

(1966) 02 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 144D of 1964

Kuldip Lal Bhandari and Others

APPELLANT

Vs

Umed Singh and Others

RESPONDENT

Date of Decision : 08-02-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342
Delhi Municipal Corporation Act, 1957 — Section 478
Motor Vehicles Act, 1939 — Section 110A

Citation : (1966) 02 P&H CK 0010

Hon'ble Judges : S.B. Kapoor, J

Bench : Single Bench

Advocate : G.S. Vohra and S.C. Sharda, for the Appellant; R.L. Tandon and G.N. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

S.B. Kapoor, J.—This is a first appeal by the claimants against the order dated 2nd of March, 1964, of the Motor Accidents Claims Tribunal, Delhi, whereby their application for compensation u/s 110-A of the Motor Vehicles Act, 1939, was dismissed, though the parties were left to bear their own costs.

2. The victim of the fatal accident was Mrs. D. Bhandari, who was aged 36 years at the time of the accident, which was the 16th of January, 1962, her date of birth being 25th of September, 1925. The claimants were her husband Kuldip Lal Bhandari, her minor son Ashok Bhandari aged 7 1/2 years, and her minor daughter Madhu Bhandari aged 4 1/2 years. All the minors, of course, filed their claim through their father as their next friend and having no interest adverse to that of the minor applicants. The accident admittedly took place on the 16th January, 1962 at about 6 P. M. on Faiz Bazar Road (Netaji Subhash Marg), Darya Ganj, Delhi. Bus route No. 9 of the Delhi Transport Undertaking passes along that road and the accident occurred just as bus No. DLP 133, belonging to the Delhi Transport Undertaking run by the Municipal Corporation of Delhi (the contesting

Respondent), had moved from the bus stop. It is the common case of the parties that at the bus stop this bus had halted about 6 or 7 feet behind another bus of the Respondents No. DLP 658, which was also discharging and taking passengers. Bus No. DLP 133, on which Mrs. Bhandari was at the time of the accident, moved away from the stop while the other bus was still stationary and the deceased was squeezed between the two buses, fell down and thus sustained injuries, which caused her death in the Irwin Hospital within about two hours of the time of the accident, which was about 6 P.M.

3. In the Petition, the cause of the accident is briefly stated as follows:

The deceased had just boarded the bus and was yet on the footboard when the bus was negligently and carelessly started. She was sandwiched when the footboard of the bus struck against the hind portion of another D.T.U. bus D.L.P. 651 parked in front and which it had tried to overtake.

The first information report No. 27 of 1962 about this accident was recorded by Beli Ram, Assistant Sub-Inspector of Police Station, Darya Ganj (A. W. 6) on the basis of the statement of Kanwal Kishore (A.W. 7). who claimed to be an eye-witness of the accident. The time of recording the report is 6.45 P.M. on the 16th of January, 1962, which means that the first version as to how the accident occurred was recorded very promptly indeed. The case was investigated by Sub-Inspector Kabul Singh, who was then attached to the Accident Squad, Karol Bagh, and on receipt of a telephonic message from the Irwin Hospital he reached the spot, where he took over charge of the investigation from Beli Ram. The site plan was prepared by him (copy Exhibit A.W.9/1). He found buses Nos. DLP 658 and DLP 133 at the scene of the accident. Bus No. DLP 133 was ahead about 13 feet of the other bus and the same was the distance from the place at which the Sub-Inspector saw the blood line. Kanwal Kishore (A. W. 7) was present at the scene of the accident and Sub-Inspector Kabul Singh recorded his supplementary statement. He noticed that both the buses were damaged. So far as bus No. DLP 658 was concerned, its right rear corner was damaged and there were some scratches the rear bumper also being scratched. There were scratches on the left side of the body of bus No. DLP 133 and these scratches were fresh. The Sub-Inspector recorded the statements of the drivers and the conductors of both the buses. He challaned the driver and the conductor of bus No. DLP 133, and it is in evidence that while the driver could not be available for the trial, apparently because he had joined the Army service, the conductor was acquitted.

4. The next day the two buses were examined by Sub-Inspector Sarup Singh (A.W. 2) of the Accident Squad. Karol Bagh New Delhi, and he noticed the following damage on bus No. DLP 658:

Right rear corner of the bus 2 feet above the lower end dented. Right end of rear bumper scratched. Right side rear corner of the bus also scratched (vide report Exhibit A.W. 2/1).

The witness noted the following damage on bus No. DLP 133 (vide report Exhibit

A.W. 2/1):

Several scratch marks on the left rear portion of the body of the bus near the entrance gate 5 inches below the rear window glass.

This witness also stated that the dent and scratch marks were fresh, that is of 24 hours" ?duration.

5. The post-mortem on the corpse of Mrs. Bhandari was reformed on the J 7th of January, 1962, by Dr. G.S. Mittal, Police Surgeon, Delhi and he found that the body was well built. There was bleeding from vagina. There was a lacerated wound on right-side forehead and abrasions on right-side chest and bruise on right thigh. Urinary bladder was torn along with bruises on its walls and there was extensive effusion of blood in the walls of pelvis and posterior abdomen wall and in the supra pubic region. Pubic symphysis was crushed and broken into many pieces. There was also fracture of the fifth rib on the left side The death, in the opinion of the Doctor was due to shock and haemorrhage from injuries to the pelvis, which were possible by roadside vehicular accident.

6. What has been stated so far are the undisputed facts. Respondent No. 1 Umed-Singh, driver of the bus, submitted his written statement through Mr. G.N. Bhattacharjee Advocate. There was also a joint reply-through the same counsel by the three Respondents and apart from certain preliminary objections the liability of the Respondents was denied on meri s. As regards facts, it was stated that the deceased was attempting to board a moving bus when she lost control as a major part-of her body was remaining outside-the bus when she struck against the stationary bus standing on the left-side of the road. Thus, according to the Respondents, her death was due to her reckless and careless act for which the driver and the conductor of the bus could not be held responsible. The Tribunal framed the following issues:

1. Whether the motor vehicles of Delhi Transport Undertaking are exempt from the operation of the provisions of Chapter VIII of the Motor Vehicles Act?
2. Whether Mrs. D. Bhandari died of accident caused by the rash and negligent act of the driver and conductor of bus No. DLP 133 on 16.1.1962 at 6 P.M. on Faiz Bazar Road, Delhi ?
3. To what amount of compensation the Petitioners are entitled to ?
4. Whether the deceased was guilty of contributory negligence ?
5. Whether the Petitioners are the legal heirs of the deceased ?
6. Whether this application is not maintainable for want of notice u/s 478 of the Delhi Municipal Corporation Act ?
7. Relief;

and the case was fixed for the 5th November, 1963, for the evidence of the Petitioners.

Subsequently, an application dated the 16th of November, 1962 was filed by the Advocate for the Respondents in which it was pointed out that Umed Singh was an Army Reservist and had been called by the Army authorities. It was prayed that the case be kept in abeyance until Umed Singh was released from the Army. However, this application was contested on behalf of the claimants and after hearing the arguments the Tribunal vide its order dated 22.1.1963 refused to adjourn the proceedings and dismissed the application observing that Umed Singh Respondent was represented by a duly appointed counsel and his interests in the proceedings were identical with those of the Municipal Corporation, which was contesting the case. Thereafter, the suit proceeded and during its pendency no attempt was made on behalf of the Respondents to impugn the order of the Tribunal dated the 22nd of January 1963.

7. The Tribunal decided issue No. 1 against the Respondents and issue No. 6, not having been pressed before it, was also decided against the Respondents. On issues Nos. 2 and 4 it held that the accident was not on account of any rash and negligent driving on the part of the Respondent Umed Singh but because of the negligence of the deceased herself. On issue No. 3 it found that if issue No. 2 had gone in favour of the claimants, they would have been entitled to Rs. 25,920/- as compensation.

8. No finding was given on issue No. 5 but it is not disputed that the Petitioners (now Appellants) are the only legal heirs of the deceased and counsel for the parties have confined their attention in appeal to arguments on issues Nos. 2, 3 and 4.

9. The only eye-witness of the accident produced on behalf of the Petitioner-Appellants was Kanwal Kishore and there can be no doubt about the fact that he did see the accident. It was on his report that the case was registered and he was found at the scene of the accident by the investigating Officer Kabul Singh. He is quite unconnected with the deceased or the claimants and had, therefore, absolutely no reason to put himself forward unless he had seen the accident and, in fact, the Tribunal has also not doubted his presence at the time and scene of the accident. The evidence given by him at the trial was practically to the same effect as the version in the first information report. He testified that he was at the bus stop of Route No. 9 in Darya Ganj. At about 6 P.M. at first bus No. DLP 658 halted at the stop and there was a rush of passengers to get into the bus. Meanwhile, bus No. DLP 133 came there stopping 5 to 6 feet at the back of the former bus. Some passengers got into bus No. DLP 133 and the last to climb into it was the deceased. She was actually on the footboard when the conductor gave the bell and the driver drove that bus so recklessly that its left part collided with the right hind part of bus No. DLP 658, which was in front of it. The deceased was still on footboard at the time of the impact and she was squeezed between the two buses and fell down. Bus No. DLP 133 stopped at a distance of 14 to 15 paces from the scene of the accident. The injured woman was taken in a car to the hospital where the witness also accompanied. The police brought him back

from the hospital and recorded his statement. The statement of one man named Gulati was also recorded by the investigating officer. This witness (Kanwal Kishore) gave evidence at the criminal trial also.

10. On the other hand, the version on behalf of the Respondents is as given by the three eye-witness-Jug Lai (R.W. 1), Kallu Ram (R.W. 2) and Jaipal Singh (R.W. 3), who was at the time of the accident the conductor of bus No. DLP 133. Jug Lai claimed to be a passenger in bus No. DLP 133 at the time of the accident, while Kallu Ram just happened to be in Darya Ganj for selling some butter, and not being able to sell the same was waiting, to get into some bus on Route No. 9. Their version is that the bus in question was full of passengers when it entered Darya Ganj. Four or five passengers alighted from it at the Darya Ganj bus stop and an equal number boarded the same. The deceased got into the bus after it had moved off and she was still on the-footboard when this bus was passing across the bus in front (DLP 658). The woman hit against the right rear portion of the bus which was. stationary and thereby got the injuries.

11. The conductor Jaipal Singh was, of course, an interested witness and neither Jug LaB nor Kallu Ram was produced at the criminal" trial where the two eye-witnesses put forward were Ajit Singh and Parma Nand, whom the-Respondents had not chosen to produce before the Tribunal. According to the conductor, it was the driver of the bus who had taken down the names of Jug Lai and Kallu Ram. A day or two before they gave their evidence the conductor met them and told them that they had to appear in Court. He brought them to the Court from the office of the D.T.U. Jug Lai stated that he attended the Court on the asking of the conductor who had visited his house about 10 days previously and had not specified any particular place where he was to wait, but he was just told to go to the Court. Kallu Ram said that the conductor had come to his house 4 or 5 days previously and had just told him to go to the Court as he had given his address to the driver. The witness came to the Court of his own accord and Jaipal Singh did not bring him from his house but had just met him at the Court. These discrepancies lead to the suspicion that Jug Lai and Kallu Ram (whose names are, of course, not in the first information report) are procured witnesses who had not really seen the accident. Mr. R.L. Tandon on behalf of the Respondents maintained that the Municipal Corporation was not a party to the criminal trial and if the conductor Jaipal Singh did not choose to produce Jug Lai and Kallu Ram before the Magistrate no adverse inference can be drawn against the Corporation. However, this much is clear that Jug Lai and Kallu Ram offered themselves as witnesses some two years after the accident and their statements cannot be relied upon to the same extent as that of Kanwal Kishore, whose statement was recorded by the police within an hour of the accident.

12. So far as Jaipal Singh is concerned, the version given by him before the Tribunal was in material respects different from his statement in the criminal trial u/s 342 of the Code of Criminal Procedure. When asked if he gave the bell (as the signal for the bus to proceed) while the deceased was still on the footboard,

he denied having rung the bell. He further said that no passenger offered to get down at the Darya Ganj bus stop and, therefore, the bus, of which he was the conductor, did not halt at the stop and continued in motion. The deceased got into the bus while it was in motion and as the bus was trying to pass the bus in front there was an impact between the two buses and the woman fell down. Jaipal Singh, while in the witness-box before the Tribunal, was duly confronted with this discrepancies but could not offer any explanation. As a matter of fact, the case of the Respondents is that there was no impact at all between the two buses. Manohar Lai (R.W. 4), who was Traffic Supervisor of the D.T.U. at the Sarojni Nagar Depot, says that he reached the spot within an hour of the accident, on being informed on telephone about the accident, and he did not find the damage to the bodies of the two buses nor any scratch marks. This, in view of the disinterested evidence of Sub-Inspector Sarup Singh and Sub-Inspector Kabul Singh, is patently false. Jug Lai also stated that he did not care to note any scartch marks on the bodies of the buses at the place of the accident, and, according to Kallu Ram, it was not correct that the hind portions of both the vehicles were struck against each other, but there was a clear distance of eight to nine inches. This is, of course, untrue in view of the evidence given by two Sub-Inspectors Sarup Singh and Kabul Singh and would lead to the inference that the witness did not see the accident at all.

13. Actually, the most significant fact is that, as proved by the fresh damage noticed on the buses, there was an impact between the bodies of the two buses. The distance at the bus stop between bus No. DLP 133 and bus No. DLP 658, which was in front, was so short that the driver of the former bus should not have proceeded ahead until either the bus in front had moved off, or by backing his own bus the driver of the bus at the back had obtained sufficient clearance to proceed ahead. The fact that neither of these precautions was taken and the driver of bus No. DLP 133 went ahead without ensuring that there was sufficient clearance- or indeed any clearance at all between the bodies of the two buses is itself evidence of negligent and rash driving.

14. The testimony given by A.W. Kanwal Kishore is, on the face of it, straightforward and the only reason which led the Tribunal to reject it was that Kanwal Kishore had stated that at the time of the accident no part of the body of the woman was protruding out of the bus. At the same time, he also said that the woman was on the footboard when there was an impact between the two buses and had got on the second step. Mr. Tandon argued that if she had got on the second step of the foot-board no part of her body could possibly have protruded out of the bus, but much depends on the actual position of the woman as well as her bodily build, and as the photograph (Exhibit A) shows, and as the Doctor who conducted the post-mortem also deposed, Mrs. Bhandari had a well built body. So it was no surprise if some part of her body was protruding at the time of the impact and she got the fatal injuries in her pelvic region. She was also hampered by the hand bag and it seems that as the bus moved off she had not quite recovered her balance. It was also argued on behalf of the Respondents

that if the bus was not full (as alleged by Kanwal Kishore), Mrs. Bhandari could have easily got inside the bus before the impact, but it would take only a few seconds for bus No. DLP 133 to travel the few feet between it and the bus in front during which time, and on account of the bus having been set in motion, the woman could not seat herself inside the bus.

15. On the crucial question-viz. whether the bus was in motion when Mrs. Bhandari boarded it (as alleged by the Respondents) or whether it was stationary (as alleged by Kanwal Kishore)-the testimony of the latter is more in accordance with the probabilities. According to the conductor's statement at the criminal trial, the bus had not stopped at all and this was apparently to show that the lady had got into the moving bus. On the other hand, before the Tribunal the position taken on behalf of the Respondents was that bus No. DLP 133 did halt at the bus stand, discharged some passengers and took some in it, and one may, therefore, assume that the lady got into the bus while it was still at the stop. The conductor said that he gave the bell for stopping the bus as soon as the woman got into the bus, but according to Jug Lai the lady struck against the stationary bus ; the passengers cried that a lady had fallen down and the conductor gave the bell for stopping the bus. Ringing the bell for stopping the bus after the accident had occurred was, of course, too late.

16. Having regard to all the facts, I am of the view that it is much more probable that (as stated by Kanwal Kishore, A.W. 7) the lady got into the bus while it was still at the stop and the bus moved off while she was on the footboard and there being no sufficient clearance between bus No. DLP 133 and bus No. DLP 658, which was in front and which" it was trying to cross, there was an impact between the two buses. Having been sandwiched between the bodies of the two buses, the lady got injuries and fell down from the bus. Thus the claimants have succeeded in proving the recklessness and negligence on behalf of the conductor as well as of the driver of the bus, the former being negligent in signalling the bus to proceed before the lady had got safely into it and the latter in not allowing sufficient clearance while passing the bus in front. On these facts, reversing the findings of the Tribunal on issues Nos. 2 to 4, I hold that Mrs. Bhandari died of the accident caused by the rashness and negligence of the driver and the conductor of the bus belonging to Respondent No. 3 and that the deceased was not liable for any contributory negligence.

Issue No. 3.

17. As regards the question of compensation, the Tribunal has found on the evidence of Kuldip Lal Bhandari (A.W. 10), PN. Khanna, Head Clerk 1st Delhi Battalion,. A.C.C., Delhi University (A.W. 5), and Dr. (Miss) S. Sinha, Principal of Rai Kedar Natb Lajjawati Memorial Girls Higher Secondary-School, Karol Bagh, New Delhi (A.W. 3), where the deceased was employed, that she was a graduate and at the time of the accident was teaching in that school, her basic salary at the time of the death being Rs. 184/- per mensem and her total emoluments being Rs. 246.32 nP. in the scale of Rs. 160-8-300, out of which Rs. 15.33 np.

were deducted as her Provident Fund. There is Dr. (Miss) Sinha's evidence to the effect that Mrs. Bhandari was appointed in the grade of Rs. 100-250 initially but subsequently the scale of pay was raised to-Rs. 160-8-265-EB-A-280-10-300 and that the deceased was a permanent employee. Dr. S. Sinha's certificate as to the salary grade is-Exhibit A.W. 3/1. Mr. Tandon objected that on the record the claimants had placed an agreement dated the 21st of September, 1954, according to which the grade in which the deceased was put had a maximum of Rs. 170/- per mensem, but there is no reason whatever to disbelieve the evidence of the Principal to the effect that subsequently the deceased was put into the higher grade, and, of course,, could not draw the basic salary of Rs. 184/- per mensem if she was in the grade to which the agreement refers. The Tribunal, though it noted that the deceased possessed robust health and besides her teaching duties she was taking part in Girls Guide, Red Cross and other extra-curricular activities, allowed her the span of life of only 12 years more, that is upto the age of 48 year. Mr. G.S Vohra on behalf of the claimants has urged that this is too low and he has referred to a Bench decision of this Court Dr. Ram Saran and Another Vs. Shrimati Shakuntala Rai and Others, in which the victim Om Dutt was 42 years old and the learned Judges considered that the conclusion of the Courts below that he would have lived for another 15 years was not shown to be erroneous. Reference was also made to an earlier case Municipal Corporation, Delhi Vs. Sobhag Wanti etc., in which the woman, the victim of the accident, was also 40 to 42 years old and a period of 15 years was considered to be a fair period for computing the damages. No authority to the contrary was shown on behalf of the Respondents and I would, therefore, hold that the deceased Mrs. Bhandari would have had lived up to the age of 55 years, that is, her span of life was cut by about 19 years. She would, in the ordinary course, have earned an increment of Rs. 8/- per year at least up to the efficiency bar of Rs. 256/-, and her total salary, including increments, for this period would be Rs. 64,764/-. The Tribunal found that the lady must have been spending about Rs. 65/- to Rs. 70/- per mensem on her food, clothings and conveyance etc. for going to and coming from her school which was at a distance of about 4 miles from her residence, and calculating at Rs. 70/- per mensem for 19 years for her personal expenses this amount would come to Rs. 15,960/- Deducting this amount from Rs. 64,764/- the balance comes to Rs. 48,804/, which may be considered as the financial benefit which would have accrued to her husband and children if she had continued to live and earn normally. It appears that she was drawing an honorarium of Rs. 100/- per year for A.C.C. training and Mr. Vohra states that this amount should be added in the emoluments, but the Tribunal did not take this amount into consideration because the lady must have been spending about Rs. 8/- a month on her uniform conveyance etc., and thus saved nothing out of this amount for her family. This reasoning appears to me to be correct. Another amount that Mr. Vohra wants to be added to the claim is the sum of Rs. 10/- per mensem which is alleged to have been sanctioned as the additional dearness allowance to the staff of the school in which the lady was employed, but I do not think the family can take any advantage of this because if

the dearness allowance had been increased, the cost of living and the personal expenses to be incurred by the lady would also increase. Mr. Vohra also wanted that the employer's contribution to the provident fund, which was Rs. 15 33 nP. per mensem at the time of the lady's death, be added to the claim, but I find no justification for this as one can say nothing definite about the future contributions towards the provident fund. Thus the total amount assessed by me as compensation is Rs. 48,804/-.

18. The learned Counsel for the Respondents maintained that after the son (Appellant No. 2) attains the age of majority, he would probably start earning himself and the daughter (Appellant No. 3) would also get married in due course, and he submitted that it was unnecessary to make provision for them for as many as 19 years after the date of the institution of the suit. However, an essential consideration, which has to be kept in mind in such cases, is of the financial benefit of which the family can reasonably be said to have been deprived by the span of the life of the deceased having been cut short on account of the fatal accident. At the time of the institution of the suit the two children were of tender years and were under the guardianship of their father and we have to consider the claim of the family as a whole.

19. In view of the foregoing discussion, the appeal is allowed, the judgment of the Motor Accident Claims Tribunal dated the 2nd of March, 1964, set aside, and the claim of the Appellants is decreed in the sum of Rs. 48,804/- as against the claim of Rs. 66,000/-with proportionate costs throughout.