
(1996) 07 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 995 of 1996 (O and M)

Municipal Council/Committee

APPELLANT

Vs

Tara Singh and Others

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (1997) ACJ 568 : (1997) 115 PLR 493 : (1996) 1 RCR(Civil) 453

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.K. Bansal and C.M. Munjal, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—An important question of law which arises for adjudication in this appeal is whether compensation for death can be awarded to a claimant under the Motor Vehicles Act, 1988 (for short, "the Act") even though the death is not caused due to the direct impact of the motor vehicle.

2. A brief factual background of the case would help us in deciding the aforementioned question in a correct perspective. Respondents 1 and 2 filed a petition u/s 166 of the Act for award of compensation with the allegations that there daughter Karamjit Kaur was killed on 15.9.1992 due to rash and negligent driving of tractor No. PJS-9081 belonging to the Municipal Committee, Sunam. They alleged that in the process of removal of alleged unauthorised construction, the- tractor belonging to the Municipal Committee was used to bring down the wall and roof of the house of the respondents and as a result of the impact of tractor, debris of wall and roof fell on a child who was declared dead when brought to the hospital. The Municipal Committee, the driver and the United India Insurance Company with which the tractor was insured, resisted the claim filed by respondents 1 and 2. On its part, the Municipal Committee pleaded that the claimant Tara Singh had encroached upon the municipal land and the tractor had to be pressed into service for removing that encroachment and further that

due to lack of control by the parents, the child was killed due to falling of debris of wall and the roof. The Municipal Committee also pleaded that the driver of the tractor could not know that the child was standing on the opposite side of the wall and, therefore, no compensation should be given to the claimants. The Insurance Company raised the plea of invalidity of the licence of the tractor driver to absolve itself from the liability to pay compensation.

3. After examining the rival pleadings and the evidence the Motor Accident Claims Tribunal held that the accident was caused due to rash and negligent driving of the tractor and the Municipality was liable because the tractor was being used as per the directions of its officers. On the basis of these findings, the Tribunal awarded compensation amounting to Rs. 60,000/-

4. Argument of the learned counsel for the appellant is that the Municipal Committee could not be held liable to pay compensation because the death of the child was not caused due to the direct contact of the tractor and, therefrom it cannot be treated as a case of death caused due to use of motor vehicle. He further argued that collapse of the wall or the roof cannot be attributed to the use of motor vehicle. Learned counsel also argued that the tractor driver could not see the child standing on the opposite side of the wall when the tractor was being used for demolition and, therefore, the appellant cannot be held liable to pay compensation.

5. In order to test the correctness of the submissions made by the learned counsel, we deem it proper to refer to the provisions of Sections 140(1), 165(1) and 166(1) of the Act, which deal with the liability to pay compensation under "no fault liability" clause, establishment of Claims Tribunals and applications for compensation. These three provisions are reproduced below for the purpose of ready reference :-

"140. Liability to pay compensation in certain cases on the principle of no fault:-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) to (4) XX XX XX

165. Claims Tribunal:- (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunal (hereinafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

XX XX XX XX XX

166. Application for Compensation:- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."

6. A conjoint reading of the above quoted provisions shows that the owner of the vehicle is liable to pay compensation in the cases of death or permanent disablement of any person resulting from an accident arising out of the use of a motor vehicle. In case of death, the amount of compensation is Rs. 50,000/- and in the case of permanent disablement, a sum of Rs. 25,000/- is payable. For claiming compensation under "no fault liability" clause the claimant is not required to plead and prove that the death or permanent disablement was due to any wrongful act or negligence or default of the owner of a vehicle. The element of contributory negligence on the part of the deceased or the disabled person cannot be relied upon by the owner for reduction in the amount of compensation. Section 165 speaks of the constitution of the Motor Accident Claims Tribunals for the purpose of adjudicating claims for compensation in respect of the accident involving death or bodily injury to a person arising out of the use of motor vehicle or damage to any property of a third party or both. The important expression used in Section 140(1) as well as Section 165(1) is "arising out of the use of a motor vehicle or motor vehicles". On a plain reading of both the provisions it becomes clear that the Legislature has deliberately refrained from using the expression "caused by a motor vehicle or caused by the motor vehicles". Instead, it has used an expression which has very wide compass and which entitles a person to claim compensation due to bodily injury or death caused by the use of a motor vehicle. Thus, where death or bodily injury is caused, the legal representatives of the deceased or the sufferer can file application for compensation.

7. Here it will be useful to refer to the proposition of law laid down in similar matters by various High Courts and the Supreme Court.

8. In *Government Insurance Office of New South Wales v. R.J. Green and Loyd Pvt. Ltd.* 1967 ACJ 329 (decided by the High Court of Australia), the question

that arose was whether an injury sustained by a workman by falling of hoist upon him, which was attached to a truck used for elevating material in the course of building construction, was caused by the use of a vehicle. Their Lordships of the High Court of Australia held:-

"The words "use of a motor vehicle" cover a very wide field, a field more extensive than what may be called "traffic use of a motor vehicle". The only limitation is that the injury must be in some way, a consequence of an use of the vehicle as a motor vehicle."

In *Samati Dev Barma v. State of Tripura* (1985) 1 GLR 420, a Division Bench of Gauhati High Court considered the scope of Section 92-A of 1939 Act as held:-

"The language of the provisions extracted above is so transparent that legislative intent is not left hidden in any manner; the liability u/s 92A is made indefeasible, peremptory and total. The question of proof is left apart; it is not required even to be pleaded that the claim for compensation u/s 92A was justifiable on tortious considerations. No wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or any other person has to be pleaded or proved. The mere fact that death or permanent disablement took place in which one or more motor vehicles is or are involved giving rise to the claim, is sufficient to raise liability in terms of sub-section (3) of Section 92A. This position is rather buttressed by what is to be found in sub-section (4) which totally negates the concept of contributory negligence. In Our opinion, therefore, a claim made u/s 92A cannot be rejected by the Tribunal if it finds that the claim arises out of an accident in which one or more motor vehicles is or are involved resulting in death or permanent disablement of any person. By creating "no fault" liability the provision subserved a humanitarian object matching social realities."

(Underlining is ours.)

9. In *New India Assurance Co. Vs. Smt. Phoolwati and Others*, , a learned Single Judge was called upon to consider the question whether owner/driver of stationary vehicle which is involved in an accident can be held liable to pay compensation. While rejecting the submission of the insurance company that a stationary vehicle cannot be treated at par with a vehicle which is in actual use, the Court observed:-

"The word "use" has to be read in its context and setting and indeed, it is a part of the phrase "arising out of the use of which would not exclude cases of stationary vehicles. The very fact that the vehicle was on the road would bring it within the mischief of the expression "arising out of the use of. Putting a vehicle on the road for running it would indeed be using the vehicle; a vehicle parked will not be in motion, but it will still be "used"."

10. In *Mangilal Vs. M.P.S.R.T.C.*, , a Division Bench of Madhya Pradesh High Court interpreted Section 110(1) of 1939 Act and held that death of a person due to fall from a ladder attached to the bus while it was standing will entitle his legal

representatives to claim compensation. The Division Bench referred to dictionary meaning of the word "use" and held:-

"While the bus is in a state of motion it is employed in carrying passengers and while it is in a state of rest or stationary, it is still in the state of employment for enabling the passengers to alight from or board the bus or for loading and unloading the luggage. Indeed, a motor vehicle which is put on the road is in a state of being in employment or constant use and consequently any accident involving such a motor vehicle causing death or bodily injury to any person is an accident arising out of the use of motor vehicle."

11. In *Union of India v. Dhanraji Devi and Ors.* 1989 ACJ 673, a learned Single Judge of Allahabad High Court considered a case where a pillion rider on cycle was killed due to collision with another cycle which was hit by a truck. The learned Single Judge held that even though the death had not been resulted due to use of the motor Vehicle, but it certainly resulted from an accident arising out of the use of motor vehicle. The learned Judge rejected the argument advanced on behalf of the appellant that there was no collision between the truck and the cycle on which the deceased was travelling and held that absence of impact between the truck and the cycle on which the deceased was travelling was inconsequential because, in fact, the cycle on which the deceased was travelling collided with another cycle which was hit by the truck."

12. In *Saraskshy and Others Vs. Krishnankutty and Others*, , a Division Bench of Kerala High Court held that where death was caused due to the fire from kerosene which was being transferred from barrel to the vehicle at the destination, the accident will be deemed to have arisen due to use of the motor vehicle.

13. In *State of Assam Vs. Pranesh Debnath and Others*, , a learned Single Judge held that where the vehicle was requisitioned for law and order duty and met with an accident due to bomb blast, the accident will be deemed to having arisen out of the use of a motor vehicle and the requisitioning authority was liable to pay the amount of interim award u/s 140.

14. In *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, , their Lordships of the Supreme Court interpreted the expressions "use of a motor vehicle" and "arising out of the use of vehicle". The Supreme Court approved the decisions of a learned Single Judge of Bombay High Court in *Smt. Vatschala Uttam More v. Shivaji Dnyanu Patil and Anr.* AIR 1991 Bom 234 which was also affirmed by a Division Bench of the same High Court in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, . Their Lordship held:-

"The expression "use of a motor vehicle" in Section 92A covers accidents which occur both when the vehicle is in motion and when it is stationary.....The word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or

mechanical defect or accident.....

As compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Section 95(1)(b)(i) and (ii) and Section 96(2) (ii) of the Act. In Section 92A, the Parliament, however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation u/s 92A, the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."

15. We respectfully agree with the views expressed by the High Courts of Bombay, Gauhati, Madhya Pradesh and Kerala and are bound to follow the law declared by the Apex Court on the interpretation of the expression "arising out of" use of and hold that for invoking the provisions of Chapter-XII of the Act, it is not necessary for the claimant to show that there was an actual contact between the motor vehicle and the person who had died in the accident or who had suffered bodily injury and it is sufficient to show that the motor vehicle was instrumental in the causing of accident. Even in cases where the motor vehicle is stationary, a claim petition may be maintainable by the legal representatives of the persons who may die in an accident or by a person who suffers bodily injury and even in such a situation, it is not necessary to prove that the motor vehicle came in actual contact with the person who died or who suffered injury. We are further of the opinion that the wider meaning given to the expression used in Sections 140(1) and 165(1) of the Act would take within their fold cases where death is caused by intervention of third object between the motor vehicle and the person who dies or suffers bodily injuries.

16. If the impugned award is examined in the light of the principles enunciated above, it cannot but be held that the Tribunal has rightly held the appellant liable to pay compensation for the death of the minor child. The evidence brought on the record clearly shows that the motor vehicle belonging to the Municipal Committee was used for demolition of the property and the child was killed solely on account of the falling of debris of wall and roof over her. The tractor of the appellant-Municipal Committee may not have directly hit the child but it has been proved beyond any shadow of doubt that the death was caused by use of motor vehicle belonging to the appellant. The casual relationship between the use of motor vehicle and the collapse of the wall and roof and the death of the child has been clearly established and, therefore, we do not find any ground to upset the impugned award.

17. The plea that the tractor driver could not see the child on the opposite side of

the wall, therefore, he cannot be held guilty of rash and negligent driving, is without substance. It was the duty of the officials to act with due care and caution and it was their duty to see that no body was on the opposite side of wall before they started the operation of demolition. The very fact that they did not do so sufficiently proves their callous negligence.

18. In view of the above discussion, we hold that the appeal is without merit and it is liable to be dismissed. Ordered accordingly.