
(2000) 08 P&H CK 0201
In the Punjab And Haryana At Chandigarh

Oriental Insurance Company Limited	Vs	APPELLANT
Raj Kaur and Others		RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2001) 1 ACC 531

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Judgement

M.L. Singhal, J.—These revisions can be disposed of through this one common order which I propose to record in Civil Revision No. 1183 of 2000.

2. Facts:

On 6.4.1994 at about 5.30 p.m. near the bridge of SYL Canal within the jurisdiction of Village Chalheri, Tehsil Rajpura, District Patiala accident took place between Bus No. PAB-8655 belonging to M/s. Gian Bus Service and Bus No. PB-12-2258 belonging to M/s. Akal Bus Service. Bus No. PAB-8655 was going to Ambala from Rajpura carrying passengers including Surjit Singh, Parkash Chand etc. Bus No. PAB-8655 was coming from Ambala and was carrying passengers including Harbhajan Singh and Satnam Kaur. When they reached near the SYL Canal bridge on Rajpura-Ambala Road within the jurisdiction of Village Chalaheri at about 5.30 p.m., head on collision took place between them. As a result of mishap passengers travelling by the said buses received injuries. Harbhajan Singh, Surjit Singh Parkash.Chand and Vijay Bahadur died at the spot while other passengers including Gurmit Kaur, Raj Kaur, Mangat singh, Mukhtiar Kaur and Satnam Kaur received injuries. Satnam Kaur died afterwards. FIR No. 37 dated 6.4.1994 was registered as Police Station Sadar, Rajpura at the instance of Mohan Singh - who had witnessed the accident. As per the FIR version accident took place on account of rash and negligent driving of Bus No. PB-12-2258 belonging to M/s. Akal Bus Service by its driver Baldev Singh.

3. This accident gave rise to a number of claim petitions, which were filed by the respondent-claimants before the Motor Accident Claims Tribunal, Patiala

4. Each of the said buses put blame for this accident on to the other.

5. On the pleadings of the parties, various issues were framed. We are presently concerned with the following issue:

Whether impugned accident between Bus No. PB-12-2258 and Bus No. PAB-8655 on Rajpura-Ambala Road was caused due to rash and negligent driving of Bus No. PB-12-2258 by its driver Baldev Singh within the limits of Village Chalheri, Tehsil Rajpura, District Patiala, resulting in deaths of Harbhajan Singh, Surjit Singh, Mrs. Satnam Kaur and Vijay Bahadur and injuries to many? OPP

6. Claim petitions were allowed and the compensation was ordered to be paid as per the direction given in the respective awards.

7. On the aforesaid issue, Motor Accident Claims Tribunal, Patiala gave its finding that there can be no escape from the conclusion that both the drivers must be held to be equally blamed. Hence, it is held that all the deceased named above died and the injured received injuries in the said motor vehicular accident, which was caused due to rash and negligent driving of both the vehicles by their drivers. This issue is accordingly decided.

8. In the final analysis, learned Motor Accident Claims Tribunal, Patiala held that the amount awarded to the claimants against the respondents shall be paid jointly and severally by the respondents.

9. These revisions have been filed by the Oriental Insurance Company Limited, Rajpura through its Regional Manager-petitioner herein, which is the insurer of Bus No. PB-12-2258 under Article 227 of the Constitution of India, whereby it has been claimed that the Oriental Insurance Company Limited should have been absolved altogether or at any rate when the Tribunal had found the drivers of both the offending buses involved in the accident equally negligent, liability to pay compensation should have been apportioned between the insurer/drivers/owners of these buses 50:50.

10. Through these revisions, the prayer is for complete absolution of Oriental Insurance Company Limited (insurer of Bus No, PB-12-2258) of the liability to pay compensation be apportioned between both the buses.

11. In my opinion, no revision lies under Article 227 of the Constitution of India whereby such a finding can be had from this Court in the exercise of its extraordinary jurisdiction vesting in it under the Constitution of India. It is matter of appreciation of evidence whether the drivers of both the buses were negligent, if so what was the proportion of negligence between them.

12. Award of the Motor Accident Claims Tribunal is appealable. In appeal, there can be appreciation of evidence. On appreciation of evidence, it can be determined whether the driver of this bus or the driver of that bus was negligent,

careless and rash and responsible or the drivers of both the buses were negligent, careless, rash and responsible for this accident. In appeal, percentage of negligence between both the drivers can be determined.

13. The owner/insurer of Bus No. PAB-8655 had pleaded that accident took place because of rash and negligent driving of Bus No. PB-12-2258 and so far as the driver of Bus No. PAB-8655 was concerned, he was not rash and negligent. He was driving the bus at a moderate speed and when this bus reached near the site of accident, Bus No. PB-12-2258 came from the opposite direction being driven by its driver Baldev Singh, who dashed that bus against Bus No. PAB-8655. As a result accident took place which took toll of five lives and injuries to many.

14. In their written statement filed by the owner/insurer/driver of Bus No. PB-12-2258, it was pleaded that the accident took place due to rash and negligent driving of the driver of Bus No. PAB-8655, who was driving the bus in dis-regard of the traffic rules and in a rash and negligent manner. So far as driver of Bus No. PAB-8655 is concerned, he died in this accident. As such, he could not throw any light as to the facts and circumstances in which this accident took place. Driver of Bus No. PB-12-2258 did not put himself into the witness box. It is a matter of pure appreciation of evidence as to why the accident took place. At page 16 of the award, learned Motor Accident Claims Tribunal has observed as follows: "The driver of Bus No. PB-2258, namely Baldev Singh has not cared to step into the witness box to rebut these allegations. Thus, there can be no escape from the conclusion that both the drivers must be held to be equally blamed. Hence, it is held that all the deceased named above died and the injured received injuries in the said motor vehicular accident which was caused due to rash and negligent driving of both the vehicles by their drivers".

15. On this finding the liability to pay compensation should have been apportioned 50:50 between the insurers of both the offending buses. In the exercise of jurisdiction conferred by Article 227 of the Constitution of India, no appreciation of evidence on take place. Appreciation of evidence can take place before a Forum which is constituted for hearing appeals against such awards. On the finding arrived at by the Motor Accident Claims Tribunal alluded to above, if it is sustained ultimately, liability to pay compensation should have been apportioned 50:50 between the insurers of both vehicles.

16. These revisions are accordingly dismissed.