
(2015) 09 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 2379 of 1994 (O&M)

Mayan Bai and Others

APPELLANT

Vs

Atma Singh and Others

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 304A

Citation : (2015) 09 P&H CK 0025

Hon'ble Judges : Lisa Gill, J

Bench : Single Bench

Advocate : Parvez Chugh, for the Appellant; Baljinder Singh Sra, Addl. AG,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Lisa Gill, J—Instant appeal has been preferred by Mayan Bai and Gurnam Singh, parents of the deceased and Joginder Singh, minor brother of the deceased, impugning the decision dated 03.06.1994 of the Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as, the "Tribunal") whereby the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") filed by the appellants-claimants was dismissed.

2. Brief facts of the case as revealed in the claim petition are that, the Mohinder Singh (deceased) alongwith his maternal uncle was proceeding to Fazilka on 09.10.1992 at about 12.30/1.00 p.m. for which purpose, they were waiting for the bus at the Bus Stop of village Chubaya. At the Bus Stop, A.W. 2 Mohinder Singh son of Mehar Singh met them. Bus bearing No. PJG-1648 belonging to Punjab Roadways, Depot Ferozepur being driven by respondent No. 1 - Atma Singh arrived at the Bus Stop from the side of Jalalabad. Bishan Singh (author of F.I.R. No. 27 dated 09.10.1992 and maternal uncle of the deceased) and Mohinder Singh son of Mehar Singh proceeded to board the bus from the door on the front side. Deceased also proceeded to board the bus. There was a rush at

the relevant time. As the deceased Mohinder Singh entered the bus with one foot inside, conductor of the bus, Bhajan Singh respondent No. 2 blew the whistle and pushed the deceased. As a result thereof, Mohinder Singh fell down and he was crushed underneath rear wheels of the bus. Bishan Singh and Mohinder Singh son of Mehar Singh raised hue and cry on which the driver stopped the bus. Injured was taken to the Civil Hospital, Jalalabad in the same bus. Deceased was referred to Guru Teg Bahadur Hospital, Faridkot but he succumbed to his injuries on the way. Appellants-claimants filed the abovementioned claim petition claiming compensation of Rs. 5,00,000/- on account of the death of their son/brother.

3. Claim petition was contested by respondent No. 1 stating that the deceased never boarded the bus nor was he pushed by the conductor as alleged. In fact when the bus left Chubaya Bus Stop and was passing through the police barrier just ahead, deceased tried to board the bus in haste but he struck his foot in the wooden logs placed for the barrier. He lost his balance and was crushed underneath the rear tyres of the bus. He denied any negligence on his part. Separate written statements were filed by respondents No. 2, 3 and 4. Similar stand was taken by them.

4. Learned Tribunal framed the following issues:-

"1. Whether the claimants are the legal heirs of the deceased? OPP

2. Whether Mohinder Singh deceased died on account of rash and negligent driving of vehicle No. PJG-1648 driven by respondent Atma Singh? OPP

3. If Issue No. 2 is proved, whether the claimants are entitled to any amount of compensation? If so to what extent and from whom? OPP"

5. On considering the evidence on record, the facts and circumstances of the case, learned Tribunal has held that the death of Mohinder Singh was not caused due to any rash and negligent act on the part of respondent No. 1 or 2 rather, deceased had been crushed underneath the rear wheels of the bus due to his own carelessness. Issue No. 1 was decided in favour of the claimants-appellants. Consequently, claim petition filed by the appellants-claimants was dismissed. Aggrieved therefrom, present appeal has been preferred by the claimants.

6. Learned counsel for the appellants submits that learned Tribunal has grossly erred in dismissing the claim petition of the appellants. Finding of carelessness of the deceased himself is not justified from the evidence on record. Said finding is submitted to be perverse and unsustainable.

7. It is submitted that F.I.R., Ex. A1 has been proved on record. A.W. 2 Mohinder Singh son of Mehar Singh has clearly deposed about the events as they unfolded. Post-mortem report, Ex. A2 clearly negates the stand of the respondents.

8. It is further pleaded that the deceased is proved to be a mason by profession allegedly earning Rs. 125/- per day and contributing Rs. 100/- towards the

family as per the statement of A.W. 1 Mayan Bai, mother of the deceased. She has stated that a sum of Rs. 5,000/- was spent on the treatment of her son, who was a bachelor. His betrothal ceremony had taken place and marriage was to be fixed shortly.

9. It is argued that appellants are entitled to compensation on account of loss of love and affection. Appellant No. 3 is also entitled to compensation under the said head being the younger brother of the deceased. They are also entitled to compensation on account of funeral expenses, transportation charges etc.

10. Learned counsel for the State, on the other hand, disputes the abovesaid arguments and submits that there is no ground whatsoever for setting aside the impugned decision dated 03.06.1994 by the learned Tribunal. It is argued that there is no evidence on record to prove negligence on the part of respondents No. 1 and 2. Present being a petition under Section 166 of the Act, it is incumbent upon the claimants to prove the negligence in which they have failed. He thus prays for dismissal of the appeal.

11. I have heard learned counsel for the parties and gone through the available record. Facts and circumstances of this case indeed indicate that the Tribunal has erred in dismissing the claimants' petition by concluding that rash and negligent act of the respondent leading to the death of Mohinder Singh has not been proved.

12. It cannot be denied that F.I.R. No. 27 dated 09.10.1992, Ex. A1 was registered against the respondent-driver on the statement of Bishan Singh, maternal uncle of the deceased. He has specifically stated that he alongwith his nephew (deceased Mohinder Singh) were proceeding to Fazilka for which purpose, they had come to Bus Stop Chubaya. They met A.W. 2 Mohinder Singh son of Mohinder Singh over there. At about 12.30/1.00 p.m. bus No. PJG-1648 driven by respondent No. 1 - Atma Singh arrived. Bishan Singh alongwith Mohinder Singh son of Mehar Singh boarded the bus from the door at the front. His nephew was boarding the bus behind them from the front door, which was open due to rush. However, in the meantime conductor of the bus No. PJG-1648 blew the whistle and simultaneously pushed the deceased due to which his grip on the door got loosened and he fell on the road. As a result thereof, he was crushed underneath the rear tyres of the bus. He alongwith Mohinder Singh son of Mehar Singh raised hue and cry on which the bus was stopped and the injured was taken to the hospital on the same bus. Due to his serious condition, he was referred to the hospital at Faridkot but Mohinder Singh succumbed to his injuries on the way.

13. A.W. 2 Mohinder Singh son of Mehar Singh who was present at the spot has reiterated the facts as revealed in the F.I.R. wherein, the presence of Mohinder Singh son of Mehar Singh is duly noted. It cannot be urged by the respondents that presence of A.W. 2 Mohinder Singh son of Mehar Singh is suspect.

14. Similarly, non-examination of Bishan Singh as a witness is not fatal to the

claimants" case. Admittedly, Bishan Singh is the maternal uncle of the deceased. It is Mohinder Singh son of Mehar Singh who is unrelated, who has been examined. He has clearly supported the claimants" case on all fours. He is an independent witness, unrelated to the deceased. There is no reason to disbelieve his testimony. Therefore, non-examination of Bishan Singh is immaterial in the facts and circumstances of the case.

15. Much stress had been laid by learned for the respondents on the evidence of driver - Atma Singh to suggest that no such accident in fact took place. Perusal of the statement of R.W. 1 Atma Singh reveals that he has stated that the bus was stopped at the Bus Stand of village Chubaya. There was a police barrier about 10 Karams ahead of the Bus Stand where wooden logs were placed on the road. He was passing through the barrier at the village and both the doors of the bus were closed when a commotion was raised about a person being run over under the rear tyres of the bus. He stopped the bus and took the injured to the civil hospital therefore, his conduct does not point to any negligence on his part. However, a perusal of the cross-examination of R.W. 1 Atma Singh reveals that he has admitted pendency of F.I.R. No. 27 dated 09.10.1992, Ex. A1 under Section 304A IPC against him for causing the death of Mohinder Singh. He has also admitted that he never submitted any complaint or representation to any of the higher authorities pleading false involvement in the abovesaid case. He disclosed that he started the bus as soon as conductor whistled. He did not know whether Mohinder Singh son of Mehar Singh and Bishan Singh entered the bus from the front door. He did not know whether Mohinder Singh (deceased) was still stepping on the bus or the conductor loosened the hand of the deceased as a result of which the deceased fell down and was crushed underneath the rear tyres of the bus.

16. It is pertinent to note that testimony of R.W. 1 Atma Singh does not inspire confidence. In his examination-in-chief he has stated that the bus was in motion whereas, in the cross-examination he submits that he started the bus as soon as the conductor whistled. Thereafter, hue and cry was raised upon which it was discovered that Mohinder Singh had been crushed under the rear tyres.

17. R.W. 3 Banwari Lal son of Ram Lal who runs a Jeep on hire was allegedly present near the Bus Stand of village Chubaya alongwith his jeep. For the first time before the Tribunal, this witness deposed that the passengers had boarded and the bus had started. However, when a passenger tried to board the bus from the front door, he stumbled against the wooden logs lying at the Naka and was crushed under the bus. He deposed that the barrier was made of tree trunks. The trunks were 5 to 6 feet.

18. Credibility of this witness is suspect for the reason that there is no evidence on record to prove his presence at the spot. There is no evidence to show that he was running a jeep on hire basis. He was unable to produce any receipt or any diary regarding the departure or arrival of his jeep. There is no mention of this witness in the written statement nor is his presence evidenced by any document

on record.

19. Learned Tribunal has clearly erred in not taking into account the registration of the F.I.R. against the driver in this case. It has been held by the Hon'ble Supreme Court in Parmeshwari Vs. Amir Chand and Others, (2011) ACJ 1613 : AIR 2011 SC 1504 : (2011) 2 RCR(Civil) 152 : (2011) 2 SCALE 398 : (2011) 11 SCC 635 : (2011) 1 SCR 1096 : (2011) AIRSCW 3240 : (2011) AIRSCW 1551 : (2011) 3 Supreme 524 that for the purpose of the decision in the claim petitions under the Motor Vehicles Act, it is preponderance of probabilities which have to be considered and strict proof beyond reasonable doubt is not to be insisted for in such matters. Registration of F.I.R. by itself is a circumstance to indicate the rash and negligent act on the part of the driver.

20. Furthermore, receipt of injuries as revealed in the post-mortem report, Ex. A2 supports the claimants' version. Learned Tribunal has clearly erred in recording the finding that there was no reason for the conductor to have loosened the hand of the deceased or push him to cause his fall. There is clear misreading of evidence inasmuch as the recital in the F.I.R. is that the conductor blew the whistle and simultaneously pushed the deceased downwards due to which his grip loosened thereby, causing the deceased to fall. It is not as if the conductor loosened the hands of the deceased. Reading anything more in the testimony of A.W. 2 Mohinder Singh son of Mehar Singh is uncalled for and unjustified.

21. Another fact which has been ignored by the learned Tribunal is that the maternal uncle of the deceased Bishan Singh and the deceased, his nephew, were travelling together. There is no question of Bishan Singh having boarded the bus easily while the nephew ran behind the bus to board it. Such a contention even if accepted is contradictory to the averments made by the driver and conductor that there was no rush at the spot. Testimonies of the respondents No. 1 and 2 are clearly suspect, untrustworthy and not worthy of reliance.

22. F.I.R. in question was lodged promptly i.e., on the same day at about 8.30 p.m. without delay and it is admitted by R.W. 1 Atma Singh that he is facing proceedings in the criminal case.

23. Keeping in view the facts and circumstances, said finding of the Tribunal on Issue No. 2 is set aside and it is held that Mohinder Singh son of Gurnam Singh died on 09.10.1992 in an accident caused due to rash and negligent driving of bus No. PJG-1648 by respondent No. 1 - Atma Singh.

24. In view of the said finding, appellants-claimants are entitled to compensation on account of the death of Mohinder Singh.

25. Appellants-claimants No. 1 and 2 are the parents of the deceased. Learned counsel for the appellants fairly admits that there is no evidence on record to suggest that respondent No. 3 was dependant upon the deceased. The claim survives qua appellants No. 1 and 2 only.

26. As per the post-mortem, age of the deceased is mentioned as 20 years. A.W. 1 Mayan Bai, mother of the deceased, has also mentioned his age to be about 21/22 years. There is no evidence that he was working as a mason and was earning Rs. 125/- per day. However, minimum wages of even a labourer would not be less than Rs. 1,500/- per month in the year 1992. Considering deceased to be a labourer, his income is assessed as Rs. 1,500/- per month at the time of accident i.e., 09.10.1992.

27. In view of the judgment of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 is to be applied. Deceased being a bachelor, a deduction of 50% has to be applied. Dependency is thus assessed at Rs. 750/- per month and Rs. 9,000/- per annum.

28. In view of the judgment of Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , he is entitled to an increase of 50% of the income (i.e., Rs. 750/-) on account of loss of future prospects. His income is thus assessed at Rs. 1,500/- per month i.e., Rs. 18,000/- per annum. Loss of dependency is thus calculated as Rs. 3,24,000/- (18,000 x 18).

29. Appellants No. 1 and 2 being parents of the deceased are entitled to a sum of Rs. 50,000/- each on account of loss of love and affection, Rs. 10,000/- on account of funeral expenses as the accident is of the year 1992.

30. Total amount of compensation to which the appellants No. 1 and 2 are entitled to is as under:-

31. The amount of compensation shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization.

32. Consequently, impugned award dated 03.06.1994 passed by Motor Accident Claims Tribunal, Ferozepur is set aside and present appeal is allowed.