
(1980) 03 P&H CK 0006
In the Punjab And Haryana At Chandigarh

Oriental Fire And General Insurance Company Ltd., and others	APPELLANT
Vs	
Smt. Manjit kaur and others	RESPONDENT

Date of Decision : 06-03-1980

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1980) 03 P&H CK 0006

Hon'ble Judges : S.S. Sandhawalia, J;J.V. Gupta, J

Bench : Division Bench

Advocate : L.M. Suri for Mr. V.P. sic, for the Appellant; G.S. Giani, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—These seven app-(sic) preferred by the (sic) and the rent by the (sic) Fire and General Insurance Company Ltd., and the owner of the insured vehicle (with cross-objections in (sic)-raise identical (sic) of law and fact. Learned Counsel for the parties are agreed that this judgment will govern all of them.

2. All these appeals arise from an unfortunate automobile accident which took place on the 31st of July, 1958, within the town of Amritsar. On that day at about 10.30 P. M. Sehdev Seth Appellant was driving Fiat Car No. PNJ (sic) from Railway Station, Amritsar to wards putlighar on the main Grant runk(sic) Road As the driver approached a traffic island located at the junction of the G T Road with the read going over the over bridge (called the Sege(sic) Bridge, which pastes over the railway lines) he diped(sic) his head lights. From the (sic) side a (sic) driven by (sic) Singh deceased with his wife Smt Manjit Kaur (now the (sic) with her children) seated on the (sic) sent thereof approached nearer the deceased scooter driver issued of going round the traffic island which was incumbent on (sic) and swerved towards the right to (sic) into the (sic) over bridge (sic) attempting to do so he crashed head-on into the on coming car No. PNJ-200(sic) driven by Sahdev Seth Appellant and the force of the impact violently threw both

the riders of the scooter on the road. The driver of the car stopped the vehicle dead within two to three yards of the impact. Harbans Singh deceased received grievous(sic) injuries and even though he was removed forthwith to the V. J. Hospital, he succumbed to them during the night Smt. Manjit Kaur claimant received relatively minor injuries and survived. The accident apart from others was witnessed by Constables A. W. 6 (sic) Singh and A W.7 Shingara Singh.

3. Smt. Manjit Kaur claimant alongwith her five children preferred a petition before the Tribunal claiming damage to the tune of Rs. 5, 000/(sic). The learned Tribunal held on issue No. 1 that the driver of the car was driving it at a relatively high speed(sic) and had been negligent in not being able to avoid a collision with a scooter. He assessed the damages(sic) for the death of Harbans Singh at a lump sum of Rs. 43,530/- and also granted Rs. 3.600/(sic) in respect of the injuries sustained by Smt Manjit Kaur. On appeal being preferred by the claimants as also by the insurer and the car owner, the learned Single Judge has held that the deceased Harbans Singh was certainly guilty of negligence but opined(sic) that his contribution towards this accident should be fixed at 20 per cent whilst(sic) that of Sahdev Seth Appellant at (sic) per cent, apparently because he was according to the learned Single Judge responsible for the accident to a larger extent. After apportioning the negligence the learned Single Judge availed(sic) to the issue of damage and enhanced the amount of compensation for the death of Harbans Singh to Rs. 1.50.000/- whilst maintaining the compensation of Rs. 3,000/- given to Smt Manjit Kaur claimed for her injuries.

4. In this appeal the matter is now in a narrow compass in view of the findings of fact arrived at by the learned Single Judge himself: these have indeed been not seriously assailed even on behalf of the claimants. With regard to the patent negligence, on the part of Harbans Singh deceased in driving the scooter he first observed as follows In the appeal, I have gone through the evidence with the help of the learned Counsel. So far as the omission of Harbans Singh deceased, to make a turn round the traffic island is concerned, evidence of Inder Singh A W 6, is quite clear. He has categorically stated that the deceased did not reach the traffic island before he made a turn towards the Rego(sic) Bridge. It is now to be seen whether in these circumstances the Appellant still should be held responsible for (sic) driving or not..." Adverting then to Rule 9 contained in the (sic) Schedule of the Motor Vehicles Act the learned Single Judge also held that in (sic) of its clear language Harbans Singh deceased was also negligent(sic) to some extent However, in apportioning the negligence the brief rationale thereof is only as follows: -

The learned Counsel for the Respondents had drawn my attention to the photograph of the site after the accident took place. It shows that the front portion of the car driven by the Appellant was also damaged. From this fact it can safely be inferred that the deceased had gone fairly ahead towards Rego Bridge when the Appellant's car, apparently being driven at a fast speed, struck against it I am, therefore, of the (sic) that negligent driving of the Appellant was to a

large extent responsible for this unfortunate accident. In these circumstances, I hold that the contribution of the deceased in terms of negligence towards this accident should be fixed at 20%.

5. In the aforesaid context the very first sad indeed the primary question herein is whether in face of the virtually admitted factual position and the glaring infraction of the statutory traffic rules by Harbans Singh deceased himself he was not primarily and solely responsible for the accident due to his own rash and negligent driving. The answer to my mind appears to be plain that he indeed was so.(sic)

6. Since the learned Single Judge has laid the larger and the heavier burden of contributory negligence on Sahdev Seth Appellant, it is expedient to advert to this aspect first. Now it is not in dispute that the time of the accident was as late as 10.30 PM. Admittedly at that time the wide G.T. Road at the material point was relatively bereft of traffic. Sehdev Seth Appellant was proceeding in his car on his left side with all the normal and reasonable care of a good driver when he approached the traffic island. It has to be highlighted that traffic island is located at what is virtually a "T" junction where the relatively minor road over the Rego(sic) bridge joins the main road. Admittedly again the traffic island is not in the middle of the G.T. Road, but on its extreme end where the road over the bridge joins the same. There is no evidence worth the same that either when approaching the traffic island or after passing the same, the car was going rashly or fastly driven. The significant fact in this context is that A.W. I. Manjit Kaur, Petitioner, the star witness in the case does not say a word in her examination in chief even that the car was being driven fastly or negligently. None of the claimants have even attempted to assess properly(sic) the speed of the car. A.W. 6 Inder Singh and A.W. 7 Shargara Singh, the two police constables, who have no axe to grind in their evidence clearly state that as Sehdev Seth Appellant approached the traffic island, he took the basic care of dipping the head-lights of his car which were on. In his cross-examination, R.W. 2 (sic) Sehdev Seth Appellant stated that he was driving at a speed between 20 to 30 miles per hour. Considering the wide road, the absence of the traffic and the time of the night, this speed cannot even remotely be labelled as "rash". It bears repetition that the car was being driven on the main G.T. road and therefore, there was no duty cast upon its driver to slow down (sic) vehicle when approaching a (sic) junction. It has been so held in *M/S Hoshiarpur National (sic) Pvt Ltd v. The Motor Accidents Claims Tribunal, Hoshiarpur* (1979) 81 P.L.R. 618.

7. That the car was being driven at a normal speed and with due care and (sic), it further (sic) from the fact that (sic) the head on collision the driver was able to (sic) the vehicle within 2 to 3 yards of the impact. Sehdev Seth Appellant in his evidence was categorical on the point and there is no challenge whatsoever to this part of his testimony. That he instantly and heavily braked his vehicle and brought it to a halt in the shortest distance is evident from the relatively short length of the skid marks (sic). Clearly it is the case that after the impact both the

scooter and its two riders fell in front of the car, yet it is nobody's case that this vehicle either over ran or hit the scooter or any one of the two victim of the accident opposite, it That would plainly indicate that the car was being driven under complete control and at no excessive speed. The photograph of the vehicle and its position on the road over the crossing as deposed to by A.W.5 Sh. Satya Parkash would all tend to show this. Issued the learned Counsel for Suit Manjit Kaur claimant could not pin point even a single factor which could lay the stigma of either negligence or high speed at the door of Sehdev Seth Appellant.

8. Equality material in this context is the fact that Sehdev Seth Appellant, was criminally charged under Sections 279, 338(sic) and 304-A of the Indian Penal Code On virtually the same evidence which has been produced in this case, he was acquitted an January 20, 1969 by the Judicial Magistrate Ist Class, Amritsar on the clear finding that he was not guilty of rash or negligent driving and therefore not liable under any of the charges framed against him Even though the said finding is not binding yet its relevance is patent.

9. The only reason given by the learned Single Judge in holding that Sahdev Seth Appellant was to a large extent responsible for the accident seems to be that the front portion of the car was damaged and a vacillating finding that the same was apparently being driven at a fast speed then the deceased struck against it. With respect we find no factual basis for the assumption of any fast or rash driving by Sahdev Seth Appellant. It has already been noticed that there is no direct evidence on the point and circumstantial evident patently negatives any such inference. Again the fact that the impact of the accident was on the front portion of the car can raise neither an inference of fast speed nor of negligence. On the admitted facts that the deceased was approaching them the opposite side and in a sharp and dangerous swerve to the right he struck the car head on Damage to the front portion of the car in such a contingency was inevitable and in our view no adverse inference whatsoever against Sehdev Seth Appellant can be raised therefrom.

10 To conclude on this aspect of the matter we find that there is no evidence whatsoever to ascribe either rashness or negligence to Sahdev Seth Appellant. It is (sic) that before he can be saddled with liability negligence must be established by the claimants against him. The following observations of Kallasa, (sic) J speaking for the final Court in Minu B. Mehta v. Balkrishna Ramachandra Nayan, 1977 ACJ 118 are instructive:-

The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in public place cannot justify fastening liability on the owner. It may be that a person bont(sic) upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the lynch pin to recover compensation. and again ;

We conclude by stating that the view of the learned Judge of the High Court has no support in law and hold that proof of negligence is necessary before the owner or the insurance Company could be held to be liable for the payment of compensation in a motor accident claim case.

11. Adverting now to the conduct of Harbans Singh deceased, it is the common case that on the wide open G T. Road at 0.30(sic) P.M. he was approaching the car from the opposite side on a scooter alone with his wife Smt. Manjit Kaur on the pillion, seat. The head-lights of the car being on, he could not possibly have missed noticing the same. However, in her cross examination A. W. I Smt Manjit Kaur evasively attempted to say that she did not remember that earlier in the criminal case she had admitted that her husband and she were talking to each other and were also laughing at the material time. She was confronted with the relevant portion thereof in court. She here conceded that she had not seen the car before the actual impact with the scooter. Again, it is the admitted position that Harbans Singh deceased wanted to go on the road over the Rego Bridge and it was, therefore, incumbent upon him to go round the traffic island located on the junction of the roads instead of doing to without warning or signal he swerved to his right(sic) and making a Lazardous(sic) short-cut, and abandoning all rules of traffic and precaution, attempted to get on to the Rego Bridge. Obviously, it was his duty both to go round the traffic island and in any case when swerving to the right to see that the road was clear. He observed neither of the two in a totally in-defensible valuation of rules of the a road, Harbans Singh deceased turned right and came directly in the path of the car and struck head on against the bulapur(sic) and the front grill(sic) thereof Inevitably, he was thrown violently offended fatally injured. It is manliest both from the direct evidence on the point as also the photographs that the mother(sic) an at the time of the impact had passed the traffic island which Harbans Singh deceased was obliged to go round. It seems to be manifest from the above that Harbans Singh (sic) rule of (sic) and safe driving to the (sic) lead-on to the car proceeding (sic) on the left side of the road. The facts here are thus eloquent. In law (sic) Kong & (sic) Kerns(sic) 1979 A.C.J. 86 a motor cyclist short (sic) to the other of the road resulting in head on collision was held entirely responsible there- for, By way of analogy, reference in this connection may also be made to Minu B. Mehta v. Balkrishna Ramachandra Nayan, 1977 ACJ 118 , and Satya Wall Devi v. Union of India 1968 A.C.J. 119.

12. Now apart from the above, the learned Single Judge rightly found that the deceased Harbana Singh was equally, if not more, guilty of what may be called statutory negligence. Rule 9 contained in the Tenia Schedule of the Motor Vehicle Act is in the following terms:

9. Tat driver of a motor vehicle shall: -

(a) when turning to the left, drive as close as may he the the left hand side of the road from which he is making the turn and of the road which he is entering ;

When turning to the right draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner, that-

(i) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the central lines of the intersecting roads ; and

(ii) It arrives as near as may be at the left hand side of the road which the driver is entering.

The application of this aforesaid rule, which prescribes the basic precautions for turning towards the right has further to be viewed in the context of the fact that admittedly there was a traffic island at the out junction which the deceased was obliged to go round for turning to the right. In doing what he did, Harbans Singh plainly infringed the aforesaid rule and more blatantly so in the peculiar situation which has been adverted to earlier, it must therefore, be held that deceased was equally guilty of the flagrant violation of rule (sic). To sum up on this aspect, it appears to be plain that Harbans Singh deceased was guilty both of factual negligence as also of statutory negligence by violating the prescribed rules of the road and the accident was the direct result of his foolish and not merely careless or negligent driving of his scooter by him. We are unable to agree with the learned single Judge that the contribution of the deceased in terms of negligence was merely 20 percent and in fact it appears to us that the same was indeed 100 percent.

13. In view of the aforesaid finding the six appeals preferred by the Oriental Fire & General Insurance Company Ltd. as also the owner of the insured vehicle are hereby allowed and the commutation awarded against them is not aside. As a necessary consequence the appeal and the cross-objections preferred by the claimant are without merit and are hereby dismissed. The parties will bear their own costs.

J.V. Gupta, J.

14. I agree.