
(1969) 04 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 102 of 1967

Oriental Fire and General Insurance Company Ltd. and Others	APPELLANT
Vs	
Chuni Lal and Others	RESPONDENT

Date of Decision : 01-04-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1969) 04 P&H CK 0021

Hon'ble Judges : Mehar Singh, C.J

Bench : Single Bench

Advocate : Munishwar Puri, for the Appellant; Maluk Singh, J.V. Gupta and R.K. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

AT CHANDIGARH

Mehar Singh, C.J.—On June 6, 1965, there occurred an accident outside Nangal Town on the railway road going from east-south to northwest, the place of accident being marked by a circle in the plane, Exhibit "X". Both sides admit this accident. Tarlochan Chand was riding a cycle with his mother Sandhya Devi, who had a child one and a half years in her arm, riding behind on the carrier. He was on the railway road proceeding from east-south to north-west. In this very plan is shown the road which comes from the side of the Nangal Dam and runs from West to east. At a point it meets another road from south and beyond that is what is described as Nangal Canal Road. This goes to east. A truck No. 5106 driven by Malkiat Singh was coming on the Nangal Dam Road and moving from west to east. The plan further shows that the railway road is connected with the Nangal Dam and Nangal Canal roads straight as also by the formation of a crescent, the curved end of which starting from south joins the Nangal Dam and Nangal Canal roads in the north. On the south-west side of the crescent is a petrol pump, quite almost opposite to the place where the accident occurred and is shown by a circle in the plan. Tarlochan Chand was riding his cycle on the

railway road from east-south to northwest. It is common ground that he was riding on his correct side, that is to say, on the left of the road. Malkiat Singh came with his truck on the Nangal Dam road and then turned on the railway road, arrived at the spot where the accident took place, took an immediate turn at almost right angle in the direction of the petrol pump and then and there was an impact between the truck and the cycle, with the result that the cycle was knocked down and so were its three occupants. Tarlochan Chand and his baby brother Surinder were injured but their mother died at the spot.

2. On one claim having been made by Tarlochan Chand and Surinder, the two brothers, and the other claim having been made by Chuni Lai, husband of Sandhya Devi deceased, on his own behalf and on behalf of his five minor children, including the two injured already named, the Motor Accidents Claims Tribunal, Punjab, Chandigarh, hereafter referred to as "the Tribunal", by its judgment and award of March 29, 1967, partly accepted both the claims. The Tribunal accepted the claim of Tarlochan Chand and Surinder to the extent of Rs. 600/- for the injuries suffered by them during the accident though it unfortunately remarked that Surinder being aged only about eighteen months at the time of the accident could not have suffered any pain, an impression which obviously cannot possibly bear any scrutiny. The Tribunal also accepted the claim of Chuni Lai on his own behalf and on behalf of his minor children, awarding all of them compensation in the amount of Rs. 14,400/-. The amount of compensation has been calculated in this manner: the age of Sandhya Devi deceased at the time of the accident was 35 years, to which an expectancy of 20 years has been attached, and the compensation awarded at the rate of Rs. 60/- per mensem on account of loss of her services to her husband and her children and also for loss of marital company to her husband. In this manner the figure of Rs. 14,400/- was arrived at. In both cases the Oriental Fire and General Insurance Company Limited, with which the truck driven by Malkiat Singh was insured, was made to bear liability for the payment of the amount awarded. Against the judgment and award of the Tribunal, on July 6, 1967, an appeal (F.A. No. 102 of 1967) has been filed by the Oriental Fire and General Insurance Company Limited, Hukam Chand Mebnga Singh, owners of the truck and Malkiat Singh, driver of the truck, Appellants 1 to 3, to which Chuni Lai and his five children have been shown as Respondents, in so far as the claim of Chuni Lai Respondent on his own behalf and on behalf of his five minor children had been decreed, and a revision application (Civil Revision 572 of 1967) has been filed by the same three Appellants as Applicants against all the Respondents other than Chuni Lai Respondent in so far as the claim of Tarlochan Chand and Surinder Respondents had succeeded. This judgment will dispose of both these matters.

3. It has already been stated that the occurrence of the accident is admitted by both the parties. It is further admitted that at the particular spot shown by a circle in the plan, Exhibit "X" the accident took place and in that accident there was an impact between the truck driven by Malkiat Singh Appellant and the cycle of Tarlochan Chand Respondent. It is also admitted that in consequence injuries

were received by Tarlochan Chand and Surinder, Respondent but their mother Sandhya Devi died at the spot. The difference between the two versions is just this. The Appellant's version is that Malkiat Singh was driving his truck at a speed of no more than something like ten miles per hour and arriving near the petrol pump, instead of taking the road in the form of a crescent going to the petrol pump, he arrived at the railway road opposite to the petrol pump and tried to reach the petrol pump over the uncovered sand and ground island between the roads. To do that he had to take almost a right angle turning leaving his own side and coming to the right side so as to arrive at the ground in front of the petrol pump. When he thus turned from his correct side to the right side and the front wheels of the truck left the road and entered the ground in front of the petrol pump., Tarlochan Chand Respondent with his cycle struck against the truck and the impact knocked off the cycle as also those riding on it, resulting in injuries to the two boys and the death of their mother. Obviously, if this is so, no possible claim can succeed on the side of any Respondent. On the contrary, the version on the side of the Respondents has been that Malkiat Singh was driving his truck rashly and negligently rather at a high speed, and while Tarlochan Chand Respondent carrying his mother on the carrier of the cycle with young surinder in her arm was going on his correct side on the railway road, Malkiat Singh Appellant immediately swung round his truck to the right, taking almost a right angle turn, and thus hit the cycle of Tarlochan Chand, with the result that the two boys were thrown off the cycle, the cycle was damaged and with the impact the mother of the boys Sandhya Devi, died at the spot. The learned Judge of the Tribunal has rejected the version of the Appellants, or rather of the driver, Malkiat Singh Appellant, and has accepted the evidence of the Respondents and their witnesses.

4. So far as the witnesses of the Appellants are concerned, I think the Tribunal was right in discarding their evidence as unreliable. The witnesses do not give adequate reason why they should have happened to be present at the crucial moment. They then support the version of Malkiat Singh Appellant that it was Tarlochan Chand Respondent who struck his cycle against the truck of that Appellant, a statement which is inherently unbelievable because for such a thing to happen Tarlochan Chand Respondent must have been extremely near when Malkiat Singh Appellant turned to the right with his truck towards the petrol pump. If the cycle was so near, and Malkiat Singh Appellant was driving at a speed of no more than ten miles an hour, it seems almost impossible to believe that he could have taken a turn so close to the boy's cycle as even to provide an opportunity for him to strike against his truck. This is belied by another fact. Malkiat Singh Appellant says clearly that he never saw the cycle of Tarlochan Chand Respondent and yet he was coming from the opposite direction and it was impossible for him to have missed seeing that a boy was riding a cycle on his own left from the opposite side. The witnesses of the Appellants have gone out of the way to speak an untruth to support the claim of Malkiat Singh Appellant to state that he blew the horn before he took the turn to the right in

the direction of the petrol pump, but if what Malkiat Singh Appellant has said is true that there was nothing on the road in any direction, there was no occasion for him to sound the horn. His evidence negatives any such thing having happened, because he says he never knew of the existence of the cycle until the cleaner on the truck passed the bell which in his driver's cabin then informed him that some accident had happened. So the Tribunal was right in discarding the evidence of the Appellants' witnesses. Some of them even said that Tarlochan Chand Respondent was not on the railway road but was on the Naagal Canal Road, which would obviously show that they were not properly tutored. So the Tribunal was right in holding the Appellants' witnesses as unreliable.

5. The Learned Counsel for the Appellants has contended that the accident did not take place because of the rash and negligent driving of the truck by Malkiat Singh Appellant. He says that the truck could not have been driven at the speed of 50 miles per hour as deposed to by the Respondents' witnesses. It was being driven at a slow speed of something near about ten miles an hour, and not until the cleaner on the truck pressed the bell that Malkiat Singh Appellant came to know that the cycle of Tarlochan Chand Respondent had struck against the truck. This means that the driver was not even aware of the cycle. According to the Learned Counsel, in the circumstances, Malkiat Singh Appellant could not possibly have driven the truck rashly and negligently and could not have caused the accident by so driving his truck. He has pressed that the fact of the matter is that it was Tarlochan Chand who drove his cycle against the truck and that is the reason why the cycle was knocked down by the rear left side of the truck and did not come in contact with the front "side. I think the conclusion reached by the Tribunal is correct that the accident as it has taken place, could not have occurred but for the rash and negligent driving of the truck by Malkiat Singh Appellant. It has already been explained with reference to the situation in the plan, Exhibit "X" that Tarlochan Chand Respondent was riding his cycle on his own side on the left of the road. Malkiat Singh Appellant was coming with his truck from the opposite direction and if he was on the correct side he would be to the right of Tarlochan Chand Respondent. He did not take the road going to the petrol pump either from the end immediately available to him as he came from the Nangal Dam road, or at the other end of the crescent which is in the south, but he cut the road in the middle, wanted to cross over the ground lying vacant in front of the pump and, as said, he wanted to reach the petrol pump in that manner so that he could have diesel for his truck from there. While so doing he could not avoid seeing Tarlochan Chand Respondent riding his cycle on the railway road and going from south-east to north-west. This was impossible. Having seen" him, he turned his truck from his own side to the. right, which means the correct side of Tarlochan Chand Respondent, and did* so rashly that his truck came in contact with the cycle before it cleared the road, causing injuries to the two boys and the death of their mother. This cannot be anything else but an act of rash and negligent driving of the truck on his part. There is no other manner in which this accident could have taken place. This is broadly how

Tarlochan Chand Respondent and his witnesses have described the accident. No doubt there are here and there discrepancies in their statements, but those are the result of different observations from different situations. No two persons will observe the same set of circumstances exactly in which and the place at which the accident has taken place. It could only take place when Malkiat Singh Appellant, without caring for who was on the road, swung round his truck to the right and wanted to run across the ground not meant for driving vehicles to reach the petrol pump. An explanation has been rendered by this Appellant why he did so. It is this, that the road leading to the petrol pump was already blocked by three trucks. It has not been shown that a fourth truck could not go on that road and it has not been explained why the truck driven by Malkiat Singh Appellant could not then come to the petrol pump from the opposite end. So that in so far as conclusion of the Tribunal in regard to the evidence of the parties is concerned, I see no reason whatsoever to take a different view.

6. The Learned Counsel for the Appellants has referred to the decision of a learned Single Judge of this Court in Malkiat Singh (Appellant) v. State Criminal Revision No. 1014 of 1966, decided on February 1968, showing the acquittal of Malkiat Singh Appellant of an offence u/s 304-A of the Penal Code in connection with the very same occurrence. He was convicted by the trial Court, which conviction was upheld on appeal, but in revision the learned Judge acquitted him. The Learned Counsel has urged that the acquittal of the offence u/s 304-A of the Penal Code, if not conclusive, is a matter for consideration which rather goes to discredit the version of the occurrence as given by the Respondents. Whatever difference of opinion was there on the question of admissibility and the extent of admissibility of such a judgment in a criminal case in so far as the claim proceedings, like those in the present case, are concerned previous to the judgment of the Division Bench in The Municipal Committee, Jullunder City v. Romesh Saggi 1969 A.C.J. 135 in that case the learned judges of the Division Bench on December 11, 1967, very definitely decided that such a judgment can only be received for the purpose of knowing the result in the criminal prosecution and for no other purpose. So that in the face of the decision in Romesh Saggi's case the Appellant cannot have the benefit of the judgment and order of the learned Single Judge acquitting Malkiat Singh Appellant of the offence u/s 304-A of the Penal Code. However, even otherwise, Teja Singh is a witness who was never produced at the criminal trial, but he has been produced by the Respondents during the trial of their claims and his evidence has been believed by the Tribunal. He was not even cross-examined on the side of the Appellants. The Learned Counsel for the Appellants points out that on the day the witness was examined, the Appellants really had not the counsel present, but for that they alone are to blame. No application was made that the witness be recalled for cross-examination. The witness has clearly stated that the accident took place due to the fault of Malkiat Singh Appellant. So that in the present case even if the judgment in the criminal case may be considered, it could not possibly affect the conclusion, because that judgment is based on evidence only

a part of which was before the Courts, but there was more evidence before the Tribunal than in the criminal case. So the decision of the Tribunal is affirmed that it was on account of the rash and negligent act of Malkiat Singh Appellant that the accident took place in which Tarlochan Chand and Surinder Respondents received injuries and their mother Sandhya Devi met her end.

7. In so far as Civil Revision No. 572" of 1967 is concerned, there is next to nothing that can be said on the side of the Appellants, who are Applicants in that revision application, for the amount of Rs. 600/- awarded as damages by the Tribunal to Tarlochan Chand and Surinder, Respondents, for the injuries received by them in the accident. I have already pointed out that the approach of the Tribunal cannot possibly be accepted that because Surinder Respondent, at the time of the accident, was only eighteen months old he could not suffer pain. It is not quite clear how the learned Judge of the Tribunal has proceeded on a premise like this. It is obvious that a child howsoever young he may be, will suffer and feel quite as much of pain as anybody else though his exhibition of the feeling of the suffering may be different from that of an adult. No doubt Tarlochan Chand Respondent received simple hurt, but Surinder Respondent had grievous injuries. However, either of these two Respondents had a shock of the instantaneous death of their mother. So no argument is available to the Appellants so far as the claim of these two Respondents is concerned either in regard to the claim as such or in regard to the quantum of compensation.

8. The Learned Counsel for the Appellants in F.A.O. No 102 of 1967" has pressed first that the approach of the learned Tribunal in calculating the amount " of compensation has not been correct. He has pointed out that only 15 years expectancy of life should normally have been taken as was done in Municipal Corporation, Delhi Vs. Sobhag Wanti etc., but in that case the deceased when she died was about 40 or 42 years of age whereas here Sandhya Devi deceased was only 35 years of age at the time of accident. The learned Judges in Sobhag Wanti's case proceeded on the expectancy of 55 to 57 years of age, but even in the present case this is exactly what the Tribunal has done. It has also proceeded on the expectancy of age of 55 years so far as Sandhya Devi deceased is concerned. As stated, at the time of her death she was 35 years old and Tribunal has given her the expectancy of another 20 years taking into consideration that she might well have lived up to the age of 55 years. Relying on the very case of Sobhag Wanti, the Learned Counsel has further urged that allowance of Rs. 60/- per mensem as compensation on account of the loss of services and company of Sandhya Devi to her husband Chuni Lai is excessive as in Sobhag Wanti's case the amount taken was Rs. 40/- per mensem, but that was a case which was considered by the learned Judges at the end of 1959, whereas the present accident took place in 1965, and it has been held by the learned Judges of the Bombay High Court in Abdulkadar Ebrahim Sura v. Kashinath Moreshwar Chandani 1968 A.C.J. 78, that the value of the currency at the time, in the matter of consideration of assessment of damages, has to be taken into account. There can be no two opinions that between 1960 and 1965 there has been an

increase in the cost of living. So the approach of the Tribunal has been consistent in the present case with the basis on which Sobhag Wantis case proceeded and that case was approved by their Lordships of the Supreme Court on appeal, and the case is reported as Municipal Corporation of Delhi v. Subhagwanti 1966 A.C.J. 57. So the Tribunal has proceeded on sound basis in assessing the damages so far as the claim of Chuni Lai and his five minor children is concerned, both as regards taking into account the expectancy of the age of the deceased wife of Chuni Lai as also with regard to the quantum of damages per month to him and his children because of the loss of the services of the deceased, and because of the deprivation of her company so far as Chuni Lal Respondent himself is concerned.

9. The Learned Counsel has then in the end urged that while the Respondents will get compensation in lump-sum, which they would otherwise have gained over a period of twenty years, and so there should be a corresponding reduction in the amount of the compensation on two considerations (a) that the family is going to have a lumpsum amount of compensation, and (b) that on account of uncertainties of life, even due to natural causes, the deceased might well have died earlier. In this impact he has referred to Krishnamma v. Alice Veigas 1966 A.C.J. 366 in which the learned Judges of the Mysore High Court pointed out that on such considerations deductions have varied bet-10 and 20 per cent, allowing a deduction of 20 per cent in the particular case, Dr. Ram Saran and Another Vs. Shrimati Shakuntala Rai and Others, and Savitri Devi v. the Malerkotla Bus Service 1969 A.C.J. 173, in which cases, however, the learned Judges made a reduction of a set sum without following any percentages, and Ishwari Devi v. Union of India 1968 A.C.J. 141, in which the learned Judges of the Delhi High Court proceeded on a figure of deduction of 15 per cent in the case of lump-sum payment after considering the cases already cited. It has, however, been pointed out in this case that the matter of deduction is not necessarily a matter of fixing a percentage of deduction, but the circumstances of each case have to be taken into account. In the present case the accident occurred on June 6, 1965, in which Sandhya Devi deceased died at the place of the accident. The judgment and award of the Tribunal was made on March 28, 1967, and an order in this Court was made for the payment of the amounts of the compensation awarded, against security, on July 27, 1967. It follows that the last-mentioned order was made a little over two years after the death of Sandhya Devi. Apparently for that period also there remained the matter of loss of the income on the amounts which should have been paid to the Respondents as damages en account of the death of Sandhya Devi. Now, if the same basis is taken to have the idea of this loss of interest or income from the amounts which should have been awarded to the Respondents as is to be taken for the matter of deduction made from the compensation amount on account of its lump-sum payment and taking into consideration the uncertainties of life, in either case 15 percent may be taken to be a reasonable approach. Now, 15 percent of Rs. 14,400/- will come to Rs. 2, 160/- , leaving a balance of Rs. 12, 240/- . If this last mentioned sum was

available to the Respondents on and from June 6, 1965, for two years, at 15 percent the return on the amount would come to something like Rs. 1,830/- . So that the margin of difference is hardly of any substance in the circumstances of the present case. Therefore, even on this consideration, reduction in the amount of the damages awarded to Chuni Lal Respondent and his five children is not justified in any sense.

10. The Learned Counsel for the Appellants has at this stage urged that Chuni Lal Respondent has claimed double compensation for his two sons Tarlochan Chand and Surinder, but that is not so because the basis of the claims with regard to them on two counts is different. They have claimed damages for injuries suffered in the accident, and Chuni Lal Respondent has claimed damages on his own account and on behalf of his five children, including Tarlochan Chand and Surinder Respondents, for loss of services of Sandhya Devi deceased so far as all the six are concerned, and for loss of her company so far as he himself is concerned. So this is not a case of a claim for double damages by Chuni Lal Respondent for and on behalf of Tarlochan Chand and Surinder Respondents.

11. The consequence then is that both the appeal of the Appellants and their revision application fail and are dismissed, with costs, counsel fee in the appeal being Rs. 100/- and in the revision application Rs. 30/- .