
(1999) 02 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 759 of 1990

Ms. Shakuntla Devi and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2001) ACJ 1246 : (1999) 3 CivCC 19 : (1999) 122 PLR 48 : (1999) 3 RCR(Civil) 28

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : H.S. Awasthi, for the Appellant; Amol Rattan, A.A.G. for Respondents 1 to 3, for the Respondent

Judgement

G.C. Garg, J.—Soan alias Sawan Ram died in a motor accident which took place on 24.5.1989. As per the averments made in the claim petition, Sawan Ram was going on his cycle near the Toll Post in Shahbad. He entered the G.T. Road and was on his left side on the kacha portion of the road when a bus owned by Haryana Roadways and driven by respondent Satya Pal Sharma, rashly and negligently, hit the cycle. Sawan Ram fell on the road, received multiple injuries on different parts of his body and became unconscious. He was rushed to the hospital where he succumbed to the injuries. The occurrence was said to have been witnessed by one Tej Pal resident of Shahbad who lodged first information report with the police. The widow and five children of Sawan Ram filed a claim petition seeking compensation for his death, against the State of Haryana, General Manager, Haryana Roadways, driver of the bus and the National Insurance Company with which the bus was insured.

2. In the written statement filed by the State of Haryana and the General Manager, Haryana Roadways, it was stated that when the bus reached Shahbad, a cyclist came from Madanpur link road and turned to his left towards Shahbad Bus Stand and then suddenly turned to his right on the main road. Even though

the driver of the Bus had no idea that the cyclist would turn to his right while going on the main road, he at once applied emergency brakes but the cyclist who was himself negligent, dashed against the bus and fell on the road. It was specifically stated that driver of the bus was not at fault and the accident took place on account of the negligence of Sawan Ram himself. The driver of the bus did not file written statement. In the written statement filed by the Insurance Company, it was stated that its liability was limited to the extent of Rs. 1,50,000/ only. On merits it was stated that the accident took place on account of the negligence of the deceased himself who could not control his cycle, turned towards his right and dashed against the bus.

3. After the issues were framed in the petition, the claimants examined five witnesses, including claimant, widow of the deceased as PW-3 and Pawan Kumar son of the deceased as PW-5. On the other hand, the driver of the bus appeared in the witness box as RW-1.

4. Claims Tribunal on appreciation of evidence produced on record came to the conclusion that this was a case of contributory negligence and both, the deceased-cyclist and the driver of the bus were equally at fault. As regards the income of the deceased, Claims Tribunal came to the conclusion that he was earning a sum of Rs. 825/- per month. Claims Tribunal deducted 1/3rd of his income towards personal expenses of deceased and assessed the dependency of the claimants on the deceased at Rs. 550/-. Claim Tribunal after appraising the oral and documentary evidence including post mortem report, Exhibit PO, came to the conclusion that the deceased at the time of the accident was 50 years of age. Claims Tribunal chose a multiplier of 10. After applying this multiplier the amount of compensation was worked out to Rs. 66,000/-. However, since the Claims Tribunal had held that this was a case of contributory negligence and the driver of the bus and the deceased were equally negligent, it awarded a compensation of Rs. 33,000/- after reducing the amount of Rs. 66,000/- by half, with interest at the rate of 12% per annum from the date of filing of the claim petition till payment, by its award dated 15.5.1990. Hence this appeal at the instance of the claimants seeking enhancement of compensation.

5. Learned counsel for the appellants by reference to the evidence produced on record submitted that Claims Tribunal erred in holding that this was a case of contributory negligence. Learned counsel vehemently submitted that the accident in which Sawan Ram sustained injuries and died, took place on account of rash and negligent driving by the driver of the bus alone. Learned counsel also submitted that having regard to the number of dependents left behind by the deceased, the dependency ought to have been assessed at a higher amount. On the other hand, learned counsel appearing on behalf of the respondents submitted that from the evidence on record, it would be apparent that the deceased turned towards right all of a sudden and dashed against the bus, therefore, he was also negligent, at least to the extent of 50%.

6. After hearing learned counsel for the parties and going through the

statements of Jasvinder Singh PW-3 and Satya Pal Sharma RW-1, the driver of the bus, I am of the opinion that this is not a case of contributory negligence. PW-3 stated that on 20.5.1989 he was coming from his house to his shop when he noticed that an aged person was going ahead of the bus in question on a cycle and the said bus hit the cyclist. According to this witness, the cyclist had not yet entered the road completely and had only partly entered the road when the accident took place. On the other hand, RW-1 stated that on the fateful day, a cyclist came from the link road leading to village Madanpur all of a sudden, who turned towards his left and then towards his right on the main road. He further stated that the cyclist had hardly covered a distance of three yards when he suddenly took a turn towards his right on the main road and that he applied emergency brakes and blew horn but the cyclist dashed against the bus and fell on the road. From the above evidence it would be seen that according to Jasvinder Singh PW-3, an eye witness of the accident, the deceased had not yet entered the main road completely when the accident took place whereas according to the statement of the driver of the bus, the deceased came from the link road leading to village Madanpur all of a sudden, turned towards his left and after covering a distance of three yards he suddenly took a turn towards his right on the main road. It is thus clear from the statements of the two witnesses that the deceased had not yet entered the road and he was partially on the kacha portion of the road. Even as per the driver's own version, he noticed the deceased first taking turn towards his left and then towards his right. Once the driver had caught the sight of the cyclist coming from the link road, he should have been more vigilant and careful and ought to have maintained his track accordingly so as to avoid any accident. Further as per the statement of the driver, the speed of the bus was not more than 30 to 40 Kms per hour. Admittedly, the accident took place near a toll post which is stated to be a very busy place. The driver of the bus was expected to slow down the bus while driving in that area. In the circumstances I hold that the deceased was not at fault and the accident took place due to rash and negligent driving by the driver alone of the bus in question. The finding of the Claims Tribunal on this issue is, therefore, reversed accordingly.

7. As regards the dependency, the deceased left behind his widow and five children. It was concluded that the deceased at the time of the accident was earning a sum of Rs. 825/- per month. Therefore, the deceased was not expected to spend 1/3rd of his income on himself. I, therefore, having regard to the number of dependents, left by the deceased, assess the dependency of the claimants on the deceased at Rs. 650/- per month. Once that is so, after applying a multiplier of 10 as was done by the Claims Tribunal, the compensation will work out to Rs. 78,000/- i.e. (Rs. 650 x 12 x 10). Since it has been held above that it was on account of the rash and negligent driving of the bus by its driver alone, the accident had taken place in which Sawan Ram sustained injuries and died, the claimants shall be entitled to the whole amount of Rs. 78,000/- as worked out above. The appellants shall also be entitled to interest on this

amount at the rate of 12% per annum from the date of filing of the claim petition till payment, minus the amount, if any, already received by them. Award of the Claims Tribunal is modified to the extent indicated above. Appeal stands disposed of accordingly. No costs.