
(2004) 07 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 947 of 1988

Manjit Kumar and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 28-07-2004

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110CC

Citation : (2005) 3 ACC 140 : (2005) 1 ACC 852 : (2005) 1 CivCC 811 : (2005) 140 PLR 335 : (2005) 2 RCR(Civil) 20

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Gaurav Mohunta, for the Appellant; S.S. Brar, D.A.G., for the Respondent

Judgement

Hemant Gupta, J.—This order of mine shall dispose of F.A.O. Nos. 947 of 1988 and 711 as both arise out of the common award.

2. The appellants in F.A.O. No. 947 of 1988 are aggrieved against the award rendered by the Motor Accident Claims Tribunal on 13.6.1988 whereby a compensation of Rs. 76,800/- was awarded to them payable by the driver of Bus No.HRF-5037,

3. The appellants are widow and minor children of Gian Chand, who was travelling in tractor No.HYN-364 which was being driven by Tara Chand from Sirsa to village Rampura Dhillon. On 28.1.1983 at about 7.30 p.m., when the tractor was in the area of village Nathusari, a bus of Haryana Roadways bearing No.HRF-5037 came from behind and struck against the tractor as a result of which the right side of the projection of trolley entangled in the body of the bus on account of which the occupants of the tractor including Gian Chand received injuries. He was moved to the hospital but he died. Subsequently, the appellants filed claim petition claiming compensation on account of rash and negligent driving of the bus driver.

4. The learned Tribunal returned a finding that the accident has occurred due to rash and negligent driving of bus driver but held that the driver was to take bus from Sirsa to Chopta via Ding and village Nathusari did not fall on the route, therefore, he was not driving the bus under the instructions of Master and, thus, the Master cannot be held vicarious liable for negligent driving of the bus. Hence, the appellants have filed the present appeal claiming enhanced compensation as well as challenging the finding of absolving the Master for the acts of his servant during the course of his employment. The learned Tribunal has relied upon the statement of RWI-Kewal Krishan, duty Clerk, who has deposed that the driver was to take bus from Sirsa to Chopta and village Nathusari does not fall on the way of that route.

5. It is not disputed that respondent No. 3 was driver of the said bus on the date of accident. He was authorised to drive bus on the said date. Even if he has chosen unauthorised route to reach the destination that will not absolve the Master for the act of his servant. There is no evidence on record that the driver was prohibited from taking the bus via village Nathusari. Once there is no evidence on record that the driver was prohibited from taking bus from village Nathusari and it is proved on record that he was authorised to take bus from Sirsa to Chopta, it cannot be said that for the negligent act of the driver, this Master is not vicarious liable.

6. Learned counsel has relied upon the judgment of the Hon''ble Supreme Court reported as State of Maharashtra and Ors. v. Kanchanmala Vijaysing Shirke and Ors., (1995) 1 P.L.R. 375 (S.C.) to contend that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. It was held to the following effect: -

"It is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. In some case, it can be found that an employee was doing an authorised act in an unauthorised but not a prohibited way. The employer shall be liable for such act, because such employee was acting within the scope of his employment and in so acting done something negligent or wrongful. A master is liable even for acts which he has not authorised provided, they are so connected with acts which he has been so, authorised.

On the other hand, if the act of the servant is not even remotely connected within the scope of employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside."

7. In Sohan Lal Passi v. R. Sesh Reddy. (1996)114 P.L.R. 311 (S.C), the driver of the bus has allowed the cleaner/conductor of the bus to drive the vehicle without any authority for the Master. It was held as under:-

"The crucial test is whether the initial act of the employee was expressly

authorised and lawful. Then the employer shall nevertheless be responsible for the manner in which the employees that is, the driver and the cleaner/conductor executed the authority. This is necessary to ensure so that the injured third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation. If the dispute revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had not actually authorised the particular mode in which the act was done. In the present case, the accident took place when the act authorised was being performed in a manner which may not be proper but nonetheless it was directly connected within the course of employment. It was not an independent act for a purpose which had no nexus or connection with the business of the appellant so as to absolve the appellant from the liability."

8. Thus, I set aside the finding recorded by the Motor Accident Claims Tribunal on issue No. 4 and held that the Master is vicariously liable for the acts of the driver.

9. Coming to the amount of compensation, the learned Tribunal has held that the appellants have not suffered any loss of income of the deceased from the land as the land is still with the appellants. However, by assessing the loss of income, as an ordinary labourer, the learned Tribunal assessed the amount of compensation at the rate of 4800/per annum and by applying the multiplier of 16 assessed the compensation to Rs. 76800A.

10. I am of the opinion that the amount of compensation assessed by the learned Tribunal is on the lower side. The deceased-Gian Chand had died leaving behind his widow and two minor children. PW5 Sumitra, one of the claimants has appeared and stated that the deceased had income of Rs. 32000/- to 35000/- per annum. The land has been inherited by the appellants but contribution of the deceased in making it cultivable is not available. Consequently, I am of the opinion that the annual loss to the appellant should be assessed at the rate of Rs. 7200/- per annum and applying the multiplier of 16, the sum of Rs. 1,15,200/- would be just compensation.

11. Therefore, it is ordered that a sum of Rs. 1,15,200/- along with interest at the rate of 7% per annum is awarded to the appellants from the date of filing of the claim petition till its realisation. The amount of compensation awarded earlier shall be adjusted while making the payment in pursuance of the award. No costs.