

(1997) 08 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No's. 452, 453 and 454 of 1986 & Letters Patent Appeal No. 452 of 1986

Parkash Vati and Others

APPELLANT

Vs

Sulakhan Singh alias Lakha and Others

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (1999) ACJ 521

Hon'ble Judges : N.K. Kapoor, J;K.K. Srivastava, J

Bench : Division Bench

Advocate : Deepak Thapar, for the Appellant; L.M. Suri and Deepak Suri, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Srivastava, J.—This judgment will dispose of the L.P.A. Nos. 452, 453 and 454 of 1986. These three appeals are directed against the judgment dated 28.1.1986 of a learned single Judge of this Court delivered in F.A.O. No. 283 of 1982. The other F.A.O. Nos. 360 and 284 of 1982 were declined as per the judgment rendered in F.A.O. No. 283 of 1982. The first appeals aforesaid were filed against the judgment dated 19.12.1981 passed by Motor Accidents Claims Tribunal, Kapurthala, dismissing three Motor Accident Claim Case Nos. 4, 5 and 6 of 1978 which were instituted the same day, i.e., on 15.6.1978 by the heirs of the deceased Babu Lal, his grand-daughter Sonia and one Bagga Singh, driver of the Jonga jeep. The three claim petitions were filed in respect of motor accident taking place on 19.12.1977 around 8.00 a.m. in the area of Chachoki in which all the three occupants of Jonga jeep bearing registration No. PNH 9130 died when their vehicle collided with a truck No. PUG 3585. Deceased Babu Lal was the owner of Jonga jeep. Motor Accident Claim Case No. 4 of 1978 was filed by Parkash Vati, widow of Babu Lal aforesaid and his three sons, namely, Parshotam Lal, Ashok Kumar and Satish Kumar. The other deceased was Sonia, aged about

four years, grand-daughter of Babu Lal aforesaid. Motor Accident Claim Case No. 5 of 1978 was filed by Parshotam Lal Jain and his wife Promila Rani claiming compensation for the death of their daughter Sonia in the said accident. The third Motor Accident Claim Case No. 6 of 1978 was filed by Deepo, widow of Bagga Singh deceased, driver of jeep and his minor sons Ramesh Kumar and Roshan Lal, who were impleaded through their mother and guardian Deepo.

2. Brief facts regarding the said accident, which have been taken from M.A.C.C. No. 4 of 1978, may be mentioned as under:

Babu Lal (deceased) accompanied by his grand-daughter Sonia (deceased) was returning to Hoshiarpur on 19.12.1977 from Ludhiana in this jeep driven by Bagga Singh (deceased). When the jeep reached the place of occurrence, the offending truck No. PUG 3585 was coming from the opposite direction which was being driven rashly and negligently by the respondent Sulakhan Singh and it hit the jeep with such an impact that Babu Lal and Sonia died at the spot, while Bagga Singh, driver sustained serious injuries and he succumbed to the injuries on way to hospital at Phagwara which was situated at a distance of a few miles from the place of occurrence near village Chachoki. A report of this accident was lodged at P.S. Sadar, Phagwara where the case under Sections 304-A/279 of the Indian Penal Code was registered against Sulakhan Singh, driver of the truck aforesaid. It was further averred that the said truck was insured with Oriental Fire & General Insurance Co. Ltd., Kanwan, District Gurdaspur. The heirs of Babu Lal (deceased) (claimants of M.A.C.C. No. 4 of 1978) claimed compensation of a sum of Rs. 1,50,000, whereas the claimants of M.A.C.C. No. 5 of 1978, i.e., the parents of Sonia (deceased) claimed compensation of Rs. 50,000. The heirs of the driver Bagga Singh (deceased) claimed compensation of Rs. 1,00,000. The allegations common in all the petitions were that the accident was caused due to the rash and negligent driving of the offending truck by its driver Sulakhan Singh because he struck into the jeep by taking the truck to the wrong side and dragged the jeep down the road in a pit. Gurnam Singh, respondent No. 2, Gopal Dass Ghai, respondent No. 3 and M/s. Gurnam Singh Gopal Dass Ghai, respondent No. 4 were mentioned to be the owners of the offending truck. Babu Lal (deceased) was alleged to be a partner of the general merchants firm M/s. Babu Di Fancy Hatti, Sarafan Bazar, Hoshiarpur and his yearly income at the time of accident was stated to be not less than Rs. 13,590. Bagga Singh (deceased) was employed as a driver by Babu Lal on the said jeep and he was getting monthly salary of Rs. 200.

3. Two sets of written statements were filed in the claim petitions. One of the written statements was filed jointly by the driver and the owners of the truck and another separate statement was filed by respondent No. 5, Oriental Insurance Co. Ltd. According to the stand taken in the written statement, which was common, the accident occurred due to the rash and negligent driving of the Jonga jeep by its driver Bagga Singh (deceased) and not due to the negligence of the driver of the truck, namely, respondent No. 1, Sulakhan Singh. The Motor

Accidents Claims Tribunal (for short "the Tribunal") framed issues arising out of the pleadings before him and recorded evidence led by the parties. The learned Tribunal held that the claimants could not prove that the accident aforesaid was the result of the rash and negligent driving of Sulakhan Singh, driver of the offending truck and in the result, the Tribunal dismissed all the three claim cases.

4. The claimants of the respective claim petitions felt aggrieved against the judgment of the Tribunal and they filed first appeals in this Court. F.A.O. No. 283 of 1982 was filed by the claimants Parkash Vati and others of Claim Case No. 4 of 1978. F.A.O. No. 284 of 1982 was filed by the claimants of Claim Case No. 6 of 1978, i.e., the widow and minor sons of Bagga Singh, driver of the jeep. The third F.A.O. No. 360 of 1982 was filed by the parents of deceased Sonia. The learned single Judge decided F.A.O. No. 283 of 1982 vide his judgment dated 28.1.1986. The other two F.A.O. Nos. 284 and 360 of 1982 were decided in the light of judgment rendered in F.A.O. No. 283 of 1982. According to the findings recorded by the learned single Judge, the Tribunal had rightly rejected the testimony of the witnesses examined by the claimants and in not relying upon the presence of witnesses Joginder Singh and Parshotam Lal, he held that the findings recorded on the issue of negligence could not be faulted. He held that the principle of *res ipsa loquitur* was, no doubt, attracted and the negligence in the accident was indeed writ large, but the question which still went abegging was as: due to whose negligence the accident was caused? He held that the claimants had failed to establish that it was on account of the negligence of the truck driver that the accident had occurred. In the result, the appeals were dismissed. Thereupon the claimants filed three separate L.P.As., referred to above, which are being disposed of by this common judgment as they involve discussion of common points of facts and law.

We have heard learned Counsel for the appellants and learned Counsel for the respondents and have carefully perused the judgment of learned single Judge as well as the judgment of learned Presiding Judge of the Tribunal.

5. The evidence of the witnesses examined during the trial before the Tribunal has been evaluated and assessed by the learned Tribunal as well as the learned single Judge of this Court and they have come to the concurrent finding that the presence of the witnesses at the time of the accident was not established and their testimony was not creditworthy. The claimants had to prove that the accident resulted due to the rash and negligent driving of the offending truck by its driver respondent Sulakhan Singh. The claimants examined Dr. Jasbir Kaur, AW 1, Medical Officer, Civil Hospital, Phagwara, who had conducted post-mortem examination on the dead body of Sonia deceased and in her opinion the death was caused in a vehicular accident which had caused ante-mortem injuries. Dr. Suraj Bhalla, AW 2, Medical Officer, Civil Hospital, Phagwara had conducted post-mortem examination on the dead body of Babu Lal and found ante-mortem injuries on the dead body and in his opinion the death was caused due to shock, haemorrhage and injuries to brain and lung, which were sufficient in the ordinary

course of nature to cause death. The claimants further examined Dr. Kuldip Singh, AW 3, who was a private practitioner at Phagwara and he had conducted postmortem examination on the dead body of Bagga Singh deceased, driver of the Jonga jeep. According to his opinion, the death was caused due to shock and haemorrhage as a result of ante-mortem injuries which were caused due to laceration of lungs and rupture which were sufficient in the ordinary course of nature to cause the death. The next witness examined by the claimants was Sansar Chand, AW 4, a photographer of Deepak Studio, Phagwara who had taken photographs of the site of the accident and had produced the positive photograph Exh. A-4. Head Constable Mangal Singh No. 409 was examined as AW 5. He was posted as Moharrir Head Constable at Police Station Sadar, Phagwara on 19.12.1977. He had prepared the F.I.R. marked "X". He stated that SI Jasmer Singh had conducted the investigation of the case. According to his statement F.I.R. was prepared on the statement of Gurmit Singh. Claimant Deepo, widow of Bagga Singh, driver of the jeep entered the witness-box as AW 6. She is not an eyewitness of the accident. She was examined to prove the dependency of the claimants on the income of deceased Bagga Singh and to give evidence regarding the monthly income of her husband. Joginder Singh, son of Khazan Singh, resident of village Chaugawan was examined as AW 7. He claimed himself to be an eyewitness of the accident. The next witness produced by the claimants is Parshotam Lal, AW 8, claimant in the two claim petition Nos. 4 and 5 of 1978. He also claimed himself to be an eyewitness of the accident. Parshotam Lal is the son of Babu Lal deceased and father of Sonia deceased.

The respondents examined Sulakhan Singh as RW1. He is the driver of the offending truck No. PUG 3585 owned by Gurnam Singh, respondent.

6. Joginder Singh, AW 7 and Parshotam Lal, AW 8, are the only two eyewitnesses of the accident. The learned Tribunal as well as the learned single Judge both disbelieved their testimony and reasonably doubted their presence at the time of the accident. We have carefully perused the statements of these two witnesses and it would be sufficient to say that both these witnesses were rightly disbelieved by the Tribunal as well as the learned single Judge. Joginder Singh, AW 7, is not resident of village Chachoki where the accident is said to have taken place. He is resident of village Chaugawan and as would appear from the judgment of the learned single Judge, this witness belongs to a village which was about 30 miles away from the place of the accident. A perusal of the statement of Joginder would go to show that he had come to meet Gurmit Singh at village Chachoki to talk about the purchase of a buffalo. At the time of the accident he was standing outside the house of Gurmit Singh which is situated on the main road. In cross-examination he stated that he had not purchased buffalo on that day but he had been purchasing buffaloes earlier from Gurmit Singh and had documentary proof with him. He did not know any other person of village Chachoki except Gurmit Singh. On further examination, he stated that he did not remember if he had purchased any buffalo from Gurmit Singh and added that Gurmit Singh simply used to help him in purchasing buffalo from others whose

names he could not give and he could not even identify any such person. He was cross-examined regarding the neighbouring houses of Gurmit Singh but he was unable to give their names. On further cross-examination he stated that he did not go inside the house of Gurmit Singh, much less that he stayed at his house in the night preceding. He made a categorical statement about his not knowing about any person in village Chachoki except Gurmit Singh. The Tribunal while recording the evidence of this witness appended a note which has been duly considered and quoted by the learned single Judge in his judgment. The veracity of the testimony of this witness is seriously eroded, from this note, which is to this effect:

Note: The witness is changing stand in telling the exact place where Gurmit Singh met him after leaving Bagga Singh in Civil Hospital, Phagwara, In the first instance, he stated that Gurmit Singh accompanied him from the hospital itself after dead body of Bagga Singh was left there. Then he stated that Gurmit Singh met him on the G.T. Road. He again changed to say that Gurmit Singh met him in the bazar. A further change again was made to say that Gurmit Singh met him ahead to city police station, Phagwara. Lastly, he stated that Gurmit Singh, in fact, had come towards the hospital after going to the police station and he met him just outside the hospital, when the witness had come out to the place of occurrence.

We are satisfied that the Tribunal and the learned single Judge rightly disbelieved the evidence of Joginder Singh, AW 7.

7. So far as the next witness Parshotam Lal, AW 8, is concerned, he is a highly interested witness. It will appear from the evidence of Parshotam Lal, AW 8, that he had also accompanied his father Babu Lal deceased and his daughter Sonia from Ludhiana. He had come to Ludhiana a day earlier than the arrival of his father and daughter who had stayed at the house of his sister. Parshotam Lal had stayed with his friend and spent his night there. According to the pre-arranged programme, Parshotam Lal was to join his father at 7.00 a.m. to go together to Hoshiarpur. He, however, reached the place fixed for meeting 5-7 minutes after 7.00 a.m. He was told by a tea-vendor that his father and daughter had left in the Jonga jeep. Parshotam Lal went to a chowk situated at a distance of half a mile away from that place from where he took a taxi on hire and left for Hoshiarpur and claimed that he reached the place of accident just in time to witness the accident. It appears to be highly improbable that the deceased Babu Lal would not have waited for Parshotam Lal to join him and would leave for Hoshiarpur in a hurry. It is noteworthy that the jeep involved in this accident was owned by the deceased Babu Lal.

8. In the normal course of events, Parshotam Lal was expected to go to the house of his sister in the morning and from there he would have left for Hoshiarpur along with his father and daughter in their jeep. Even otherwise, we find no valid reasons for the deceased Babu Lal to leave Ludhiana in his own jeep without bothering to take the son with him. It is noteworthy that Joginder Singh,

AW 7, stated that Parshotam Lal came about 5 or 7 minutes after the accident and this makes the presence of Parshotam Lal at the place of accident in time to witness the same highly improbable. After going through the statement of Parshotam Lal, we find that his testimony does not inspire confidence and is not creditworthy and the same has been rightly disbelieved by the Tribunal as well as the learned single Judge.

9. There was no other evidence led by the claimants. Respondent driver Sulakhan Singh entered the witness-box and stated that he had left the job of driver prior to the alleged date of accident. Gurmit Singh said to be the person who had lodged the F.I.R. was not examined. The F.I.R. was not even sought to be proved by examining the lodger of the F.I.R. The statement of Head Constable Mangal Singh does not prove the contents of the F.I.R. It only proves about the F.I.R. being scribed by him. The learned Counsel for the appellants submitted that in claim cases, the Claims Tribunal is not bound to strictly adhere to the provisions of Evidence Act and Section 110-C of the Motor Vehicles Act, 1939 entitles the Tribunal to adopt summary procedure for trial. The learned Counsel for the appellants relied on the judgment of the Gauhati High Court in the case of Union of India (UOI) and Another Vs. Mrs. Saraswati Debnath and Others, , wherein a learned single Judge of that court held that "the law is well settled that in a claim under the Motor Vehicles Act, the evidence should not be scrutinised in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case the rule is proof beyond reasonable doubt. It is not necessary to consider these niceties in a matter of accident claim case inasmuch as it is summary enquiry. If there is some evidence to arrive at the finding that itself is sufficient. No nicety, doubt or suspicion should weigh with the Claims Tribunal in deciding a motor accident claim case. The law on this is laid down by the Supreme Court in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal 1980 ACJ 435 (SC)."

This authority in our considered view is not at all applicable to the facts of the instant case.

10. The other authority relied on is reported in the case of Rajasthan State Road Transport Corporation and Others Vs. Devilal and Others, . In that case, the question before the single Judge for consideration was whether post-mortem report, inquest report and panchnama could be accepted as documents admissible in evidence without examining the persons who prepared them and the learned single Judge held that the said documents were admissible in evidence and strictly speaking, provisions of Evidence Act were not applicable before the Tribunal. It was held that if a document is a certified copy of a public document, it need not be proved by calling a witness or the person who prepared it. This authority is also not applicable to the facts" of the instant case. The first information report cannot be held to be a public document and treated at par with the post-mortem report, inquest report and panchnama.

11. It is relevant to note that the claimants took care to prove the postmortem

reports by producing the Autopsy Surgeons, who conducted post-mortem examinations on the dead bodies of the three deceased of this accident. F.I.R. is prepared on the basis of information furnished by the informant and as such, it is the evidence of the informant which is significant to prove the averments made in the F.I.R.

The other authority cited by the learned Counsel for the appellants is the single Judge decision of Delhi High Court in the case of Geeta Devi and Others Vs. Amrik Singh and Others, . In that case the formal proof of insurance policy was involved and the learned Judge held that:

It would thus be seen that in this case the true copy was proved by RW 2, a responsible officer of the insurance company and this he did by reference to the carbon copy of the original which he had brought before the Tribunal. The document was thus exhibited as it was found to be a copy of the original. The record shows that full opportunity was provided to the other side to cross-examine, but it did not avail of the opportunity. It would thus be seen that at the time when this document was exhibited it was found to be an exact copy of the original which in the form of a carbon copy was in the possession of the insurance company. The basic cover note was in the possession of the insured and he failed to produce the same. In my view, therefore, since the principles of natural justice were strictly adhered to, the document cannot be impeached for failure of the Tribunal to strictly comply with the rules of evidence. The insurer can only show the kind and quality of its liability by reference to the records in its possession. The appellants in the present case could not, therefore, impeach the credibility of the insurance cover Exh. PW 2/1 in appeal.

The judgment of the Delhi High Court in the case of Geeta Devi (supra) is of no help to the appellants inasmuch as it deals with the proof of insurance cover note and is clearly distinguishable on facts of the instant case.

12. Learned counsel for the appellants lastly urged that the principle of *res ipsa loquitur* was clearly attracted and the learned single Judge has also referred about it. The learned single Judge while dealing with the submission regarding the application of the principle of *res ipsa loquitur* held as under:

Faced with the situation, the counsel for the claimants adverted to the photographs of the scene of occurrence and sought to contend on the basis thereof that the principle of *res ipsa loquitur* was clearly attracted and the negligence of the truck driver stood established thereby. Negligence, in the accident, is indeed writ large, but the question that goes abegging is, whose negligence was it that resulted in the accident. The claimants, as shown above, have failed to establish that it was on account of the negligence of the truck driver that the accident here occurred.

The learned Counsel relied upon the decision of the Supreme Court in the case of Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC). In para 6 of this decision, the Apex Court while dealing with the principle of

res ipsa loquitur held as under:

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. The general purport of the words res ipsa loquitur is that the accident speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence.

13. In the instant case the principle of res ipsa loquitur is sought to be applied on the basis of the photographs of the scene of occurrence. No doubt, the accident resulted due to negligence. The accident was caused due to the collision of the two vehicles, i.e., Janga jeep and the truck which is alleged to be involved in this occurrence. It cannot be said that by application of the said principle the liability would necessarily be fastened on the driver of the truck and a finding could be arrived at, in the absence of any other reliable evidence, that the driver of the offending vehicle was the culprit and responsible for causing the accident due to his rash, negligent and careless driving. In the facts and circumstances of the case, the claimants were required in law to prove as a fact that the accident was caused due to the rash and negligent driving of the respondent driver Sulakhan Singh. After carefully perusing the entire evidence on record, we are of the considered view that the learned single Judge has rightly held that the claimants have failed to establish that the accident resulted due to rash and negligent driving on the part of the respondent driver Sulakhan Singh. Resultantly, these appeals are devoid of any substance and merit and are dismissed.