
(1975) 09 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 66 of 1969

Pepsu Road Transport Corporation

APPELLANT

Vs

Darshan Singh and Others

RESPONDENT

Date of Decision : 05-09-1975

Acts Referred:

Limitation Act, 1963 — Section 12, 5

Motor Vehicles Act, 1988 — Section 110B, 110D(1)

Citation : (1976) ACJ 66

Hon'ble Judges : Muni Lal Verma, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; I.K. Mehta, for the Respondent

Final Decision : Allowed

Judgement

Muni Lal Verma, J.—The material facts, which gave rise to this appeal and F.A.O. No. 50 of 1969, may be briefly stated as under:

2. Bus PNT 5827 (hereinafter called the bus) belonged to the Appellant. Raghbir Chand (Respondent No. 3) was employed by the Appellant as driver. On December 8, 1966, he drove the bus from the side of Narwana towards Patiala. At about 2 p.m. he reached Samana which fell in the way and drove the bus at a very high speed within the limits of Samana in the locality which had shops. Kuldeep Singh appeared there on a cycle from the link road which proceeded from the Mandi Samana, and when he was crossing the road, Raghbir Chand without blowing any horn or taking any care or caution struck the bus against the said cycle, as a result of which Kuldeep Singh was knocked down and his head was crushed under the wheel of the bus. He died at the spot. The bus dragged the cycle and could be stopped at a distance of about thirty feet from the scene of accident. Darshan Singh (Respondent No. 1) is the father and Mrs. Mohinder Kaur (Respondent No. 2) is the mother of Kuldeep Singh, who was more than sixteen years and was working as Mechanic Apprentice in the Janta Engineering Works at Samana. He was then receiving Rs. 80/- per month as his wages.

Therefore, Darshan Singh and Mrs. Mohinder Kaur moved an application in the Motor Accidents Claims Tribunal at Chandigarh (here in after referred to as the Tribunal, claiming Rs. 60,000/- as compensation for the death of Kuldip Singh from the Appellant and Raghbir Chand alleging that the accident resulting in his death was due to negligence of Raghbir Chand in driving the bus in the course of his employment under the Appellant. The said petition was resisted by the Appellant. The factum of the accident was admitted and he has not denied that the bus belonged to the Appellant and Raghbir Chand was its driver and he was driving the bus in the course of his employment under the Appellant ; or that Kuldip Singh was the son of Darshan Singh. The other material allegations were controverted and the case was tried by the Tribunal on the following issues:

1. Was the accident due to any negligent act on the part of the driver of the vehicle involved ?
2. What should be the quantum of compensation due if any and from whom to whom ?
3. Relief.

The Tribunal answered issue No. 1 in the affirmative and held under issue No. 2 that Darshan Singh and Mrs. Mohinder Kaur were entitled to claim Rs. 14,400/- from the Appellant and Rajghbir Chand. As a result of the said findings, the Tribunal awarded Rs. 14,400/- to them with costs and future interest at the rate of Rs. 6/- per cent per annum, against the Appellant and Raghbir Chand. Aggrieved by the said result, the Appellant has come to this Court in appeal.

3. Dissatisfied with the quantum of compensation, Darshan Singh and Mrs. Mohinder Kaur filed F.A.O. No. 50 of 1969 for enhancement of the same. Since both these appeals have arisen out of one case, the same are being disposed of by one judgment.

4. According to Section 110-D (1) of the Motor Vehicles Act (hereinafter called the Act), the appeal could be preferred within ninety days from the date of the award. The impugned award is dated as July 8, 1968. This appeal (F.A.O. No. 66 of 1969) was filed on May 21, 1969. Therefore, the Appellant moved application under Sections 5 and 12 of the Limitation Act for condonation of delay in filing the appeal. According to the Appellant, the Tribunal reserved the award and passed order on May 15, 1968 that the award would be conveyed to the parties but the award was never conveyed to it (the Appellant). It was further stated by the Appellant in the aforesaid application that application for certified copy of the award was made to the Tribunal on July 27, 1968, that the Tribunal was thereafter abolished on August 8, 1968 and the Appellant was never informed about the place from where the certified copy could be obtained. The records of the case were ultimately transferred to the Court of the District Judge who was constituted as Tribunal at Patiala, and it was on May 15, 1969 when the certified copy of the award was delivered from the office of the District Judge, Patiala to the Legal Assistant of the Appellant. Therefore, the Appellant claimed

condonation of delay for the period from July 27, 1968 to May 15, 1969. It is evident from the note recorded on the certified copy of the award that the application for the said copy was made to the office of the Tribunal at Chandigarh on July 27, 1968 and the said application was received in the office of the District Judge, Patiala on February, 4, 1969 and the certified copy was delivered to the Appellant on May 15, 1969. There is nothing on record to show that the Appellant had been informed about the award or its announcement. Since the application for certified copy of the award was made by the Appellant on July 27, 1968, it is legitimate to presume that it (the Appellant) had come to know about the award on July 27, 1968, or earlier. Since the provision contained in Sub-section (1) of section 110D of the Act provides specifically that the period of ninety days will run from the date of the award, I do not think that the learned Counsel for the Appellant was right in contending that the said period in the case in hand could run from the date of knowledge of the Appellant about, the award. The Appellant, as indicated above, applied for certified copy of the award on July 27, 1968 in the office of the Tribunal at Chandigarh. The said Tribunal was abolished on August 8, 1968 and here is nothing to show that the Appellant had ever been informed that after its abolition, the Tribunal had been constituted at Patiala, or that the application moved by it on July 27, 1968 had been sent to the Tribunal at Patiala. Therefore, in the circumstances of the case, no fault can be attributed to the Appellant for not obtaining certified copy of the award from the office of the District Judge (Tribunal) at Patiala till May 15, 1969. In view of the aforesaid circumstances, I find that it was beyond the control of the Appellant to have obtained certified copy of the award before May 15, 1969. So, the period from July 27, 1968 to February 22, 1969 when certified copy of the award had been prepared has to be excluded on account of the same being requisite for obtaining the said copy u/s 12 of the Limitation Act. The delay for the period from February 22, 1969 to May 15, 1969 for not obtaining the delivery of the certified copy has to be condoned on the ground of sufficient cause for the reason that the Appellant was never informed that the application for certified copy of the award had been transferred from Chandigarh to Patiala, or that certified copy of the award would be delivered to it from Patkda. Proviso to Sub-section (1) of Section 110D of the Act is to the effect that an appeal can be entertained after expiry of the period of ninety days if it is shown that the Appellant was prevented by sufficient cause from preferring the appeal in time. In the circumstances, referred to above, the Appellant was, in my opinion, prevented from riling the appeal within ninety days because he was never informed that the certified copy would be delivered to it at Patiala and it did not obtain the same before May 15, 1969. So, I allow the application (Civil Miscellaneous No. 2602 A of 1969) and condone the delay. As soon as allowance is made for the period from July 27, 1968 to May 15, 1969, as I do, the conclusion is inescapable that the appeal was filed within time.

5. Assailing the findings recorded by the Tribunal on issue Nos. 1 and 2, Mr. L.M. Suri, the learned Counsel for the Appellant, raised the following two contentions:

(1) that there was no negligence on the part of Raghbir Chand in driving the bus and Kuldip Singh was solely responsible for the accident as he had himself struck the cycle against the bus; and

(2) that the compensation amount assessed by the Tribunal was excessive.

6. I see no merit in the first contention though there seems some force in the second contention. "Negligence" would mean the failure to observe, for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. The test of negligence lies in default to exercise the ordinary care and caution which is expected of a prudent man in the circumstances of a given case. The duty to exercise such a care and caution including reasonable use of his faculties of sight and intelligence to observe and appreciate danger or threatened danger of injury is undoubtedly on the driver of an automobile. If he fails to do so and such failure is the proximate cause of the injury or death, he is guilty of negligence. The evidence on record reveals, and it is also stated in the spot Inspection Report prepared by the Tribunal on June 12, 1968, that the accident had taken place near the T-crossing, that is, a junction where the link road coming from the side of the Mandi Samana meets the Jind-Patiala road in a locality where there are shops and residential houses. In those circumstances, it was expected of Raghbir Chand to drive the bus cautiously and at such a low speed that he could stop it once in case any person or a cyclist appeared to appear in front of the Bus. He was also required to see that no person or cyclist had approached the aforesaid T-crossing from the link road when he was to drive the bus across it. The record bears ample testimony that Raghbir Chand did not observe the aforesaid care and caution demanded of him by the aforesaid circumstances of the case. Baba Gujjar Singh (AW4), Tarsem Lal (A.W. 5) and Hazura Singh (A.W. 6) had unanimously deposed that the bus was driven at a fast speed and its left front wheel had struck the cycle of Kuldip Singh who, as a result of the said impact, had fallen on the ground and his head was crushed under the wheel of the bus, and that the bus could be stopped at a distance of about thirty feet from the scene of accident. Tarsani Lal (A.W. 5) had a shop near the scene of accident. So, his presence at the time and scene of accident cannot be doubted. The aforesaid witnesses were subjected to strict and lengthy cross-examination but nothing could be elicited from them which could show that they were interested in the deceased or his parents, or that they had any animosity against Raghbir Chand. Their statements do not suffer from any infirmity. The Tribunal accepted their testimony and I see no reason to disbelieve them.

7. Dr. M. L. Jaiswal (A.W. 3) who conducted autopsy on the dead body of Kuldip Singh on December 9, 1966 narrated the injuries found on it and testified that the head of Kuldip Singh had been crushed resulting in his death. So, the medical evidence confirms the direct testimony of the aforesaid witnesses that the bus had knocked down Kuldip Singh and his head had been crushed under its wheel.

No doubt, Raghbir Chand appearing as R.W. 4 Bahadur Singh R.W. 1, Gurnam Singh R.W. 2 and Saroop Singh R.W.3, maintained that Kuldeep Singh could not control his cycle and struck it on the left side of the bus and fell on the road. But, their statements did not find favour with the Tribunal and have also not impressed me to be true. Bahadur Singh admitted during cross-examination that he did not see the impact as he did not see the cycle striking against the bus. Raghbir Chand stated that Kuldeep Singh had no impact with the bus. Saroop Singh, however maintained that Kuldeep Singh did strike against the left side of the bus, but he maintained that he was not run over by the bus. The said statement of Saroop Singh that Kuldeep Singh was not run over by the bus is falsified by the medical evidence, discussed, above. Gurnam Singh admitted during cross-examination that he has not seen Kuldeep Singh coming from the side of the Mandi Samana and he had seen him after the accident, lying under the wheel of the bus. I am, therefore, satisfied that the statements of the aforesaid witnesses who appeared on behalf of the Appellant, are not worthy of credence and were rightly disregarded by the Tribunal. So, the evidence led by the claimant-Respondents stands unreported and prevails. The circumstances that Kuldeep Singh had been knocked down near the T-crossing, that his head was crushed under the wheel of the bus and the bus could be stopped at a distance of about thirty feet from the scene of accident, attract the application of the doctrine of *Res Ipsa Loquitur* which literally means that the thing speaks for itself. It is a rule of evidence and applies to the facts of the case, and affords good corroboration to the direct testimony led by the claimant-Respondents, and furnish indication that the bus had been driven at a fast speed and Raghbir Chand did not care to notice that Kuldeep Singh had appeared from the link road and he did not apply brakes to stop the bus for avoiding its impact against the cycle of Kuldeep Singh. Therefore, I unhesitatingly concur with the Tribunal that the accident resulting in the death of Kuldeep Singh had taken place due to negligent driving of the bus by Raghbir Chand, and find that the record does not support the contention raised by the learned Counsel for the Appellant that Kuldeep Singh was guilty of any negligence which had contributed to the aforesaid accident. So the first contention raised by the learned Counsel for the Appellant is devoid of any force and the same is repelled, and the finding of the Tribunal on issue No. 1 is affirmed.

8. Human life is invaluable and it cannot be gainsaid that it is beyond the monetary tape measure. Therefore, the mode of assessment of compensation for loss of human life is not free from doubt. It is beset with difficulties. It depends on many imponderables. As such, no arithmetical formula for assessment of compensation for loss of human life can be formulated and the compensation for loss of human life is bound to vary with the facts and circumstances of each case. At the same time, it has to be remembered that, compensation for loss of human life cannot be determined by the rule of thumb because such a determination would be arbitrary and, as such, would not be permissible by law. Hence, some workable formula has to be set for determination of compensation

for loss of human life. Such compensation should neither be punitive nor should be such as to prove a windfall for the dependants of the deceased. The compensation to be allowed should be recitative in the sense that it should have the effect of restoring the state of things as obtaining previous to the accident which resulted in the death of Kuldeep Singh. That would mean that the dependants of the deceased, by grant of compensation, should be placed in such a situation that they would receive the pecuniary help which they could have received had the deceased lived a normal life. Section 110-B of the Act too provides that the compensation to be determined by the Tribunal should be such as would appear to be just. "Just would mean appropriate, equitable or proper. The said word too gives an indication that the compensation should be so assessed as to enable the dependants of the deceased to earn as much pecuniary benefit as could be available to them from the deceased had he not died in the accident. Therefore, I am of the opinion that the compensation amount to be assessed should be such that if the same is prudently invested in some scheduled Bank, it would earn interest which is equal to the pecuniary benefit which could be available to the dependants from the deceased. In order to determine as to what pecuniary benefits were available to the dependants from the deceased, the first point is what was the amount of wages which the deceased was earning. The second point would be to estimate as to how much was required to be spent by the deceased for his own personal and living expenses. The balance would then give a datum or basic figure which could be spared by the deceased for his dependants. The education, the status of the deceased and his family and the class to which he belonged, are some of the factors which render assistance in determining the aforesaid matters.

9. Kuldeep Singh was aged slightly above sixteen years at the time of accident. He had read upto eighth class. He belonged to an ordinary family of an agriculturist residing in a village. He was working as Mechanic Apprentice and was getting Rs. 80/- per month as his wages. In the years to come, he could expect to earn Rs. 150/- per month. He must have needed Rs. 90/- to Rs. 100/- for his personal and living expenses. Therefore, the Tribunal appears to be correct in observing that he (Kuldeep Singh) could have spared Rs. 60/- per month for his parents. At one stage, Mr. I. K. Mehta, the learned Counsel for Darshan Singh and Mrs. Mohinder Kaur, contended that by the passage of time the income or the earning capacity of Kuldeep Singh could have increased, but he forgets that in the years to come, he would have married and might have begotten children. So, his liability for expenses must have also increased. It is, thus, clear that the pecuniary benefits which could have been expected by Darshan Singh and Mrs. Mohinder Kaur from Kuldeep Singh had he lived, can be rightly assessed at Rs. 720/- per year, i.e. Rs. 60/- per month. The said amount of Rs. 720/- can very well be earned by way of interest at the rate of Rs. 10/- per cent per annum on an amount of Rs. 7200/- if the same is invested prudently in a scheduled Bank. I am, therefore, of the opinion that Rs. 7,200/- should have been the just compensation, which could be allowed to Darshan Singh and Mrs. Mohinder Kaur

for earning the pecuniary benefit which could have been available to them from Kuldeep Singh had he not died in the accident. A further amount of Rs. 2,000/- can also be allowed to Darshan Singh and Mrs. Mohinder Kaur as compensation for the pain and agony which had been caused to them on account of the untimely death of their son-Kuldeep Singh. Therefore, the amount of compensation which can be reasonably and justly allowed to Darshan Singh and Mrs. Mohinder Kaur for the death of Kuldeep Singh should not be more than Rs. 9,200/- The amount of Rs. 14,400/- allowed by the Tribunal, if invested in the scheduled Bank, would earn Rs. 1,440/- as interest, and that would mean that the pecuniary benefit from the interest on the said amount would be Rs. 120/- per month. It would be double for the pecuniary benefit which, as indicated above, could have been available to Darshan Singh and Mrs. Mohinder Kaur, from Kuldeep Singh, So, the assessment of compensation made by the Tribunal cannot be maintained.

10. For the reasons given above, I, modify the finding of the Tribunal on issue No. 2, held that Darshan Singh and Mrs. Mohinder Kaur are entitled to Rs. 9,200/- as compensation.

11. The principle, that a master is liable for the consequences of the negligence of his servant, is well-recognised. Raghbir Chand committed the accident due to negligent driving of the bus during the scope and course of his employment under the Appellant. Therefore, Raghbir Chand and the Appellant are jointly and severally liable to pay the aforesaid amount of Rs. 9,200/-.

12. It, thus, follows from the discussion above, that this appeal succeeds partially while F.A O. No. 50 of 1969 is bereft of any merit, there being no scope for enhancement of compensation amount, though it requires modification to the extent that Raghbir Chand and the Appellant are jointly and severally liable to pay the compensation amount to Darshan Singh and Mrs. Mohinder Kaur.

13. Consequently, I partly allow this appeal, and modifying the judgment of the Tribunal, award Rs. 9,200/- with future interest at the rate of Rs. 6/- per cent per annum with effect from the date of the award, i.e. July 8, 1968 till payment of the same, to Darshan Singh and Mrs. Mohinder Kaur, against the Appellant and Raghbir Chand. The costs as awarded by the Tribunal shall also be paid by the Appellant and Raghbir Chand to Darshan Singh and Mrs. Mohinder Kaur. They (Darshan Singh and Mrs. Mohinder Kaur) shall share the aforesaid compensation amount, future interest and costs equally.

14. F.A.O. No. 50 of 1969 is dismissed except with the modification that Raghbir Chand and Pepsu Road Transport Corporation are jointly and severally liable to pay the aforesaid compensation amount, interest and costs, to Darshan Singh and Mrs. Mohinder Kaur.

15. In view of the divided success in the appeals, I direct the parties to bear their own costs of both the appeals.