
(2008) 11 SHI CK 0002
In the High Court Of Himachal Pradesh

Oriental Insurance Company Ltd.

APPELLANT

Vs

Nanak Chand and Others

RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) ACJ 2240 : (2008) 3 ShimLC 518

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—The Insurance Company has filed the present appeal assailing the impugned award dated 29th November, 2003 passed by the Motor Accident Claims Tribunal (II), Mandi, H.P. in M.A.C.T. No. 101 of 1996 titled as Nanak Chand v. Kaji Ram and Anr.

2. Sh. Nanak Chand, respondent No. 1 (hereinafter referred to as the "claimant") filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act") claiming compensation of Rs. 4,00,000/- for the injuries sustained by him in an accident which took place on 18th April, 1996 at village Naulakha, Sunder Nagar, District Mandi, H.P.

3. Claimant as pillion rider was traveling on the National Highway No. 21 on scooter No. HP-34-2235, being driven by Sh. Het Ram when tractor No. HP-31-4038 being driven by Sh. Kazi Ram-respondent No. 2 herein was ahead of them. All of a sudden without giving any signal (respondent No. 2) turned the tractor to the right to join the Naulakha-Chattar link road. Noticing the same, Sh. Het Ram tried his best to avoid the collision by immediately applying the brakes and bringing the scooter to the halt, but, however, the hind portion of the tractor struck the scooter and both the occupants of the scooter fell down and sustained injuries. The claimant was taken first to the Civil Hospital, Sundernagar and then to the Zonal Hospital, Mandi where he was admitted and given medical

treatment. In the said accident, the claimant received permanent disability to the extent of 60% and had to be discharged from the I.T.B.P. where he was permanently employed.

4. Respondent No. 2, while admitting his presence at the relevant time and date of the accident denied both the occurrence of the accident as also his negligence.

5. The Insurance Company took up the defence that the tractor in question was never involved in the accident which plea stood substantiated by the fact that pursuant to the investigation of the F.I.R. by the police a cancellation report (challan) as untraced was filed before the appropriate Court.

6. Based on the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the respondent No. 1 had rashly and negligently driven tractor No. HP-31-4038 and had knocked down scooter No. HP-34-2235 thereby causing injuries to the petitioner? OPP.

2. If issue No. 1 is proved to what amount of compensation and from who is the petitioner entitled to? OPP.

3. Relief.

The parties were given adequate opportunity to lead their respective evidence.

7. Importantly, the driver who is also the owner chose not to lead any evidence and the Insurance Company, vide order dated 1st March, 2002 was permitted u/s 170 of the "Act," to take all defences and led evidence to prove the same.

8. Appreciating the material on record, the tribunal held respondent No. 2 to have driven the tractor in a rash and negligent manner which caused the accident in which claimant/respondent No. 1 sustained injuries. Considering the permanent disability of the claimant and also the fact that he had to lose his job from the I.T.B.P due to medical unfitness, compensation of Rs. 2,60,000/- was awarded towards the loss of income. His salary was taken to be Rs. 3,000/- per month and the period of six years was taken into account while determining the compensation. In addition thereto, a sum of Rs. 25,000/- was also awarded towards the pain and sufferings.

9. I have heard learned Counsel for the parties and also perused the record.

Mr. A.K. Sharma has assailed the award for the reason that petition u/s 166 of the "Act" was not maintainable as negligence was neither pleaded nor proved and the Tribunal erred in holding to the contrary. Pursuant to the registration of the F.I.R., during the investigation it was found that the vehicle in question was not involved and accordingly cancellation report (untraced) was filed in the Court. He referred to and relied upon the decision of the apex Court In The Oriental Insurance Company Limited Vs. Meena Variyal and Others, and this Court in Sukhwant Kaur and Ors. v. Sher Singh and Anr. Latest 2008 MHLJ 850, to support his submission. According to him the finding of the Tribunal is purely

on presumption as Sh. Amar Singh (PW-7) and Sh. Roshan Lal (PW-8) had not witnessed the occurrence of the accident and Sh. Nanak Chand (PW-5) and Sh. Het Ram (PW-11) being interested witnesses, admittedly became unconscious after the collusion. In any event, the compensation awarded was much on the higher side.

10. Ms. Suvrata, learned Counsel for the respondent No. 1 has supported the award for the reasons set out therein. She has referred to and relied upon the decisions reported in *Basthi Kasim Saheb (Dead) by LR's v. Mysore State Road Transport Corporation and Ors.* : AIR1991SC487 and *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, to contend that the negligence is evident from the sequence of the events and the attending circumstances and by invoking the principle of *re ipsa loquitur* the owner and the Insurance Company are liable to pay the compensation. On the quantum of compensation, she has referred to and relied upon the decision of the apex Court in *Sunil Kumar Vs. Ram Singh Gaud and Others*,

11. I have perused the record.

In order to prove its case, the claimant examined Sh. Bir Singh (PW-1), Dr. Harish Behl (PW-2), Sh. Chaman Lal (PW-3), Dr. Rafia Bano (PW-4), Sh. Nanak Chand (PW-5), Sh. Tilak Raj (PW-6), Sh. Amar Singh (PW-7), Sh. Roshan Lal (PW-8), Sh. Nageshwar Dutt (PW-9), Sh. L.D. Vaidya (PW-10), Sh. Het Ram (PW-11) and Sh. Madan Lal (PW-12).

In rebuttal, the respondent-Insurance Company examined Sh. Bhupinder Pal (RW-1) and Sh. Suram Singh (RW-2).

12. To ascertain as to whether the vehicle in question was involved in the accident and as to whether its driver was negligent or not the relevant pleadings and the statements of witnesses PW-5, PW-7, PW-8 and PW-11 needs to be examined.

13. In para-24 of the claim petition, the claimant pleaded:

That on dated 18.4.1996 the applicant was traveling on scooter No. HP-34-2235 as a pillion rider and was going to Dhanotu from his native place on the National Highway No. 21 and when at about 2.00 p.m. reached at village Naulakha, Tehsil Sundernagar, the tractor No. HP-31-4038 driven by respondent No. 1 was also proceeding in the same direction and was ahead of the scooter, the respondent No. 1 without giving any signal all of sudden turned the tractor to the right side in order to join Naulakha-Chattar link road and on noticing this rash and negligent act of the respondent No. 1 the scooter driver tried his best to avoid the accident by immediately applying the brakes and bringing the scooter to a halt, but in the mean time, the rear portion of the tractor struck the scooter with a bang and the scooter driver and the petitioner fell on the road and sustained injuries on the various parts of the body.

The driver/owner replied to the same as under:

In reply to para No. 24 of the petition it is submitted that the respondent drove his tractor through the public road mentioned in this para of the petition on the relevant date and at the relevant time but the respondent is not in a position to admit or deny the fact of the accident especially in view of the pleadings of the petitioner that the scooter has allegedly struck against the rear portion of the tractor. The respondent did not hear any sound of striking of the scooter with the tractor in question nor signaled by the petitioner to stop the tractor. The respondent acquired the knowledge of accident only on receiving summons from this Hon''ble Tribunal. It is further submitted that as per pleadings of the petitioner the accident if any took place it was solely due to the rash and negligent driving on the part of the scooter driver.

(Emphasis supplied)

The preliminary objections and reply of the Insurance Company is as under:

1. That as per information and investigation conducted through an investigator by the replying respondent, the accident has not taken place with a tractor bearing No. HP-31-4038, as such, in view of this fact the petition is misconceived of the facts and deserves to be dismissed.

2. That the present petition appears to have been filed with a motive to grab compensation from the Insurance Company by implicating tractor to be involved in the accident, which fact could easily be falsified from the fact that police has submitted cancellation of challan before S.D.J.M. which further falsify the allegation qua the involvement of the tractor. As the till date police has not been informed regarding the involvement of tractor by the petitioner, in view of this fact the petition deserves to be dismissed.

10. In reply to para 24 it is submitted that the averments contained in view of the preliminary objections and parawise submissions the tractor is not involved in the accident and its involvement in the accident appears to be after thought in order to grab the compensation from the Insurance Company, which under the facts and circumstances cannot be allowed. Rest of the averments are denied as such in view of the reasons and submissions the petitioner is not entitled for any claim, rather he is liable for an exemplary cost to bring out false, fabricated and manipulated petition to grab compensation from Insurance Company. Hence the petition deserves to be dismissed.

14. As per the version of the Claimant Sh. Nanak Chand (PW-5) on 18th April, 1996 he was traveling on scooter No. HP-34-2235 on the National Highway No. 21. The scooter was being driven by his nephew who exercised due care and caution. When they reached at a place called "Naulakha", the tractor being driven ahead of them all of a sudden and without any signal turned the same towards the right side of the road to join the Naulakha Chatter link road. Consequently, the hind portion of the trolley struck with the scooter and both the occupants of the scooter fell down. He regained consciousness in the bus when he learnt that one Sh. Amar Singh resident of village Chatter was taking them

into the hospital. The accident occurred due to the negligence of the tractor driver as he suddenly turned towards the right side of the road. The police examined him only once and the particulars of the tractor and its driver could not be disclosed as he could neither read the vehicle number nor identify the driver. However, he was subsequently informed about the same by PW-7. In cross-examination, he clarified that he was not aware as to whether the cancellation report was filed in the Court.

15. Sh. Het Ram (PW-11) the driver of the scooter has corroborated the version of PW-5 and has further deposed that after the accident he saw the driver of the tractor flee away from the site in great speed. He regained consciousness in the hospital where he was informed by PW-7 and PW-8 that they had brought them to the hospital. When he saw the tractor, suddenly turn towards the right, he applied the brake to stop the scooter, but, however, the hind portion of the trolley of the tractor struck with the scooter which caused the accident. The accident occurred due to the negligence of the tractor driver. Both he and PW-5 fell on the road and became unconscious. He could neither read the number of the tractor nor make any effort to stop the vehicle. He learnt about the details of tractor from PW-7 and PW-8 who had subsequently came to enquire about his health. They told him that the accident occurred with vehicle No. HP-31-4038 which belonged to village Tarot, Tehsil Sunder Nagar. He clarified that the speed of the tractor was 30 to 35 Kms. per hours and the trolley of the tractor did not bear any number.

16. Importantly, the owner/driver in cross-examination has suggested to him that the driver was driving the tractor carefully in a slow speed and the scooter did not collide with the tractor but the occupants of the scooter fell down as they became nervous. It was also suggested to him that since he and PW-5 were busy talking with each other and not paying any attention towards the tractor therefore the accident occurred. He denied the suggestion that the accident did not occur due to the negligence of the tractor driver. Even the Insurance Company in cross-examination suggested to him that the scooter collided with the tractor as its occupants were not paying any attention towards the tractor and were busy talking with each other. He clarified that both Sh. Roshan Lal and Sh. Amar Singh had informed him that the police had been informed about the details of the tractor, but was not aware as to whether the police had taken any action against the owner.

17. From the line of cross-examination of these witnesses, it is evident that the presence of the tractor being driven by Sh. Kazi Ram at the time of the accident is not in dispute. While cross-examining, the Insurance Company has taken a defence that the accident which actually did take place was in fact due to the negligence of PW-5 and PW-11. The testimony of PW-5 and PW-11 in spite of the extensive cross-examination remains un-shattered. Their deposition is clear, consistent, cogent and totally reliable. From their statements as also from the line of cross-examination, it is evident that on the fateful day both the vehicles

were being driven at the place and time of the accident. Importantly, there is no serious cross-examination on the claimants' deposition that the trolley of the tractor was not bearing any registration number and that the driver had suddenly turned the vehicle on the right side to join the Naulakha link road. PW-11 has categorically deposed that before he fell down and became unconscious, he saw the driver of the tractor run away from the scene in great speed. There is no cross-examination even on this point. It is true that both fell down and became unconscious and regained consciousness later on but they have deposed with regard to the events which led to the accident. They were immediately attended to and taken to hospital by people who happened to be present at the site. At this point, the version of the said witnesses i.e. Shr. Amar Singh (PW-7) and Sh. Roshan Lal (PW-8) needs to be examined.

18. As per the version of PW-7 on the eventful day, he was coming from Chattar to the work site at Khapai on Chattar-Naulakha road and when he reached Naulakha, he noticed tractor No. HP-31-4038 driven by Sh. Kazi Ram in high speed and in a confused manner. When he reached the main road he saw two persons along with scooter No. HP-2235 lying on the road. He along with Sh. Roshan Lal who also happened to be there took the injured to the hospital. Sh. Roshan Lal informed him that the scooter fell down after it collided with the tractor. In cross-examination he admitted that it was on the basis of presumption that he informed the insured that the accident occurred with the tractor.

19. Sh. Roshan Lal (PW-8), who was working in the field adjacent to the site of the accident, deposed that he heard a loud noise and he saw that a tractor was negotiating a turn from the National Highway and two injured persons were lying on the main road along with the scooter. The tractor was being driven at a high speed. The tractor bearing registration No. HP-31-4038 was being driven by Sh. Kazi Ram himself. The accident took place with the tractor. He saw Sh. Amar Singh coming from Chattar side and both of them arranged for the injured to be taken to the hospital by Sh. Amar Singh. He went to inform the family members. In cross-examination he clarified that from the main road the distance of the fields where he was working was just about 50-60 feet. He admitted that he did not see the actual occurrence of the accident, but, however, saw the persons lying on the road and the tractor being driven in a great speed towards Naulakha Chatter road. Prior to the accident, he had not known either PW-11 or PW-5 and he had disclosed the details of the driver and the tractor to the claimant.

20. I find that the statements of PW-7 and PW-8 are slightly contradictory, but, in my view, the contradiction is not material and is minor. Whereas PW-7 has deposed that he was coming from Chatter side on the scooter. PW-8 has deposed that PW-7 was on foot. Further according to PW-7, Sh. Roshan Lal (PW-8) informed him that the accident occurred with the tractor whereas as per version of PW-8 he did not inform anything to PW-7. There is also some contradiction with regard to the person who actually took the injured to the hospital.

21. The fact of the matter is that both the witnesses have deposed that they

have not seen the actual occurrence of the accident.

22. But, however, the fact that both these persons were present at the site and narrated events subsequent to the accident cannot be ignored. PW-7 saw the tractor being driven at a high speed in a confused manner. In fact it was suggested to him (by the non-claimants) that on the Chatter Naulakha road the distance of the place where he saw the tractor speed away was 50 yards from the National Highway. He has categorically deposed that the moment he reached the main road, he saw the scooter and its occupants lying on the road and he took them to the hospital. PW-8 who was working in the fields heard the sound of collision and rushed to the site. Even he noticed the tractor being driven away in great speed towards the link road.

23. The Insurance Company has only examined RW-1 and RW-2 who have only proved the registration of F.I.R. (Ext.RW-1/A) and the fact that the cancellation report was filed in the Court. As per the version of RW-2 he examined Sh. Amar Singh, Sh. Het Ram, Sh. Nanak Chand and Sh. Roshan Lal, only once. The F.I.R. was not lodged on the claimant's complaint. It appears that the police has not thoroughly investigated the matter for the simple reason that RW-2 who carried out the investigation has deposed that the claimant did not approach him nor did he again examine the witness.

24. The present case pertains to the claim petition under the Motor Vehicles Act and not a prosecution under the Indian Penal Code. Therefore, the degree of proof required to prove a fact is not beyond reasonable doubt but preponderance of probability.

25. The matter needs to be examined from another angle. The respondents have been taking ambivalent stand. As has been noticed herein-above, both the Insurance Company and the driver/owner of the tractor initially took up the defence that the tractor was not involved in the accident. The presence of the tractor at the site, in fact, was disputed. However, later when the issues were framed and the evidence was recorded, the respondents changed their stand and while admitting the presence of the tractor, being driven by Sh. Kazi Ram at the site the cause of the accident and the negligence was attributed to the claimant.

26. The Apex Court in *Shyam Sunder and Others Vs. The State of Rajasthan*, , while dealing with the claim petition filed by the widow of an occupant of the truck who was asked by its driver to jump out of the truck as it had caught fire died after jumping, it was held that if the result, in which the plaintiff proves, makes it more probable than not that it was caused by the negligence of the defendant, the doctrine of *res ipsa loquitur* would" apply and the plaintiff would be entitled to succeed unless the defendant by evidence rebuts that probability. The maxim is based on commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant. It has further held as under:

15. *Res ipsa loquitur* is an immensely important vehicle for importing strict liability into negligence cases. In practice, there are many cases where *res ipsa loquitur* is properly invoked in which the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part. Industrial and traffic accidents and injuries caused by defective merchandise are so frequently of this type that the theoretical limitations of the maxim are quite overshadowed by its practical significance.

27. In my view, the Tribunal was right in inferring the negligence on the part of the driver. The driver was duty bound to have given the signal before suddenly taking a turn on the National Highway. Immediately after the occurrence he was noticed to have run away in great speed. The sound of collision was heard by PW-8 who came at the site and helped PW-7 to ensure timely medical treatment to the victims. No explanation has been given by the tractor driver for the said behaviour, therefore, the maxim *res ipsa loquitur* is attracted.

28. In *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, where the Court was dealing with a case where the evidence disclosed that the car proceeded on the wrong side of the road and dashed against a tree uprooting its trunk by about 9 inches and the condition of the car showed that the collision was caused with great violence, the principle of *res ipsa loquitur* was invoked as the circumstances disclosed that the driver, in fact, was driving the vehicle in a rash and negligent manner. In the absence of any eye-witness the Court held that it stood established that the vehicle was being driven in a rash and negligent manner. The Apex Court held:

The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident, but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. This maxim applies where it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part.

29. Similarly in *Basthi Kasim Saheb (dead) by LRs. v. Mysore State Road Transport Corporation and Ors.* : AIR1991SC487 , where the Court was dealing with the proven fact that the bus in question continued to be driven in third gear right from the place the road proceeded on down gradient and not slowed down even while going from the tarred portion to the mud portion of the road in order to avoid a bullock cart standing on left flank of the road despite being aware that the mud portion was soft and not well settled due to rains, this principle was also

invoked by the apex Court where the acts of the driver, driving the bus in question was such that the negligence was on the face of it attributable to the claimant.

30. Further, the Apex Court in *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, and *The Managing Director, Northeast K.R.T.C. Vs. Devidas Manikrao Sadananda*, while dealing with a case of departmental inquiry, reiterated the principle of *res ipsa loquitur*.

31. In *North-East KRTC (supra)* the Court took into account the circumstance where the delinquent driver driving the bus was behind another bus. In an endeavour to over take the same, the delinquent driver drove his bus in a such manner that the hind portion of his bus collided with the other bus and the impact of the offending bus was such that the other bus went and dashed against a tree resulting in injuries and death to its passengers. The Court by adopting the principle of *res ipsa loquitur* held the driver to be guilty of misconduct. It referred to and relied upon its earlier decision in *Cholan Roadways Ltd. (supra)*, wherein it was held that in cases of accident of the above nature it was not necessary as a relevant factor to examine before the enquiry officer passengers of the bus and that the Labour Court had failed to apply the correct standard of proof in relation to the domestic enquiry, which is "preponderance of probability" and thus a case for judicial review stood, clearly made out by the Corporation.

32. The occurrence of the accident and the attending circumstances goes to prove that the driver was negligent and it was incumbent upon him to have proved to the contrary. Importantly, no evidence was led by the driver. It is not the case of any of the respondents that at the place where the accident took place the condition of the road was bad which could have caused the accident. The accident took place on the National Highway in the hilly terrain of Himachal Pradesh. The defence taken by the Insurance Company that the accident occurred due to the (sic) negligence of the scooter driver for the reason that its occupants were (sic) it paying any attention is also not borne out from any attending circumstances (sic) record. Therefore, in my view, the Tribunal has been right in concluding (sic) it was the driver who was negligent in driving the vehicle which (sic)lted into the occurrence of the accident.

33. In this background, the ratio of law laid down by the Courts in *Oriental Insurance Company Ltd. (supra)* and *Sukhwant Kaur and Ors. (supra)* would not apply.

34. That the claimant was admitted in the Zonal Hospital, Mandi from 18th April, 1996 to 15th May, 1996 and was discharged vide discharge slip (Ext.PW-2/A) stands proved by PW-1, PW-2, PW-3, PW-4 and PW-5. The claimant sustained multiple injuries (fracture of bones) on his right leg, right arm and forehead which is evident from M.L.C. Ext.PW-4/ A proven by PW-4. The claimant sustained permanent disability to the extent of 60% which stands proved by disability certificate Ext.PW-10/ A and Ext.PW-10/B. That due to the disability

incurred in the accident, the claimant aged 32 year, had to be boarded out from the I.T.B.P. for medical reason stands proved by PW-12 who has also proved the discharge certificate (Ext. PW-12/A). While awarding compensation the Tribunal has taken into account the fact that his income from the job had been reduced from Rs. 6,000/- to Rs. 3,000/- per month and thus by applying a multiplier of 6 awarded Rs. 2,16,000/- as compensation. Rs. 25,000/- was awarded towards the expenses incurred by the claimant for his medical treatment which could not have been reimbursed by its employer. In my view, the compensation awarded by the Tribunal to the claimant is inadequate but, however, since the claimant has not filed any appeal, nor has sought enhancement even at the stage of the hearing, I am not inclined to interfere with the same. No compensation has been awarded under the head of non-pecuniary damages.

35. Considering the age, the nature of the accident and the disability and the fact that the claimant had to loose his job, I am of the considered view that the impugned award cannot be faulted for the reason that the compensation awarded is on the higher side.

36. Keeping in view the principle of law laid down by the Apex Court in Sunil Kumar Vs. Ram Singh Gaud and Others, no interference is warranted. The appeal is accordingly dismissed.