
(1985) 12 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Mohinder Kaur and Others

APPELLANT

Vs

Surinderpal Singh and Others
 Surinderpal Singh and
Others Vs MohinderKaur and Others

RESPONDENT

Date of Decision : 12-12-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1986) 1 ACC 481

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

Bench : Single Bench

Judgement

S.S. Sodhi, J.—A speeding truck coming from the opposite direction dashed into the scooter of Joginder Singh Bedi killing him at the spot and then speeded away. This happened on September 13, 1976 at 6-15 a.m. near the First Sikh Regiment Gate on the Ptiala-Sangrur road.

2. It was the finding of the tribunal that the offending truck was PUV 8225 driven by respondent Jagir Singh and that the accident had been caused entirely due to his rash and negligent driving. A sum of Rs. 50,000/- was awarded as compensation to the claimants, they being the widow and children of Joginder Singh Bedi deceased.

3. The controversy in appeal here is with regard to the identity of the truck involved in the accident and the finding of negligence recorded against its driver. The claimants, on their part, seek enhanced compensation.

4. According to the claimants, the deceased was returning to the Air Port at Patiala on his scooter after seeing off his wife and son who had boarded a bus for Bhiwnaigarh from near the First Sikh Regiment Gate on the Patiala-Sangrur road when the truck PUV 8223 came from the opposite direction at a very fast speed and hit into the scooter of the deceased, who was on his correct side of the road. The deceased was thrown on to the right of the road by this impact and his head was crushed and he died at the spot. The truck driver Jagir Singh did not stop

the truck but speeded away though he was signalled to stop by the witnesses at the spot. The accident was thus blamed wholly upon the rash and negligent driving of Jagir Singh.

5. Jagir Singh, the alleged driver of the truck PUV 8225, Surinder Pal Singh, its owner, as also the respondent Insurance Company, took up the identical pleas that the truck PUV 8225 had not been involved in any accident and further that Jagir Singh was never the driver on this truck. It is pertinent to note here that as regards the accident itself, no counter-version of it was suggested even as an alternative plea by any of the respondent, but despite this, the claimant Joginder Kaur, the widow, and here witnesses were subjected to lengthy cross-examination not only with regard to the identity of the offending truck and its driver, but also qua the manner of its occurrence with a view to show that it was the deceased who was at fault.

6. The case of the claimants rests upon the testimony of A.W. 1 Mohinder Kaur, the widow of the deceased, PW 2 Khem Chand PW3 Mitranjan Singh and PW 6 Capt, Amarjit Singh, who claimed to have witnessed the occurrence. They all gave a consistent account of the accident by deposing that Joginder Singh Bedhi deceased had come there on his scooter with his wife and son and had parked the scooter on the left side of the road while facing the side of Sangrur. Mohinder Kaur and her son had boarded the bus when he started his scooter and had just covered a few yards when the truck PUV 8225 coming from the opposite direction at a fast speed suddenly swerved to its right and hit into the scooter of the deceased as a result of which he was killed instantaneously. It was the testimony of these witnesses that the scooter had been parked about 50 yards behind the bus when the deceased came on to the road. In other words, it was not a case of a scooter suddenly emerging from behind a bus.

7. Further, Mohinder Kaur, as also Khem Chand, Mitranjan Singh and Capt. Amarjit Singh were categorical in stating that the offending truck was PUV 8225 driven by Jagir Singh, who was described as a young man of about 25 years of age with a parna on his head. All the eye-witnesses to the occurrence were subjected to lengthy cross-examination both with regard to the manner in which the accident occurred as also the identity of the truck that caused it, but except for some minor discrepancies, in consequential in nature, counsel for the truck owner and Insurance Company could point to no matter of any material significance to create any doubt in their testimony. All of them gave a sound and plausible explanation for their being there. The main criticism levelled against Khem Chand, Mitranjan Singh and Capt, Amarjit Singh was that they all belonged to the same establishment where the deceased was working, namely, the Air Port at Patiala. This is indeed a factor to be borne in mind while evaluating and assessing the evidence given by these witnesses, but this circumstance, by itself, cannot render them unreliable. An important point to note here is the valuable corroboration afforded to their testimony by the first information report of this accident recorded on the statement of the widow Mohinder Kaur within less than

two hours of the occurrence. The account given there is wholly in consonance with that deposed to in Court and, what is more, there is specific mention there of the number of the truck, namely, PUV 8225.

8. Mr. L.M. Suri, counsel for the truck owner Surinder Pal Singh, sought to lay great stress upon the statement of Mohinder Kaur in this Court to the effect that the scooter had been parked about ten yards behind the bus that she boarded. The suggestion here being that the scooter had suddenly got on to the road from behind the bus and it was thus the deceased who was at fault. It will be recalled that in her earlier statement Mohinder Kaur had given this distance to be 40-50 yards behind the bus. It is obvious, therefore, that it was merely on account of lapse of memory by passage of time that she gave the distance now to be 10 yards instead of 40-50 yards.

9. Next it was argued that as evidence shows that the scooter had fallen in the middle of the road and the deceased on his right, it would imply that the scooter, was not travelling on its correct side of the road when the accident occurred. This too is a contention devoid of merit. When a heavier vehicle coming at a fast speed hits into a lighter one, there is no knowing where the lighter vehicle or its driver may be thrown upon impact. Much significance cannot, therefore, be attached to the place where the scooter or the deceased fell after the impact with the truck.

10. In seeking to doubt the account of the accident as given by Mohinder Kaur and her witnesses, great stress was laid upon their testimony that it was the left side of the truck that had hit the scooter, the argument being that this was wholly inconsistent with the general version of how the accident occurred. The way the accident has been described, it cannot be said that the impact could not have been with the left side of the truck as the evidence shows that the truck had suddenly swerved to its right. In that event, the left side of the truck could very well have hit the scooter. Considering, at any rate, the split-second within which the accident occurred, it is right quite possible too that the witnesses committed an error on this point. This is, at any rate, not any circumstance to justify any doubt in their version.

11. Reference was next made to the testimony of RW 8 Didar Singh, the driver of the bus, that Mohinder Kaur and her son had boarded just before the accident. This testimony was sought to be read to show that the accident occurred when the deceased suddenly came on to the road from behind the bus and that the truck was coming on its correct side at normal speed. No reliance can indeed be placed upon his testimony to this effect. Didar Singh was admittedly sitting on the driver's seat facing the opposite direction. He could not possibly have seen from where and in what manner the deceased got on to his scooter and came on to the road or indeed even how the accident occurred. Whatever he saw, it was after the accident had already taken place. This testimony is clearly thus of no avail to the truck owner or driver.

12. An attempt was also made to suggest that this was a case of contributory negligence. There is clearly no warrant for holding this to be so. Such a finding cannot be based upon conjectures alone.

13. The most telling circumstance against the truck driver and owner and the fact that no counter-version of the accident had been put forth by them, nor indeed was there any plea that the deceased was in any manner negligent. This cannot but reflect adversely upon the veracity of the plea to this effect now sought to be built up merely upon the evidence on record. As a general rule, the well established principle that no amount of evidence can be looked into upon a plea never put-forth must hold good in these proceedings too.

14. As regards the identity of the truck involved in the accident, counsel for the truck owner challenged the testimony of Mohinder Kaur in this regard by contending that she had boarded, and that too at a fast speed before it struck into the scooter of the deceased, there was no occasion nor indeed could it be said that there was sufficient opportunity for her to have noticed the number of the truck and her testimony that it was the truck PUV 8225 that caused the accident, was thus not worthy of belief. This is indeed a valid point raised. To fix the identity of the offending truck on the statement of Mohinder Kaur alone would have been unsafe, but it is to be noted that it is corroborated by the testimony of PW 2 Khem Chand and PW 3 Mitranjan Singh besides the first information report, which, as shown earlier, was recorded without any undue delay. The other witnesses, namely PW 2 Khem Chand and PW 3 Mitranjan Singh admittedly had ample time and opportunity to have noted the number. It would be recalled in this behalf that they were consistent in their testimony that after causing the accident, the truck slowed down before it speeded away. Further, there is no material on record to suggest any motive on the part of the claimants to seek to falsely implicate this truck in this accident.

15. Faced with this situation, counsel for the truck owner sought to question the vicarious liability of Surinder Pal, Singh for this accident on the plea that it had not been proved that Jagir Singh was the driver employed on this truck by the truck owner.

16. It is well-settled as was held in *Lajwanti and Others Vs. Haryana State and Others*, that there is a presumption, rebuttable no doubt, that a vehicle is driven on the master's business and by this authorised agent or servant and consequently the owner or master is vicariously liable for the negligence of such servant or agent committed in the course of his employment. In order to rebut this presumption, the truck owner led evidence with view to show that the driver or the truck PUV 8225 was Baldev Singh and Jagir Singh and further that this truck was on a different route at that time. Before proceeding to discuss the evidence led with regard to this matter, it must be mentioned that the said Baldev Singh and Jagir Singh respondents are real brothers. RW 1 Surinder Pal Singh, the owner of the truck PUV 8225 deposed that Baldev Singh was his driver while RW 3 Jawahar Lal, the owner of another truck PUV 8225 stated that

Jagir Singh was his driver on this truck. This was sought to be corroborated by the testimony of RW 6 Baldev Singh and RW 11 Jagir Singh. What deserves notice is that RW 1 Surinder Pal Singh did not produce any accounts, receipts or the log book to show that the driver on his truck was Baldev Singh and not Jagir Singh. Similarly, no documentary evidence was produced with regard to Jagir Singh being his driver by RW 3 Jawahar Lai. What is more, Surinder Singh could not give the exact date when Baldev Singh RW 3 Jawahar Lai, it is significant to note his statement that Jagir Singh did not turn up for duty after September 12, 1976. There is no explanation to account for this. It is apparent that this to be attributed to Jagir Singh's involvement in the present case. This being so, the finding of the Tribunal that Jagir Singh was the driver of the truck PUV 8225 cannot be faulted. He must thus also be taken to have been so employed by the truck owner.

17. Before concluding with this aspect of the matter, it may be mentioned that an attempt had also been made lead evidence to show that the truck PUV 8225 was on a different route at the time of the accident. This was sought to be established by the evidence of the Octroi Clerks Madan Lai and RW 5 Hira Lai. Counsel could, however, point to not part of their testimony which could advance the truck owners' case on this points.

18. Considered in their totality the circumstances the case as seen in the context of the evidence on record amply justify the finding of the Tribunal that the accident here had been caused by the rash and negligent driving of the truck and that the truck involved in the accident was PUV 8225 driven by Jagir Singh.

19. It may be mentioned here that Jrgir Singh has since also been convicted u/s 304A of the Indian Penal Code in respect of this accident.

20. Turning now to the quantum of compensation payable to the claimants, the evidence on record shows that Joginder Singh Bedi deceased was employed as Aerodrome Assistant at Patiala. His total emoluments were over Rs. 1080 per month. He was about 48 years of age at the time of his death. The claimants in this case are his widow Mohinder Kaur aged 41, their two sons and one daughter ranging in age from 5 to 11 years. Considering the young age of the claimants, it is apparent that they would have continued to be dependent upon the deceased for many more years. The compensation payable to the claimants in such cases has to be assessed keeping in view generally the principles laid down by the Full Bench in Lachhman Singh v. Gurmit Kaur 1979 PLR 1 in so far as they are relevant in the context of the circumstances of the claimants and the deceased. Seen in this light, it would be apparent that 16 would be the appropriate multiplier and the dependency deserves to be assessed at around Rs. 9,000/- per annum. So computed, the compensation would work out to Rs. 1,44,000/-, which may be rounded off to Rs. 1,50,000/.

21. Here, counsel for the respondent-Insurance Company sought to contend (hat the liability of the Insurance Company must be held to be limited to Rs. 50 000/-

in this case. He adverted in this behalf to the provisions of Section 95(2) of the Motor Vehicle Act, 1939 (hereinafter referred to as the Act) The argument being that as no plea had been put-forth by the claimants that the liability of the Insurance Company exceeded this amount, it must be held to be limited to Rs. 50 000/- which was the sum mentioned in Section 95 (2) of the Act. He cited in support Hamirpur Cooperative Transport Society Ltd v. Kaushalya Devi and Ors. 193 A.C.J. 02 Des Raj and Ors. v. Ram Narain and Ors. 1980 A C J. 202 Automobile Transport (Rajasthan) Private Ltd and Anr. v. Dewalal and Ors. 1977 A.C J. 150. and Bal Dehiben v. Jesingbhai Bijalbhai and Ors. 1984 A.C.J 150. In all these authorities, there were observations to the effect that in the absence of a plea to the contrary, the liability of the Insurance Company must be held to be limited to the amount mentioned in Section 95(2) of the Act.

22. It has, however, been the consistent view of this Court, as recently expressed in F.A.O. 22 of 1981 The New India Assurance Co Ltd. v. Smt. Charan Kaur and Ors. decided on November 20, 1985, that in the absence of a specific plea by the Insurance Company that its liability was limited to any particular sum, (not being less than the minimum prescribed) and the policy of insurance being placed on record in support thereof the liability of the Insurance Company must be held to extend to the entire amount awarded.

23. No plea was raised in the present case regarding any limitation in the liability of the Insurance Company. This being so, the liability of the Insurance Company must extend to the entire amount payable to the claimants as compensation in this case.

24. The compensation payable to the claimants is accordingly hereby enhanced to Rs. 1,50,000/-, 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 payment of the amount awarded. Out of the amount awarded, a sum of Rs. 25000/- each shall be payable to the children of the deceased and the balance to his widow. The amount payable to the minor claimants shall be paid to them in such manner as the Tribunal may deem to be in their best interest. The respondents shall be jointly and severally liable to for the compensation awarded.

25. In the result, the appeal filed by the claimants is accepted while that of the truck owner of and Insurance Company is hereby dismissed with costs. Counsel's fee Rs. 500/.