

(1968) 07 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 170 of 1963

Prem Lata and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 09-07-1968

Acts Referred:

Citation : (1968) ACJ 398

Hon'ble Judges : R.S. Sarkaria, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; H.L. Sibal, S.C. Sibal and R.C. Sathia, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sarkaria, J.—This is a first appeal directed against an order, dated 2nd July, 1963, of the Motor Accidents Claims Tribunal, Punjab Chandigarh, by which he dismissed a petition filed by Shrimati Prem Lata, widow, and other legal heirs of Sohan Lal Mehta deceased.

2. On 10th February, 1963, at about 1.45 P.M. at Bus-Stand, Abohar, Bus No. PNA-6193 of the Punjab Roadways, Amritsar, was being reversed. The deceased while trying to cross the road at the rear of the bus was knocked down and was run over by the rear wheel of the bus. The by-standers, including Ramesh Kumar, son of the deceased, raised an alarm, whereupon the driver stopped the bus just before the deceased could be run over again by the front wheel of the bus. In the claim petition, it was alleged that the accident took place due to the rash and negligent driving of the driver, who reversed the bus at great speed without the help of the conductor and without bothering to look back, and that no horn was blown by the driver. After considering the pleadings, the Tribunal framed these two issues.:

1. Whether the accident took place due to the negligence of the driver of the Punjab Roadways Bus No. PNA-6193.

2. What is the quantum of compensation due, if any.

3. After discussing the evidence produced by both the sides, the Tribunal decided issue No. 1 against the claimants and: dismissed the claim application without going into issue No. 2.

4. I have gone through the record and have heard the arguments of Mr. L.M. Suri, the learned Counsel for the Appellant and Mr. H.L. Sibal, the learned Advocate-General for the State. The deceased had himself lodged a report in this case with the Police, on the basis of which a case was registered under the Penal Code and the Motor Vehicles Act against Sat Pal driver of the bus involved in the accident. The person who recorded the statement of the deceased, has not been examined. In the F.I.R. 4 witnesses were cited by the deceased. They were Ramesh Kumar (son of the deceased), Kashmiri Lal, Madan Lal, and Girdhari Lal. Ramesh Kumar and Kashmiri Lal have been examined as A. W. 1 and A.W. 5 respectively. Madan Lal and Girdhari Lal have not been examined. In their place, Balraj and Jagdish Chander have been substituted. The learned Tribunal has observed, that Ramesh Kumar being the son of the deceased was a highly interested witness, while Kashmiri Lal did not support the Applicants' case in material particulars. He stated that his back was towards the scene of occurrence. He was engrossed in talk with some other persons. He could not say whether any horn was or was not blown by the motor-driver. He did not say a word as to whether the conductor was or was not present there in or near the bus. He diverted his attention towards the scene of occurrence only on hearing the alarm. In examination-in-chief, he however, said that the deceased wanted to cross the bus from the right hand side, and that the bus while reversing hit the deceased on the shoulder, felling him to the ground. Obviously, in making this statement, the witness drew upon his imagination, because in cross-examination he candidly admitted that at the time of the accident, his back was towards the bus and he saw only when people raised the alarm (which was just after the accident). The Tribunal has, therefore, rightly observed that it was not possible for the witness to judge the negligence of the driver.

5. While Ramesh Kumar, A.W. 1, has stated that the bus stopped when its front wheel had last come near the head of the deceased, Gurdeep Singh, R. W. 5 and Hakam Singh. R. W. 6, stated that the bus had stopped immediately after the deceased was run over, at a distance of 10 feet or so from the deceased. Sat Pal driver himself appeared in the witness-box and stated that the speed of his vehicle at the material time, was only 4 or 5 miles per hour.

6. Ramesh Kumar, son of the deceased, admitted that the deceased had sometime before this accident received injuries and was under treatment in the Hospital for about 15 days. The defence version was that the deceased was in poor health and could walk only with a limp. He himself took the risk of crossing the road when the bus was being reversed. The conductor was also there assisting the driver in reversing the bus. He had blown the whistle, while the driver had blown the horn. Other buses were parked on the right and left sides of

the bus driven by Sat Pal driver. The conductor got down from the vehicle on the right side of the bus and was guiding the driver to avoid collision with the bus already standing towards the back side. While so doing, neither the driver nor the conductor could see the deceased who came from the left side in the rear. The driver stopped the vehicle as soon as he heard the alarm.

7. The Tribunal, which had the opportunity of observing the demeanour of the witnesses, has placed reliance on the witnesses examined by the Respondents. He had classed Hakam Singh R.W. 6 as an independent witness. He has also believed the version of the driver and the conductor.

8. Mr. L.M. Suri contends that even if it is assumed for the sake of argument that the conductor of the bus was there, then also from his admission it stood proved that while assisting the driver he was neither inside the bus in the hind most part, nor outside the bus at the rear. It is urged that the driver could himself see the right side of the vehicle and avoid its collision on that side with any other object. If at all any assistance was needed by the driver from the conductor, it could be only to guard against any collision on the left side of the bus, which could not be seen by the driver. In the circumstances, a duty was cast on the conductor to remain either inside the rear part of the vehicle towards the left or outside the vehicle just at the back. It is argued that Cm Parhash conductor's own admission shows that there was negligence on his part and that of the driver.

9. There is, no doubt, some force in this contention. But it must be remembered that in cases of this kind, the onus of proving negligence on the part of the driver of the vehicle, rests on the claimant-Applicants. If one particular type of negligence is alleged in the claim application, the Applicant cannot be allowed to drop that stand and take advantage of the weakness of the defence, or adopt a part of the defence story, and ask the Court to give him relief on the basis of another kind of negligence. In the application, three particulars of the negligence were alleged:

- (1) High speed of the vehicle ;
- (2) absence of the conductor ; and
- (3) failure to blow any horn or whistle by the driver.

10. None of these particulars was established by the Applicants, On the contrary, the evidence taken as a whole shows that the speed of the vehicle at the time of the accident, was not more than 5 or 6 miles per hour. The conductor was there, though it cannot be said at what particular place he was when the accident occurred. Even if there was negligence on the part of the conductor in performing the duty, the Applicants could not take advantage of it as they had based their claim mainly on the negligence of the driver and had alleged total absence of the conductor. At the most it can be said that the evidence adduced by both sides is precariously balancing, as it were, on a knife-edge. In such a situation, the appellate Court would hesitate to disturb the finding of fact arrived at by the

Tribunal, which had the opportunity of observing the demeanour of the witnesses.

11. For reasons aforesaid, I would dismiss this appeal, leaving the parties to bear their own costs.