having emerged from the college gate or trying to cross over by the other side. PW Rakesh Chandra who as well received injuries, is definitely eye witnesses to the incident and the details given by him inspire confidence. PW Deependra Kumar stated that he was to the south of the sewer line at the moment and he, too, has been given graphic

account as to how the things transpired.

5. In *Veeran and Another Vs. T.V. Krishnamoorthy and Another*, cited for the appellant, it was observed upon similar facts that the question for consideration is not whether the defendant did actually foresee the consequences that happened as probable. The question was only whether the truck driver, as a reasonable man, ought to have foreseen them. If the circumstances are such that a reasonable man would have foreseen the probability of the accident, then the truck driver, who failed to do likewise or who envisaged it and rejected it as too remote a chance, must be regarded as having been negligent. The road being extremely narrow and there having been the cart on the Patari, it is difficult to imagine that the truck driver could reasonably conceive that the truck could take its turn to the north-east. The space left over for the turn was extremely short. The front portion alone, it appears, had taken turn to the north east but the behind portion could not be moved in that direction and this led to the deceased being or used under the rear wheel besides Rakesh Chandra being injured also. From the observation made by the learned single Judge in *Babu Singh Vs. Smt. Champa Devi and Others*, it may not be inferred that they are of assistance to the respondent in the instant case. The criteria which has been adopted in that case too is that the negligence has to be judged from the point of time but the driver of the motor vehicle was driving the vehicle without exercising reasonable care which was expected of him further it was stated that it is expected to a driver to keep a good look of the road on the sides and on the stretch of the road in front of him. In case such care will have been observed in the present, the accident may have in all probability been averted.

6. Consideration being had to the above, I find it established that the accident took place on account of the negligence of the DW Sobaran Singh the truck driver.

7. In so far as the quantum of compensation is concerned, the learned Counsel for the appellant has had nothing to submit, taking in view the scanty material placed on the record from the side of the claimant. There is also no cross objection or cross appeal from the other side.

8. The appeal for these reasons succeeds in part. The order made by the Tribunal date 5th November, 1977 is set aside. The claim shall stand allowed for a sum of Rs. 10,000/- only. With interest at the rate of 6% per annum from 6th November, 1977. Costs on parties.