

(1999) 12 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3374 of 1996

Rachhpal Raj

APPELLANT

Vs

P.S.Sureshan

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Citation : (2000) 2 RCR(Civil) 265

Hon'ble Judges : Amar Dutt, J

Advocate : Mr. Pritam Saini, Advocate., Advocates for appearing Parties

Judgement

Amar Dutt, J.—This order will dispose of Civil Revision Petition Nos. 3374, 3375, 4285 and 4286 of 1996. For the purposes of this judgment, the facts are being taken from Civil Revision No. 3374 of 1996.

2. The facts necessary for the decision of this petition are that on 7.11.1985 a Matador in which Jasjit Singh, his grandmother Rachhpal Kaur and his cousin Jagatbir were transporting articles of furniture from Karnal to Mohali met with an accident near village Jainpura, with a truck which formed part of the military convoy coming from the opposite direction. Since Jasjit Singh and Rachhpal Kaur had sustained injuries in the accident they filed separate claim petition Nos. 24 and 25 of 1986 respectively which were disposed of on 22.10.1986 by the Motor Accident Claims Tribunal Kurukshetra. The Tribunal after assessing the compensation had passed identical orders against respondent Nos. 1 to 3 indicating that drivers and owners were severally and jointly liable for the same. Before doing so, the Tribunal had come to the conclusion :

"that the accident took place due to contributory negligence of drivers of the Military truck and the driver of the Matador."

In execution, the Union of India deposited 50 per cent of the amount awarded but as nothing was being realised from the owner and driver of the Matador, the claimants got warrants issued for attachment of the property of the Union of India for recovery of the remaining 50 per cent of the amount awarded. This

order compelled the Union of India to file an application under Sections 151, 152 and 153 CPC for amendment of the award to indicate that the amount of compensation awarded would be equally recoverable from the owners and drivers of each of the two vehicles. This application was allowed by the Tribunal and this has occasioned the filing of the revision petition each by Rachhpal Kaur and Jasjit Singh and two separate revisions by Rachhpal Raj, the owner of the Matador.

3. I have heard learned counsel for the parties and have considered the respective submissions made by them.

4. The impugned order passed by the Tribunal is being assailed before me on two grounds. Firstly it is submitted that in the award the Tribunal had found that the accident had taken place on account of the negligence of the drivers of both the vehicles. Since neither Rachhpal Kaur nor Jasjit Singh was driving the vehicle, this would not be a case of contributory negligence but one of composite negligence in which case it was open to the Court to direct that the compensation awarded could be recoverable from either of the two joint tortfeasors. In such a case, there was no question of the order being amended on a subsequent date by the successor Court while exercising powers under Sections 151, 152 and 153 CPC. Secondly, it is submitted that the relief sought for and granted to the Union of India does not fall within the scope of the provisions of Sections 151, 152 and 153 of the CPC as the same is not a correction of clerical or arithmetical mistake in the order nor can it be said to be an error which has arisen in the award on account of accidental slip or omission.

5. Having given my careful consideration to the submission made by the learned counsel for the parties, I find that the stand of the petitioners has got to be accepted. In a case where the claimant is a third party to a collision between two erring vehicles, both the drivers become joint tortfeasors and their negligence is to be termed as composite. In such cases, the liability of the joint tortfeasors and the owners of the vehicles is joint and several. The question as to whether in such cases, the Tribunal is obliged to apportion the liability of the drivers for the accident came for consideration before this Court in *Narinder Pal Singh v. Punjab State*, AIR 1989 Punjab and Haryana 82 and their Lordships of the Division Bench have observed :

"First referring to the Motor Vehicles Act, 1939 (for short "the Act"), S. 110B whereof clearly provides that it shall be the duty of the Tribunal to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be."

The aforesaid quotation is the reproduction of latter part of S. 110B of the Act. The quotation enjoins upon the Tribunal not only to determine the amount of

compensation payable but also the amount, which is payable by the Insurance Company or owner or driver of the vehicle, or by all or any of them. This means the Tribunal's jurisdiction extends to awarding the amount against all, some or one of the respondents and if this is to be done, the Tribunal has to apply its mind on all those matters and if there are two vehicles involved and their drivers are found negligent, then the Tribunal has to apportion the amount and has to see how much would be the liability of the driver and owner of the one vehicle and that of the other. Assuming for the sake of argument that both the vehicles are insured then the Tribunal has to apportion the liability between the two Insurance Companies. In a given case it is possible that one vehicle may be insured and the other may belong to Government or a private person, but not insured, then also the Tribunal has to apportion the liability so that the Insurance Company would know its liability for the insured vehicle and of the other, that is, the Government or the private owner. This is only for the purpose of inter se liability of the two vehicles found negligent but this determination has no effect on the claimant because in law he is entitled to recover the entire amount jointly and severally. Therefore, on a reading of the provision, it is clear that while awarding the amount in a case of composite negligence, the Tribunal can direct the payment of the entire compensation jointly and severally, but at the same time would apportion the liability between the two owners for their facility, and if both the owners or the two insurance companies, as the case may be, pay the amounts to the claimant in proportion as awarded by the Tribunal. There will be no problem for the claimant. But in case, any one of the parties liable does not want to honour the award of the Tribunal, it will be open to the claimant to recover the entire amount from the other, leaving such party to claim rateable distribution from the owner of the other vehicle involved in the accident and found negligent by the Tribunal. Therefore, on the basis of the provisions of the Act mentioned above, it can safely be held that the Tribunal has the jurisdiction to apportion the liability, even in the case of the composite negligence."

Their Lordships further went on to observe

"Having considered the provisions S. 110B of the Act, quoted above, view expressed in Halsbury's Laws of England, view expressed in Corpus Juris Secundum and the decided cases, we find it clear that it is the duty of the Tribunal to apportion the compensation even in the case of joint and several liability, without which it would not be a complete determination by it. Moreover, when exclusive jurisdiction has been given to the Tribunal, it would not be proper to say that inter se between the two joint tortfeasors, there should be fresh litigation before a civil Court in separate proceedings and that court should decide the dispute. It is another cardinal rule of jurisprudence that multiplicity of proceedings on the same matter should be avoided and unless it is expressly provided or is the necessary intendment, the interpretation should be such that a Tribunal of exclusive jurisdiction should finally decide the dispute on all matters between them and should not leave any part to be gone into in a separate suit before another court of law."

Thus according to the Division Bench though the liability of joint tortfeasors remains joint and several yet the Tribunal is required to apportion the compensation amongst each of them so as to completely adjudicate upon the rights of the parties inter se and thereby avoid multiplicity of proceedings.

6. In the present case, the Tribunal in its award dated 22.10.1986 had merely indicated that respondents were jointly and severally liable which finding cannot be said to be illegal. The failure of the Tribunal to apportion the compensation between the joint tortfeasors would have to be rectified by the same court while exercising powers of review or by the appellate Court when the award comes up before it in appeal. It would not, to my mind, be open to rectification by the Tribunal while exercising powers under Sections 151, 152 and 153 CPC because the aggrieved party could seek proper relief by way of review; revision or appeal. For his view of mine, I rely upon the observations made in *Amar Nath v. State of Punjab*, 1966 Cr. L.J. (Pb.) 554. In *Abdul Karim v. Kunjali*, 1996 ACJ 615, a Division Bench of the Kerala High Court has held that a mistake which has occurred due to wrong application of law or for failure to apply the correct law cannot in any manner be described as arithmetical mistake, it was observed "the remedy open to the insurance company was to file an appeal." In the present case, although according to the ratio of the Division Bench in *Narinderpal Singh's* case (supra) it would have been proper for the Tribunal to apportion the compensation amongst the joint tortfeasors but its failure to do so cannot be rectified under Sections 151, 152 and 153 CPC as it would necessarily require the successor Tribunal to give a finding regarding the extent of the negligence of the respective parties which has not been given.

For the reasons recorded above these petitions fail and are accordingly dismissed.

Petitions dismissed.