
(1962) 02 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 160 of 1960

Ram Pertap

APPELLANT

Vs

General Manager, Punjab Roadways, Ambala

RESPONDENT

Date of Decision : 23-02-1962

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110

Citation : AIR 1962 P&H 540

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Judgement

(1) This appeal u/s 110-D of the Motor Vehicles Act IV of 1939 is directed against the order of the Motor Accidents Claims Tribunal, dated 5-10-1960, dismissing the appellant's application for claim in respect of an accident caused by bus No. P. N. E. 8126 of the Punjab Roadways, Ambala on 21-12-1958, in which he (appellant) received some injuries. In this application he claims Rs. 25,000/- by way of compensation. This claim application was on 6-7-1960 dismissed in default but was later restored in August, 1960.

(2) The trial of the claim application proceeded on the following issues:

1. Whether the accident was due to the rash and negligent act of the driver of bus No. PNE 8126, if so, to what effect?
2. What is the income of the applicant?
3. If issue No. (1) is proved in the affirmative what is the quantum of compensation to which the applicant is entitled.
4. Whether the application is time barred and whether it is a fit case where delay should be condoned?
5. Relief.

The first issue was decided against the appellant-applicant with the result that

the remaining issues did not arise for consideration and the claim application was dismissed. The Tribunal in the opening part of its discussion on issue No. 1, noted the version of the accident as given by the claimant himself in his application. Therein, it had been stated that on 21-12-1958, which was a rainy day, the roads were wet and somewhat slippery. The driver of the Punjab Roadways bus in question by which he was travelling from Fort Bahadurgarh (Patiala) to Delhi tried to overtake another bus going ahead of his. Either due to slippery road or due to some mechanical defect, the driver of the Punjab Roadways but lost control of the steering wheel with the result that it had a head on collision with a bus coming from the opposite direction in the jurisdiction of P. S. Shambu, District Patiala. As a result of this accident, more than half of the travellers of the Punjab Roadways but including the claimant, were injured; the travellers of the other bus also received injuries.

After dealing with the evidence led at the trial, the Tribunal considered it important to look at the version given by the claimant himself immediately after the accident. The note made by the claimant in the complaint book which was with the conductor of the bus is in the following terms:

"I was sitting on the front seat of bus No. PNE 8126 bound to go to Delhi. It so happened that this bus due to rain had a slip and struck against the bus coming from the opposite direction, I. e. Ambala side. Both the drivers did their best to save the accident but of no use. Passengers of both the buses had injuries."

This note is under the signatures of the appellant who was a D. S. P. I/c. Fort Bahadurgarh and is dated 21-12-1958 and was made at 11 A.M. A.W. 2/3, a copy of the report sent by the claimant to the Superintendent of Police, Ambala was then taken into account by the Tribunal. This letter reads as follows:

"It is to bring to your kind notice while I was proceeding on duty from Fort Bahadurgarh to Gurgaon on 21st December, 1958, the bus I was travelling collided against another bus coming from the opposite direction, in between Rajputra and Ambala (in jurisdiction of P. S. Shambu) at 11-00 A.M. Both the buses belonged to Punjab Roadways. Along with other passengers I received severs injuries on my person. An X-ray picture of my left leg revealed fracture, dislocation of the lower end of tibia. I am under observation at Dr. Joshi's Nursing Home, Karol Bagh, Delhi.

It is requested that the Police concerned may, please, be informed for taking necessary action in the matter."

The next occasion on which the claimant gave his version was in May, 1959, when he submitted his application and which has already been noticed above. From this material, the Tribunal inferred that there was no negligence on the part of the driver of the bus as none was mentioned by the claimant who was holding the position of Deputy Superintendent of Police in the Police service and, therefore, the Punjab Roadways could not be held responsible.

(3) On appeal in this Court, the learned counsel for the appellant referred me to the statement of Om Prakash Kaushal, R. W. 1, who was the conductor of the bus in question on 21-12-1958 when it was coming from Patiala to Delhi. He has stated that it was drizzling on that day and the accident took place one mile ahead of Shambu village towards Ambala side. The bus slipped and on account of that skidding, it struck against a bus coming from the opposite side. The complaint book was asked for by the applicant who was also travelling by that bus and he noted down his remarks just after the accident, a copy of those remarks is Exhibit R. W. 1/1.

In cross-examination, the witness stated that he did not remember if another bus was going ahead of the bus in question nor did the witness remember if Sad Singh driver of the bus in question tried to overtake the bus alleged to be ahead of it. The witness, however, explained that the question of overtaking the bus did not arise as the sealed governor was fixed in the bus in question and its speed was limited to 35 miles only. In cross-examination by the Tribunal, the witness could not say that the accident took place as Sadhu Singh wanted to overtake another bus going ahead because the witness was sitting on the back seat. Singh, driver has since left the service of the Punjab Roadways of his own accord. As a matter of fact driver Sadhu Singh was also injured in the same accident and he never joined after he came out of the hospital where he had been admitted for treatment.

The appellant's counsel has very forcefully contended that but for the negligence of the driver, the bus could not have skidded and that on the facts and circumstances of this case, it is for the Punjab Roadways to explain want of negligence on the part of the driver. The counsel, in other words, contends that the doctrine of *res ipsa loquitur* is fully attracted by the facts and circumstances of this case.

(4) It is next argued that u/s 110 of the Motor Vehicles Act, in order to claim compensation it is not necessary to establish that the accident involving bodily injury to persons arising out of the use of the motor vehicle in question was the result of negligence on the part of the owner or the driver of the vehicle. In support of this contention, reference is made to the wording of this section and it is emphasised that the section does not speak of negligence on the part of the driver or the owner of the vehicle.

(5) On behalf of the Punjab Roadways respondents, Shri Doabia has contended that the onus of establishing his claim is always on the claimant (appellant in this case) and that even if there was any onus resting on his client, the same has been fully discharged. It has also been emphasised that in the vehicle in question, the governor had been fixed at the speed of 30 miles per hour with the result that the vehicle could not possibly be going at a speed higher than 30 miles per hour.

It is further pointed out that in the complaint made by the appellant, there was

no mention of the driver's negligence; nor was there any such mention made in the report to the Superintendent of Police, Ambala. It is submitted that no interference on appeal on the basis of the argument that the incident is prima facie independent of the driver's negligence is called for. The respondent's counsel has in this connection relied on section 110-F of the Motor Vehicles Act which excludes the jurisdiction of Civil Courts from entertaining questions relating to claims for compensation.

(6) On the second point, Shri Doabia has contended that only a person who has been at fault can be held liable and burdened with the liability and that no innocent party should in fairness be called upon to compensate the injured person.

(7) Dealing with the second point first, it is true that section 110-B of the Motor Vehicles Act does not in terms lay down that it is only when negligence on the part of the driver of the vehicle concerned is established that compensation can be awarded, but then it should be borne in mind that this bunch of Secs. (110 to 110-F) merely deal with the subject of the substitution of Motor Accidents Claims Tribunal in place of civil Courts for the purpose of adjudicating on claims for compensation in respect of accidents involving the death or bodily injury to person arising out of the use of motor vehicles. They do not deal with the question as to who is to be held liable and in what circumstances, if any injury results from an accident. In order, therefore to discover the criterion or test for fixing liability, we have, in the absence, of any statutory provision fixing liability irrespective of negligence, to turn to the law of Torts according to which indisputably negligence in causing the accident in question is generally speaking essential to hold the negligent person liable.

Nothing has been stated at the bar to persuade me to hold that the bunch of sections mentioned above in any way override the law of Torts. The cardinal principle of liability in tort, when death or bodily injury has been caused to a person, is negligence or failure to take the requisite amount of care required by law. It has not been argued, and, indeed not even a suggestion has been thrown, that the claim in question before me is based on any scheme of insurance, contractual or statutory. I have, therefore, no hesitation in repelling this contention.

(8) In so far as the first point is concerned, the contention raised is really based on the maxim *res ipsa loquitur*. This maxim, as I understand its purport, suggests that on the circumstances of a given case the Res speaks and is eloquent because the facts stand unexplained, with the result that the natural and reasonable inference from the facts--not a conjectural inference--shows that the act is attributable to some person's negligent conduct. The effect of this maxim, however, depends on the cogency of the inferences to be drawn and must, therefore vary in each case. Its effect appears to be to shift the burden or onus of proof on to the defendant who is expected to show as to how the accident may have occurred without his negligence. There is undoubtedly a

divergence of judicial opinion as to the extent of the onus but in the case in hand that question does not arise and, therefore, it is unnecessary for me to advert to it. The Claims Tribunal has found that, the bus in question skidded on account of the wet condition of the road, as originally mentioned by the claimant in the complaint book. This finding has not been successfully challenged on behalf of the appellant and as a matter of fact no argument has been addressed in respect of this finding on the merits.

(9) The contention raised, however, is that it was not possible for the vehicle to skid if there had been no negligence on the part of the driver; in other words the vehicles could only skid if there was some serious defect in it. I would grant that a skid in itself does not excuse the accident and it may not suffice, by itself, to displace the prima facie inference of negligence arising from the vehicle being where it has no right to be, for a skid may be caused by bad, careless or fast driving. The skid is thus by itself a neutral factor and it may or may not be due to the driver's negligence. But in the instant case the finding of the Court below based on the earliest representation made by the claimant in the complaint book has not been successfully displaced on behalf of the appellant. It was, I may here mention, for the claimant it to be clearly erroneous in which attempt he does not seem to have succeeded. I have, therefore, no option but to repel this contention as well.

(10) In the result this appeal falls and is hereby dismissed. In the circumstances of the case, I would not like to burden the appellant with costs of this appeal. Before concluding, however, I should like to observe that the learned counsel for the appellant put his client's case with considerable fairness and clarity of thought and nothing that could reasonably be urged has been left out.

(11) Appeal dismissed.