

(1986) 04 P&H CK 0006
In the Punjab And Haryana At Chandigarh

K.S. Minhas

APPELLANT

Vs

Sneh Lata and Others

RESPONDENT

Date of Decision : 24-04-1986

Acts Referred:

Citation : (1986) 2 ACC 381 : (1986) 90 PLR 82

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Judgement

S.S. Sodhi, J.—Whose negligence was it that led to the accident between the car CH-5884 and the tractor-trolley HRJ-1019 ? Herein lies the main controversy which arises in this appeal.

2. The accident occurred on March 17-9-78 at about 8-30 P.M. near Nilokheri on the Grand Trunk Road between Karnal and Ambala. Mr. R.K. Sud, a lecturer in the Physical Education College, Patiala, who was travelling in the car sitting besides the driver and car-owner of which he later died at the Post Graduate Institute at Chandigarh on March 20, 1978. According to the Tribunal, this was a case of composite negligence with the both car-driver as also that of the tractor-trolley being equally to blame. They were thus held to be jointly and severally liable for Rs. 1,29,600/-awarded as compensation to the claimants, they being the parents, widow and children of R.K. Sud deceased.

3. The version of the accident, as set forth in the claim application was that the car was travelling from Karnal to Chandigarh its correct side of the road when the tractor came from the front and struck against the car. It was not, however, explained why and how the two vehicles collided. Further, it was averred that the tractor-trolley did not stop after causing the accident.

4. The car-driver Mr. K.S. Minhas, who was also its owner, on his part took the plea that he was proceeding towards Chandigarh when the tractor-trolley, loaded with sugar-cane came on to the road from the side. He, thereupon, immediately turned his car towards the extreme right, but the tractor-driver could not control

his vehicle as a result of which it came and hit into the car and after causing the accident, he ran away. Further, after the accident, he reported the matter to the police and also arranged for the medical treatment for the injured-R.K. Sud at the Post Graduate Medical Institute, Chandigarh.

5. A different account of the accident was, however given in the return filed on behalf of the driver of the tractor-trolley and its owner. There, it was stated that the tractor-trolley was in fact parked on the kacha herem of the road on its correct side with its head-lights on facing Karnal when the car came from behind at a very fast speed. There was a truck coming from the side of Karnal at that time. As a result of the headlights of the truck, car-driver could not see the tractor-trolley parked on the side, as a result of which the left side of the car struck against the back side of the parked tractor-trolley. The tractor-owner, it was said was, therefore, in no way to blame for the accident.

6. The case of the claimants rests upon the testimony of PW 3 Harjit Singh whose version was described by the Tribunal as being totally unconvincing and unbelievable. It was also observed "he has made absolutely false deposition in the court". No exception can indeed be taken to the Tribunal holding so. According to his statement, as made in the witness box, the tractor was travelling towards Karnal with a truck coming from behind trying to over-take it when the car coming from the opposite direction, that is, from the side of Karnal struck against the tractor-trolley. He sought to explain this in cross-examination by deposing that the car went completely on to its wrong side from in front of the on-coming tractor and the truck and then its left side hit the tractor-trolley on its left. It will be seen that this is wholly contrary to the case as set up by the claimants in the claim application. What is more, he stated that he was coming on his motor-cycle when he saw this accident. He says that he did not stop there, but merely slowed down and drove away. He made no statement to the police and did not join in the investigation of this case. It was for the first time when he appeared before the Tribunal that he stated that he had seen the occurrence. It is apparent that what he deposed to was on improbable version quite different from that of the claimants themselves. He was thus clearly an untrustworthy witness not entitled to any credence.

7. Turning now to the version of the tractor-trolley driver and owner, a reading of their evidence would also show that this too is equally improbable and unconvincing. Both RW 3 Joginder Singh-driver of the tractor-trolley and his witness, RW 2 Balkar Singh, deposed to the tractor-trolley being parked on the kacha portion of the road side facing Karnal when the car came from the side of Chandigarh proceeding towards Karnal with the truck coming from in front and the car-driver being blinded by the head-lights of the truck and hitting into the tractor-trolley. If indeed the accident had taken place in this manner. There was no occasion for the tractor-trolley to have been driven away from the spot leaving the injured lying thereafter this accident. According to RW 2 Balkar Singh, the injured occupants of the car was sent to Nilokheri in a car. It is to be

noted here that the earlier statement of RW 1 K.S. Minhas that he had taken the injured to the hospital in a truck was not even challenged in cross-examination nor was it suggested that they had been removed in car. The same criticism is to be levelled with regard to the testimony of the tractor-driver RW 3 Joginder Singh. He too stated that the injured was removed to Nilokheri in a car. In his case, there is an additional factor too, namely, the absence of any explanation to account for his running away from the spot after the accident. Further, as regards, RW 2 Balkar Singh, it was only for the first time when he appeared before the Tribunal that he came forth as an eye witness to the occurrence. No statement of his was recorded by the police nor indeed did he join in the investigation of the case.

8. Finally, as regards Mr. K.S. Minhas, a reading of his testimony would show that he has come forth with a straight-forward natural account of the accident and it brings out in hold relief the fact that the car was proceeding on the correct side of the road when the tractor-trolley came on to the main road from a side road and after seeing this, every effort was made by him to avoid the accident. He explained in this behalf that the tractor, on coming on to the main road, suddenly turned to its right as there was a truck also coming from the side of Karnal, whereupon, he turned his car also to the right and it was in this manner that the left side of his car hit into the left side of the tractor-trolley. It was also his testimony that after the accident, he took the injured in a truck to Nilokheri from where he arranged for him to be removed to Karnal and finally to the Post Graduate Medical Institute, Chandigarh. The first information report regarding this accident was lodged by him at the hospital at Karnal. The version of the accident as contained therein is in consonance with his testimony in court.

9. Counsel for the opposite party sought to pick holes in the testimony of RW 1 Mr. K.S. Minhas, on the ground that there was no mention of any truck coming from the side of Karnal, in the first information report recorded on his statement and that as regards the tractor-trolley, it had been recorded there that it had come from the front side whereas in his testimony he had deposed that it had come on main road from an approach road. Mr. K.S. Minhas, explained this by deposing "since the tractor and the trolley had appeared on the Grand Trunk Road when it was coming from the side of Karnal towards Chandigarh and before the accident, I was towards Karnal side from the tractor-trolley, so, I had got mentioned in the first information report that the tractor had come from the front side." No exception can be taken to this explanation. As regards the omission of any mention of the truck in the first information report, this is clearly not a matter of any consequence to warrant any doubt in the testimony of Mr. K.S. Minhas.

10. It will be seen that the Tribunal fastened liability upon the car-driver, Shri K.S. Minhas on the ground that the accident had taken place on a T-junction, namely; near the point where the approach road joined the main road and consequently, "he too should have been careful enough to observe if any vehicle

was coming towards G.T. Road from either side" this is where the Tribunal so obviously fell in error. The rule is well-settled as held in District Transport Corporation Society Limited v. Janak Rani and Ors. 1984 A.C.J. 477:

A having regard to the provisions of regulations 6 and 7 of the Xth Schedule of the Motor Vehicle Act in the case of a "T" junction, the driver of a motor vehicle on the main road is neither required nor expected to slow down his vehicle, while approaching or going past the by-lane or side road joining it to from the "T" junction. It is the driver of the motor vehicle coming on to the main road from the by-lane or side road, upon whose it is incumbent to slow down his vehicle and to enter to only on being aware that he can do so without enhancing the safety of persons thereon and further it is that driver of such vehicle, who must give way to traffic on the main road.

Taking an over-all view of the circumstances and the manner in which the accident occurred, as per the evidence on record. There can be no manner of doubt that the blame for it must lie wholly upon the driver of the tractor trolley. The finding on the issue of negligence must thus be modified accordingly.

11. In computing the quantum of compensation payable to the claimants, it was clearly incumbent upon the Tribunal to have adopted a multiplier of "16" keeping in view the principles laid down by the Full Bench in Lachhman Singh v. Gurmit Kaur 1979 P.L.R. 1. A reading of the evidence on record would show that as per the testimony of IW 2 Raghbir Singh, Superintendent of the Physical Education College, Patiala, the date of birth of R.K. Sud, deceased was December 18, 1934, which would mean that he was about 44 years of age at the time of his death. He died leaving behind his 38 years" old widow, two minor children besides his aged parents who were all dependent upon him. It has also come in evidence that his salary was Rs. 1218/- per month. The Tribunal thus rightly took the dependency of Rs. 900/- per month. Applying here the multiplier of "16" the compensation payable to the claimants would work out to Rs. 1,72,800/-. which may be rounded off to Rs. 1,73,000/- (Rs. One lac and seventy three thousand only). The compensation payable to the claimants is accordingly hereby enhanced to Rs. 1.73,000/-, which they shall be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded. Out of the amount awarded, a sum of Rs. 25,000/- each shall be payable to the parents and children and the balance to the widow of the deceased.

12. The liability for the payment of compensation awarded shall be only that of the driver of the tractor-trolley and its owner.

13. In the result, the appeal filed by Mr. K.S. Minhas is hereby accepted as also the cross-objections filed by the claimants. The other appeal is, however, dismissed. There will be no order as to costs.