

(1983) 10 P&H CK 0075
In the Punjab And Haryana At Chandigarh

Nek Ram and Others

APPELLANT

Vs

The Punjab Roadways and Others

RESPONDENT

Date of Decision : 14-10-1983

Acts Referred:

Citation : (1984) 1 ACC 178 : (1984) ACJ 396

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

Bench : Single Bench

Judgement

S.S. Sodhi, J.—The Punjab Roadways bus PUQ-5340 while travelling on the Pathankot-Jalandhar Road was involved in an accident with a truck DLL-9571 coming from the opposite direction. This happened on September 7, 1975 at about 3.30 P.M. Both the drivers namely that of the bus and the truck as also the cleaner thereof were killed. The other person who died was Sh. P.C. Nanda a passenger travelling in the bus.

2. A claim for compensation was put in by the son and daughters of Damodar Dass, deceased, the driver of the ill-fated bus and a separate one by Kamlesh Nanda the widow of Sh. P. C. Nanda, deceased and their three minor daughters a minor son and also by his mother. Both these claims though arising from the same accident were tried separately.

3. In dealing with the claim filed by the children of Damodar Dass, deceased, the Tribunal came to the finding that the accident between the bus and the truck was an act of God and, therefore, neither driver could be held to have been negligent. No compensation was accordingly awarded to them.

4. Negligence, was however, held against the bus driver in the claim relating to Sh. P.C. Nanda, deceased, on the finding that the spare wheel of the bus had been kept inside it and the deceased died as a result of the injuries caused to him by this wheel when it jumped and struck against his head at the time of the accident. A sum of Rs. 1,20,000/- was awarded as compensation to the claimants here.

5. This order will dispose of both the appeals filed against the two awards of the Tribunal arising from the accident here.

6. The main question which arises in this appeal is with regard to the issue of negligence. In the case relating to Damodar Dass deceased, the claimants imputed negligence for the accident to the truck driver. The case being that despite every possible care taken by the bus driver to avoid the accident, the truck came and dashed into the bus. It was also stated that the truck was being driven rashly and negligently. This version was supported by the State of Punjab as also Punjab Roadways in the other case. The claimants there namely Kamlesh Nanda and others laid the blame for the accident upon the drivers of both the vehicles. The case pleaded being that both the vehicles were being driven rashly and negligently and neither of the drivers cared to make room for the other vehicle to pass and as a result of which there was a head on collision between them. It was further pleaded that a spare wheel had been placed inside the bus and with the impact of the collision between the two vehicles this spare wheel came and hit against the deceased on his head as a result of which he later died in hospital. Ramji Dass respondent, owner of the truck, on the other hand, blamed the bus driver for the accident and also put-forth the plea that it was an inevitable accident and had occurred on account of the bursting of the right front tyre of the truck which was an act of God.

7. As the two claims had been separately tried, a different set of witnesses were examined in each case. P.W. 5 Bakhshish Singh and P.W. 6 Gurcharan Singh passengers travelling in the ill-fated bus, narrated the eye-witness account of the occurrence. They both deposed to the effect [that the bus was travelling on its correct side of the road at normal speed when the truck came from the opposite direction at a very fast speed and all of a sudden turned towards the bus and hit into it. P.W. 6 Gurcharan Singh stated that the truck had come on to the wrong side and then hit into the bus. Both these witnesses deposed that they did not hear the sound of any tyre burst.

8. R.W. 1 Gurdial Singh was the only witness examined as an eyewitness by the respondents. It was he who deposed that the right front tyre of the truck had burst and it was as a result thereof that the truck went on to its right side and struck against the bus.

9. Finally, there is the testimony R.W. 2 Ramji Dass. the owner of the truck, to the effect that the tyre which burst was in a good condition as it was only 3 or 4 months old. He further deposed that he sent the truck from Delhi only two days earlier after getting it checked there.

10. A reading of the evidence led in this case would show that the bus was being driven on its correct side of the road at the time of the accident and it did not go on to the wrong side of the road at any time. There is some conflict in the evidence whether the bus was in the centre of the road on its correct side or had gone on to the kucha portion on the left side. Be that as it may, there is no

suggestion that if the truck coming from the opposite direction had stayed on its correct side of the road, the accident could not have been avoided. Indeed, as was the case pleaded by the respondents, the accident here took place on account of bursting of the right front tyre of the truck and it was then that the truck went towards its right and hit against the bus. There can thus be no manner of doubt in such a situation that there was no fault of the bus driver in this accident. The question that thus survives for determination is whether the bursting of the tyre absolves the truck driver and owner from blame for this accident.

11. Turning now the claim filed by Kamlesh Nanda and others, the eye-witness account of the occurrence was narrated by PW, 6 Hans Raj who deposed that he had been travelling in the bus involved in the accident. Besides this, there, is the testimony of P.W. 1 Dr. Nasib Singh, a medical practitioner and P.W. 2. Mulkh Raj Sharma who deposed that they had seen the accident which took place near where they were. It was the testimony of these witnesses that the collision between these two vehicles, namely the bus and the truck took place almost in the middle of the road. PW. 2 Mulkh Raj Sharma described the speed of the bus as high and that of the truck as very rash. P.W. 6 Hans Raj on the other hand stated that the bus was proceeding at normal speed while the truck had come at a very fast speed from the opposite direction. According to him, the accident took place as both the vehicles were travelling in the centre of the road. He, however, denied the suggestion that the bus came on to its wrong side but stated that it was the truck which had come on to its wrong side.

12. There is then the testimony of R.W. 4 Bakhshish Singh who deposed that he was a passenger in the bus and R.W. 5 Mohinder Singh who was the Conductor thereof. According to these witnesses there was no fault of the bus driver. Both these witnesses deposed to the tyre of the truck bursting and then accident taking place.

13. The tyre burst of the truck being the cause of the accident was also deposed to by R.W. 1 Gurdial Singh who was examined in this case too as an eye-witness to the accident. As regards the bursting of the tyre of the truck it would be pertinent to note the testimony of R.W. 2 Bhagat Ram who stated that he saw the accident and that the collision took place after he had heard the sound of the tyre burst. The significant part of his testimony was that the tyre that burst was worn out. This is contrary to the testimony of R.W. 3 Ramji Dass, the owner of the truck, who deposed that the tyre was in good condition as he had purchased it only 3 or 4 months before the accident.

14. Before proceeding further, it also deserves note that according to the evidence led, the bus carried inside it a spare wheel thereof. This was specifically deposed to by P.W. 6 Hans Raj. This statement was corroborated by that of P.W. 1 Nasib Singh and P.W. 2 Mulkh Raj Sharma. Both these witnesses stated that this spare wheel had struck some passengers who lay injured in the bus when they reached there. In the face of this dis-interested testimony, the statement of

R.W. 4 Bakhshish Singh and R.W. 5 Mohinder Singh Conductor of the bus denying the existence of the spare wheel in the bus cannot be accepted. R.W. 4 Bakhshish Singh was a person known to the bus-driver while RW 5 Mohinder Singh was Conductor thereof. They were thus both the persons interested in the deceased driver.

15. As in the earlier case, here too it would be seen that the evidence led clearly establishes the fact that the accident between the bus and the truck was caused by the tyre burst of the truck which resulted in the truck swerving to its right and then hitting into the bus. It was on this account that the accident was sought to be described as an act of God. Here again, no blame for the accident between bus and the truck could be fastened upon the bus driver. As regards the plea of inevitable accident on account of the bursting of the tyre of the truck, it would be relevant to advert to the judgment of this Court in *Mela Ram v. Mohan Singh and Ors.* AIR 1978 Punjab and Haryana, 323. This was a case of an accident due to a tyre burst. It was held that the doctrine of *res ipsa loquitur* applied in such a case and the burden consequently shifted to the respondents to disprove negligence on their part. The truck driver was held liable in the absence of evidence that the tyre which had burst was in good condition and that it had been examined periodically.

16. Reference may here also be made to *Barkway v. South Wales Transport Co.* (1959) 1 ALL ER 392, which was followed in *Mela Ram's* case (*supra*). This is a case of an accident caused on account of the bursting of a tyre of an Omnibus. It was held that the doctrine of *res ipsa loquitur* was attracted thereby. This doctrine, it was said "was no more than a rule of evidence affecting onus of proof of which the essence was that an event which, in the ordinary course of things was more likely than not to have been caused by negligence, was by itself evidence of negligence.

17. It would be pertinent to note that there is no evidence in this case with regard to the mileage done by the tyre which had burst. The only evidence here being that of the truck owner Ramji Dass that he had purchased the tyre 3 or 4 months ago. There is no documentary evidence in the form of any bill or cash memo to corroborate this statement. The omission of this becomes significant when regard is had to the testimony of RW2. Bhagat Ram that the tyre which had burst was a worn out one. Here it also deserves note that ASI Guru Dutt, the Investigating Officer of this case, was not questioned with regard to the bursting of the tyre nor was any question asked from him with regard to the condition thereof. In these circumstances, there is no escape from the conclusion that the blame for the accident in so far as the claimants in the case relating to Damodar Dass deceased are concerned, lay entirely with the driver and owner of the truck involved in the accident. In the case of the claimants in the other case namely Kamlesh Nanda and others, liability would be not only of the driver and owner of the truck, but also partly of the bus driver and the owners thereof, namely Punjab Roadways and the State of Punjab, in that if the spare wheel had not

been kept inside the bus, P.C. Nanda deceased may perhaps have escaped injury with the spare wheel which proved fatal in his case. The negligence of the bus driver in this case lay in keeping the spare wheel inside the bus.

Having regard therefore, to the totality of the circumstances of this case, it must be held that the accident resulting in the death of Damodar Dass deceased was caused entirely due to rash and negligent driving of the truck driver while as regards the death of the other deceased namely P.C. Nanda, both the truck driver and also the bus driver were negligent, negligence of the truck driver being to the extent of 75% and that of the bus driver being 25%.

18. Turning now to the issue relating to the quantum of compensation payable to the claimants, there was no challenge to the amount awarded as compensation to the claimants Kamlesh Nanda and others. As regards claim in the other case, the evidence on record shows that Damodar Dass deceased was about 40 years of age at the time of his death and was employed as driver in the Punjab Roadways. His income was about Rs. 470/- per month. The claimants here are his four minor children. Keeping in view the principles as set out by the Full Bench in Lachhman Singh and Ors. v. Gurmit Kaur and Ors. 1979 P.L.R. 1, 16 would clearly be the appropriate multiplier to be applied here. After making due allowance for the amount that the deceased would have been spent on himself and the other uncertainties of life, the fair and reasonable the loss to the claimants would be at the rate of Rs. 250/- per month. So computed, the compensation payable to the claimants would work out to Rs. 48,000/.

19. In the result, the claimants Nek Ram and others are hereby awarded Rs. 48,000/- as compensation. All the claimants shall be entitled to this amount in equal shares. They shall, in addition, be entitled to interest thereon at the rate of Rs. 12% per annum from the date of the application to the date of the payment of the amount awarded. The amount payable shall be paid to them in such manner as the Tribunal may deem to be in their best interest.

20. Turning now to the appeal filed by the State of Punjab against the claimants Kamlesh Nanda and others, it is accepted to the extent that the liability of the State of Punjab for the amount awarded shall be to the extent of 25% only while that of the respondent-truck owner Ramji Dass shall be for the remaining 75%. The liability of the respondent-Company shall, however, be limited to Rs. 50,000/-.

21. In the result, the appeals filed by the claimants Nek Ram and others and the State of Punjab are accepted to the extent indicated above. The claimants Nek Ram and others shall be entitled to costs of their appeal. Counsel fee Rs. 300/-. There will be no order as to costs in the other appeal.