
(1964) 01 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Regular First Appeal 103D of 1954

New Delhi Municipal Committee

APPELLANT

Vs

Jagdish Rai and Another

RESPONDENT

Date of Decision : 23-01-1964

Acts Referred:

Limitation Act, 1963 — Article 2
Penal Code, 1860 (IPC) — Section 279 , 338

Citation : (1964) 01 P&H CK 0035

Hon'ble Judges : D. Falshaw, C.J; Mehar Singh, J

Bench : Division Bench

Advocate : Daljeet Singh, for the Appellant; Keshav Dayal and Maharaj Kishan, for the Respondent

Final Decision : Dismissed

Judgement

D. Falshaw, C.J.—This is an appeal by the New Delhi Municipal Committee against a decree for Rs. 3,500/- in favour of Jagdish Rai Respondent.

2. The facts are that at about 7.30 a.m. on the 25th of August 1948 Jagdish Rai was riding a bicycle along Curzon Lane when a truck belonging to the Defendant Committee which was on a round collecting rubbish from dust-bins situated at intervals along the road, and was driven by Risal Singh, came from the opposite direction. The road is 181 wide according to the Inspection Note of the learned Subordinate Judge and the truck was driven by Risal Singh, from the left hand side of the road to the right side, which was the Plaintiff's proper side, and there was an accident in which the Plaintiff's bicycle was damaged and a wheel of the truck crushed his right foot so badly that when he was taken to the hospital, as he was, without delay, in the truck involved in the accident, the foot had to be amputated.

3. He instituted the suit on the 5th of February 1949 claiming Rs. 10,000/- as damages against the Municipal Committee and the driver Risal Singh.

4. The decision of the suit was some what delayed because on the 23rd of November, 1949 the learned Subordinate Judge rejected Jagdish Rai's application for bringing the suit in forma pauperis and it was only on the 27th of June 1951 that in revision I set aside that order and allowed the Plaintiff to sue as a pauper.

5. Every possible plea was taken by the Defendant Committee resulting in the framing of the following issues:

1. Whether the Plaintiff was run over due to the negligence and rash driving of truck No. D.L.A. 5627 by Defendant No. 2 ?

2. Whether the suit is within time ?

3. Whether Defendant No. 1 is not liable for the acts of Defendant 2 ?

4. To what amount, if any. is the Plaintiff entitled by way of damages ?

The trial Court held that the suit was within time, that the accident was due to the negligence of Risal Singh for which the Defendant committee was liable and that the proper amount of damages was Rs. 3,500/-. The Committee has appealed and Plaintiff has also filed cross-objections for an additional sum of Rs. 2,500/-, which would make the damages Rs. 6,000/-.

6. Only four witnesses were examined by the Plaintiff. Dr. Parshotam Das, Police Surgeon P. W. 1, examined him in the Irwin Hospital on the 28th of August 1948 after the amputation had taken place, in connection with the case instituted by the police against Risal Singh under Sections 279 and 338 Indian Penal Code in which Risal Singh was acquitted. A.S.I. Tara Singh P. W. 3, proved plan which was also prepared in connection with the criminal case. The story of the accident was related by Murly Dhar P. W. 2 and the Plaintiff himself as P. W. 4 on the other side Risal Singh Defendant and two beldars (laborers) who were with him in the truck for the purpose of loading the rubbish out of the bins into the truck, Girdhari and Kundan, gave evidence. Their evidence was to the effect that a boy was riding on the back of the Plaintiff's bicycle who got off and ran away when the accident was imminent and that Risal Singh had blown his horn when crossing from the left to the right of the road and that at the time of the actual impact the Plaintiff had actually lost his head and fallen off his bicycle.

7. A copy of the Magistrate's judgment by which Risal Singh was acquitted was also filed, but this strictly speaking is inadmissible and certainly not binding on the civil Court. I have, however, perused it and on the assumption that the evidence produced in the criminal Court was the same as has been produced in this case, I do not think it is a correct judgment.

8. It may well be that when Risal Singh drove his truck from the left to the right side of the road in order to stop at a dustbin which was close to the scene of the accident, he blew his horn and was not driving at all fast but this in my opinion does not at all exonerate him from the charge of negligence and breach of the

ordinary rules of the road. It is an elementary principle in driving a vehicle that if the driver wishes to take a turn to the right, or even to cross over to the right side of the road in order to park there he must wait until any vehicle coming from the opposite direction has gone past, and his duty does not end in merely blowing his horn and crossing over. It may also be true that when the wheel of the truck actually ran over the foot of the Plaintiff the latter had already fallen from his bicycle, but I do not regard this as at all contributory negligence since any person riding a bicycle may well lose his head when he finds a truck crossing to its right side of the road on top of him. On the facts of this case I have no doubt that the serious injury to the Plaintiff was caused by the negligent driving of Risal Singh.

9. The learned Counsel for the Appellant even sought to raise the plea of limitation although the suit was filed less than six months after the accident took place. His argument was that the case was one covered by Article 2 in the First Schedule to the Limitation Act which reads-

Description of suit Period of Limitation Time from which period begins to run

For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India. Ninety days When the Act or omission takes place.

I fail to see how this Article has any application whatever when there is an Article which specifically deals with compensation for injury to the person. Article 21 fixes the limitation for a suit brought by executors, administrators or representatives under the Fatal Accidents Act at one year from the date of the death of the person killed and Article 22 fixes same period of limitation for a suit for compensation for any other injury to the person from the date when the injury is committed. Some attempt was made to argue that since the truck was on an errand of collecting rubbish under the Municipal Bye-Laws, the provisions of Article 2 were some-how attracted but in my opinion it is completely irrelevant in a suit brought against a driver that an employer is a private individual or an official body. The learned Counsel for the Appellant admitted that he was unable to cite any authority applying Article 2 to a case of this kind.

10. No attempt was made to argue that the Municipal Committee was not liable for the negligent act of the driver, and the only question is of the quantum of damages. The relevant facts on this point are that at the time of the accident the Plaintiff was aged 20 and after passing the Intermediate examination of the Punjab University he was receiving training in the Radio Training Institute of the Y.M.C.A. at Delhi. No evidence has been led regarding any medical or other expenditure and the damages are simply to be calculated as compensation for the loss of a foot. In arriving at the figure of Rs. 3,500/- the learned subordinate Judge relied on the decision in *John Vectis Carew Wyllie v. Secretary of State for India in Council* (1928) 111 I C 549 This was a decision of the Lahore High Court relating to an accident to a boy of 8 whose leg was fractured by the falling of the

gate in the Lawrence Grandens at Lahore. Part of the claim was for medical expenses which included the resetting of the fractured leg in England, but general damages were assessed by the learned Judge as Rs. 2,665/8/-. This sum in 1928 would be the equivalent of a very much higher sum in post-War years.

11. On behalf of the Appellant reliance has been placed on the decision in *The State of Madras Vs. James Appadurai and Another*, the facts in which bear some resemblance to those in the present case. The Plaintiff was a boy whose age is not given, but apparently was little younger than the present Plaintiff and as the result of the negligence of a bus driver his left leg had to be amputated below the knee. The principles of damages in similar circumstances and the authorities have been considered by Ramaswami and Subrahmanyam JJ. who found that the sum of Rs. 10,000/- awarded by the lower Court was a proper figure. In the *The Kotah Transport Ltd., Kotah and Others Vs. The Jhalawar Transport Service Ltd. and Others*, Rs. 14,000/- were allowed as damages, but the injuries which included the amputation of a leg were more serious in other respects. In my opinion Rs. 3,500/- is little and the total sum claimed by the Appellant as the result of his cross-objections, Rs. 6,000/- is not too much. The result is that I would dismiss the appeal of the Municipal Committee and accept the cross-objections of the Plaintiff-Respondent both with costs and increase the decial amount to Rs. 6,000/-

Mehar Singh, J.

12. I agree.