

(1962) 05 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 63 of 1961

Nand Singh Viridi, Chandigarh

APPELLANT

Vs

Punjab Roadways, Amritsar and Another

RESPONDENT

Date of Decision : 22-05-1962

Acts Referred:

Motor Vehicles Act, 1939 — Section 94, 94(3), 95, 95(1), 95(2)

Citation : AIR 1963 P&H 214 : (1962) 2 ILR (P&H) 887

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : H.R. Aggarwal, for the Appellant; T.S. Munjral, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This is an appeal filed u/s 310-D of the Motor Vehicles Act, 1939, against the order of the Motor Accidents Claims Tribunal, dismissing the application of Hand Singh for the grant of compensation in respect of Injuries sustained by him on account of an accident, when he was travelling in a bus belonging to the Punjab Roadways.

2. it appears that on 5-12-1959 Nand Singh got into this bus for going to Chandigarh, when it started from Amritsar at 5-30 A.M. At about 7-00 A.M., when this bus reached near the Military Camp at Sura Nassi, which is about 4 or 5 miles from Jullundur, a bullock-cart was coming from the opposite direction. A cyclist was following this bullock-cart and when he tried to overtake it, ha came in front of the bus. Buta Singh, the driver of the bus, immediately applied the brakes in order to save the cyclist and since it was drizzling and the road was wet, the bus slipped and turned turtle with its face towards Amritsar side instead of Jullundur. As a result of this accident, the appellant's collar bone was fractured and his right arm was injured. Nand Singh was taken to the Civil Hospital at Jullundur and, on his request, was brought to the Genera! Hospital, Chandigarh, and was admitted there as an Indoor patient. He remained there till 10-12-1959. On 19-1-1960 he filed an application for compensation for Rs.

5,000/-before the Motor Accidents Claims Tribunal, who framed the following issues :

1. Whether the accident was due to rash and negligent act of the driver of the Punjab Roadways?

2. What is the quantum of compensation due and from whom?

3. Relief.

3. After examining the evidence produced by the parties, the Tribunal came to the conclusion that Buta Singh, the driver of the bus, was not to be blamed and the accident was not due to his rash or negligent driving. On issue No. 2, it was found that since the driver was not at fault, no compensation could be granted to the appellant. Consequently, the Tribunal dismissed the application for compensation.

4. The first question for decision in this case is whether the accident in the present case had occurred due to any rash or negligent act of the driver.

5. Both sides had produced a number of witnesses, including a few passengers, who were actually travelling in the bus on that day. I was taken through the entire evidence and am of the view that the finding given by the Tribunal on issue No. 1 is correct. (His Lordship then discussed the evidence and proceeded :) From the above evidence, I have no manner of doubt that the driver was not at fault. He was not going at a high speed. In order to save the cyclist, who was overtaking the bullock-cart, which was coming from the opposite direction, the driver applied the brakes and turned the bus to the left side of the road. Since it was drizzling and the road had become wet, the bus slipped and got unbalanced. Its wheel came down to the low gradient portion adjoining the road and the bus turned turtle. This was an unfortunate accident, but it was not due to any rash or negligent act of the driver.

6. The next question for decision is whether, under these circumstances, the appellant, who was admittedly, travelling in the bus and got injured due to this accident, is entitled in law to claim compensation for the injuries received by him and from whom. Learned counsel for the appellant submitted that even if this accident was not due to any rash or negligent act of the driver, the appellant could recover compensation for the injuries sustained by him from the Insurance Company, with which this vehicle was insured against third party risk. But since this bus belonged to the Punjab Roadways, which is owned by the Punjab State, and was, therefore, not insured, the appellant was entitled to get compensation out of the fund created by the Punjab State in accordance with the provisions of Section 94 (3) of the Motor Vehicles Act. For this submission, he placed his reliance, only on the provisions of Sec-Cons 94 and 95 of the Motor Vehicles Act.

7. I have gone through the provisions of Sections 94 and 95 of the Motor Vehicles Act, 1939. In my opinion, they are of no assistance to the appellant. Section 94 makes insurance against third party risk compulsory, but in the case

of vehicles, which are owned by the State Government, the appropriate Government is authorised to exempt them from this provision, if a fund is established and maintained by that Government in accordance with the rules made in that behalf under the Motor Vehicles Act for meeting any liability arising out of the use of any vehicle of that Government, which that Government or any person in its employment may incur to third parties. Section 95 lays down the requirements of policies and limits of liability, which a policy of insurance must comply with. In para (ii) of the proviso to Sub-section (1) of Section 95 it is laid down that where the vehicle is a vehicle, in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, the policy of insurance is required to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event, out of which a claim arises. In sub-section (2) of Section 95 it is provided that subject to the proviso to sub-section (1), the policy of insurance shall cover any liability incurred in respect of any one accident up to the limits mentioned in that Sub-section. All that these two sub-sections lay down is that the Government-owned vehicle has to be insured to cover liability in respect of third party risk and the policy of insurance shall cover any liability incurred in respect of any accident up to the limits prescribed in sub-section (2) of Section 95. If the liability of the State Government is determined, then the amount of compensation payable to a third party on that basis will be paid out of the fund created by the State Government under the proviso to sub-section (3) of Section 94. These sections do not lay down under what circumstances the liability of the State Government will be fixed. The Insurer only incurs the liability of the assured and that also to the extent for which the vehicle is insured. Therefore, the third party has first of all to establish the liability of the assured and it is only then that it can recover the amount of compensation awarded against the assured from the insurer. If he is unable to prove his claim against the assured, then he cannot get any compensation from the insurer. The provisions of the Motor Vehicles Act have not, in any way, changed the general law under which compensation is claimed by one person from another. Under the Law of Torts, in order to get compensation from another person, it is necessary to prove that death or bodily injury was caused to the claimant by the rash or negligent act of the driver of the vehicle. If that is not proved, the claimant cannot get any compensation either from the driver or the owner of the vehicle and if no decree for compensation can be passed against the driver or the owner of the vehicle, then the insurer with whom the vehicle is insured, is under no liability to pay any compensation to the claimant, because u/s 96 of the Motor Vehicles Act, the decree has to be obtained; against the assured and it is only then that the same can be executed against the Insurer.

8. A similar case came up for decision before Dua, J. in *Ram Pertap Vs. General Manager, Punjab Roadways, Ambala*, where- in the learned Judge observed thus:

"Held, that Section 110-8 of the Motor Vehicles Act does not in terms lay down,

that it is only when negligence on the part of the driver of the vehicle concerned is established that compensation can be awarded, but then it should be borne in mind that this bunch of Sections (110 to 110-F) merely deal with the subject of the substitution of the Motor Accidents Claims Tribunal in place of Civil Courts for the purpose of adjudicating on claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles. They do not deal with the question as to who is to be held liable and in what circumstances, if any injury results from an accident

Held also, that in order to discover the criterion or tests for fixing liability, the Courts have, in the absence of any statutory provision fixing liability irrespective of negligence, to turn to the Law of Torts, according to which indisputably negligence in causing the accident in question is generally speaking essential to hold the negligent person liable. The cardinal principle of liability in Torts, when death or injury has been caused to a person, is negligent or failure to take the requisite amount of care required By law.

Held further, that the bunch of Sections 110 to 110-F of the Motor Vehicles Act do not in any way override the Law of Torts."

Learned counsel for the appellant submitted that in this authority, the learned Judge had not discussed the provisions of Sections 94 and 95 of the Motor Vehicles Act and if the same had been considered, the decision might have been otherwise. I have already referred to these two provisions in detail and am of the view that they do not, in any way, support the contention of the appellant.

9. In the present case, since I have already held that this accident was not due to any rash or negligent act of the driver, therefore, the appellant is not entitled to claim any compensation for the injuries received by him.

10. In the result, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court as well.