

(1986) 04 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : First Appeal No. 471 of 1981 and X-obj. No. 11-CII of 1982

Ranjit Singh and other

APPELLANT

Vs

Bagarian Shoes Ltd. Chandigarh and others

RESPONDENT

Date of Decision : 10-04-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110CC

Citation : (1987) ACJ 866

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : L.M. Suri and Mr. Ravinder Arora, for the Appellant; V.P. Gandhi, and Mr. Muneshwar Puri, for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—This is an appeal against the award of the Motor Accident Claims Tribunal, Chandigarh, at the instance of the dissatisfied claimants due to the inadequacy of the sum awarded. On the other hand, there are Cross-Objections No. 11-CII of the owner of the offending car to absolve them of the liability altogether. The Insurance Company, though a Respondent in these two matters, has chosen to remain non-aggressive.

2. The accident, which is the subject matter of this claim, occurred on an intersection of equi dimensional roads in Sector 35-A Chandigarh at about 6.30 p.m. on June 10, 1979. The deceased Jatinder Singh lived in a house close-by to the scene of the accident and had while riding his motor-cycle CHG-21 came out of his house to proceed on the straight road. At the intersection, however, Ambassador Car No. CH-8025 came out from his left side, struck against him almost in the middle, whereby the deceased by the impact was thrown off and fell on the corner of the intersection near an electric pole. The motor-cycle, however, was pushed forward by momentum of the car and became stationary touching the car near the pavement when the car was almost 3/4th on the pavement across the intersection in the direction in which it was proceeding. At

the point where the car ultimately stood the distance was about 50 feet. Jagjit Singh PW-7, Miss Harbant Kaur PW-8 and Mehma Singh PW-9 are said to have witnessed the occurrence. Harbant Kaur PW-8 was the sister of the deceased and according to her she removed the deceased to the hospital. Before-hand the occupants of the car, being its driver and suggestedly two other men and two ladies leaving the car there, vanished from the scene. The car was found to be owned by Messrs Bagarian Shoes Limited, one of whose Directors is Ashok Singh Respondent and it undeniably was comprehensively insured with the Oriental Fire and General Insurance Company Limited Respondent. The liability, if any, undeniably is thus on the Insurance Company. In due course the matter was reported to the police, but somehow it never went before the Criminal Court as the police took the view that Ashok Singh at the time of the accident was not driving the car and who else was the driver was not known. The claimants being the parents of the deceased, however, moved the Motor Accident-Claims Tribunal, Chandigarh, claiming compensation to the tune of Rs. 12,00,000/-.

3. The Tribunal went into the controversy. The plea of the owners was that it was Kishori Lal, their driver, who was driving the car at the time of the accident. It is for this reason that the comprehensive issue was framed by the Tribunal at the effect-Whether the accident took place due to rash and negligent driving of car No. CH-8025 by Ashok Singh or Kishori Lal or due to rash and negligent driving of the motor-cyclist, resulting in causing the death of Jatinder Singh and to what effect? The second issue obviously was-To what compensation, if any, the claimant are entitled and from which of the Respondents? The Tribunal expressed the view that it was car No. CH-8025 which had caused the accident and that it was not driven by Ashok Singh but by Kishori Lal. It further took the view that the accident took place due to the negligence of both the vehicles and defining contribution inter se it put the offending car to be negligent to the extent of 70 per cent and that of the offending motor-cycle at 30 per cent. On the question of quantum, the Tribunal found that the deceased, an unmarried Youngman of 25, was drawing a sum of Rs, 1,047 50 per mensem as SDO (Irrigation). The deceased was an Engineering Graduate having topped in the list of selectnees by the Public Service Commission in the year 1977. The Tribunal calculated the dependency of the parents at the rate of Rs. 5,000/- per annum and the damage to the motor-cycle at Rs. 3,000/-. A multiplier of 10 was given and thus computing the total loss at Rs. 63,000/- an award was passed in terms of 70 per cent thereof, to the tune of Rs. 44,100/- on which interest at the rate of 12 per cent per annum was allowed from the date of the filing of the claim application till realisation. As indicated earlier, the parents of the deceased clamour for more and the car owners' effort is to deprive them of even what has been awarded.

4. It is significant to note that the finding of the Tribunal that car No. CH-8025 was the offending vehicle has not been disputed. It has also not been disputed that it was owned by the owner-Respondents and their liability is to be taken care of by the Insurance Company. It is, even obvious otherwise, for the offending vehicle was found standing after the accident by the investigating

police. There are on record photographs obtained of the time being Exhibits P-1 to P-7, which speak for themselves, invoking the principle of *Res ipsa loquitur*. Additionally there is site plan Exhibit P-12 supported by oral evidence in that regard. It is plain from the site plan Exhibit P-12 and photographs that the impact between the two vehicles was in the middle of the intersection for there was no round-about constructed in it or even manned otherwise. The pool of blood at that place established the impact point. From that impact point, the deceased was found thrown at a tangent in a corner of the intersection near an electric pole on the road pavement. The car was found parked 3/4th on the road pavement and approximately 1/4th on the road in the direction in which it was headed at a distance of about 50 feet from the place of impact. The motor-cycle was lying in front of it. in close contact with the car, entangled with the right front tyre, and causing a uniform dent on practically whole of the front of the car. These facts since they speak for themselves, disclose that the motor-cyclist had almost come in front of the car, if not wholly in front of it, when the accident took place.

5. Learned Counsel for the parties have invoked Regulations 6 and 7 of the Tenth Schedule to the Motor-Vehicles Act 1939, to press their view-point. It would be worthwhile to have those Regulations reproduced herein:-

6. The driver of a motor-vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

Case law has been cited on either side to suggest that when there was violation of Regulation 6 by two vehicles involved in a mutual hitting accident, the one which had violated Regulation 7, was made to share 66 per cent liability and the other who was not negligent for violation of the said Regulation, was held liable to share 33 per cent liability. To mention a few seriatim:

Mandip Kaur Vs. Ram Lal and Others, ;

2. (Kuldip Singh Kohli v. Gurmail Singh and otheas) 1985 ACJ 621 ;

3. (Piara Singh and Ors. v. Gian Kaur and Ors. 1985 ACJ 758 ;

Earlier decisions in the same regard are: The Tourist Cooperative Transport Society Ltd. Ambala City v. Dr. Om Parkash (1973) 75 P. L. R. 486. and Smt. Raj Kumari v. State of Haryana (1974) 76 P. L. R. 33., proceeding on the basis that both the vehicles are responsible for the accident and the need to share negligence inherent in it. But multiplication of the authorities to my mind does not help the situation, for, it is obvious that when the Court comes to the view

that it is not the sole negligence of one vehicle, then necessarily negligence is shared by the other vehicle. The underlying current, however, of these decision is to interpret facts of each particular case in such a way so as to ear-mark what would attract Regulation 7. Without meaning to deviate from that underlying current, my attempt is to give it another look inasmuch as these two Regulations also give out a composite scheme of things-something which regulates priorities in the matter of driving motor-vehicles. Since we are concerned with an accident at an intersection, that alone be kept in view to understand how these Regulations simultaneously operate, and particularly when there is no main road, designated as such, involved. Now if two vehicles are approaching a road intersection at right angles, they both are duty bound to slow down when approaching a road intersection and forbidden to enter it until each of them has become aware that it can enter the intersection without endangering the safety of persons thereon. The expression "safety of persons thereon" when meant to apply literally or strictly would mean-safety of persons present at the intersection, whether in motor vehicles or not, and not to safety of those persons who are not yet in the intersection. This thought appears to me to be self-defeating in purpose and thus safety of person on the road intersection means safety of those persons, whether in or on motor vehicles or not, who are likely to be on the intersection, when a particular vehicle is about to enter the intersection. In practical analysis it would mean that a slowing vehicle approaching a road interaction, presumptively driving on his left hand side as obligated under Regulation 1, is required to view broadly around as to what persons, whose safety he is required to ensure, are likely to be in the intersection at the time when he drives over it. While that is being done with a cautious approach and simultaneously the road intersection has been entered upon, then each vehicle is required to give way to all traffic approaching the intersection on his right hand. Negatively put, such a vehicle is then under no obligation to give way to traffic approaching the interSection 0.1 his left hand. If a clock-wise exercise is made mentally, it would dawn upon one that each vehicle in the intersection has to mind his right hand side and it is for other vehicles to likewise mind their sides of the right hand. It is in this composite manner that Regulations 6 and 7 can simultaneously operate.

7. Now coming to the facts of the instant case, an argument of the learned Counsel for the car-owners need first to be met, for, according to him, if Ashok Singh Respondent, who was accused of having driven the car, was found not to have done so by the Tribunal, then it must be concluded that the story put up by the witnesses about the manner of accident should be discarded. Furthermore, it has been urged by him that on the principle of *Res ipsa loquitur*, which would be invocable in the absence of positive evidence, it should be presumed that both vehicles did not observe the requirements of Regulation 6, and violation of Regulation 7 at best would put the car driver responsible for 2/3rd of the damages, for concededly the car driver did not give way to the motor-cycle approaching the intersection on the former's right hand. In reply to this, learned

Counsel for the claimants has contended that though it was the positive case of the claimants that it was Ashok Singh who was driving the car, the case set up by the latter was that it was Kishori Lal who was driving the car and opting the alternative Kishori Lal had been made a party in the claim petition by the claimants themselves. It is true that the Tribunal has found Ashok Singh not to be driving the car and thus as alternatively suggested has found that Kishori Lal was driving the car. But that by itself does not cast any dent to the case of the claimants factually or legally. There could have been a case of mistaken identity as far as the driver is concerned, for it is the victim in that flash of moment who attracts more attention than the driver. In either situation, as said before, whosoever was the driver of the car he has not stepped in on the side of the owners to depose in what manner did the accident take place. Thus, one has to fall back upon the oral evidence as led by the claimants which is consistently to the effect that the car driver did not slow down while approaching the intersection and dashed into the crossing motor-cycle which was at a slow speed for the deceased had barely come out and picked up speed from his house which was close-by. Thus from the evidence it is possible to conclude that the deceased was not guilty of either violating Regulation 6 or Regulation 7.

8. In the alternative, let it be assumed for the sake of argument that the oral word of the eye-witnesses in that regard be taken as doubtful. Even then no presumption can be raised that both the vehicles had, while approaching the intersection, violated Regulation 6. It could be violation by one and not by the other. It could equally be that both had not violated Regulation 6. Learned Counsel for the car owners as said before, had ventured to invoke the presumption that both vehicles had violated Regulation 6 and I fail to see that why the presumption in the instant case cannot be conversely raised that both of them had observed the provisions of Regulation 6, leaving aside the oral evidence that the motor-cyclist had observed Regulation 6 and not the driver of car. This controversy does not leave us anywhere and thus as observed earlier, the observance of Regulations 6 and 7 has to be viewed in this case in a composite way and lean more towards the violation of Regulation 7, if there was any. As has been observed earlier, the duty of the driver of the car was to give way to the motorcyclist because the latter had approached or was in the intersection at the time when the car entered the intersection. It was the duty of the driver of the motor-car to stop and let the motor-cyclist cross by. His failure to do so does, not, to my mind, make the motor-cyclist contributorily negligent. It is true that to save his life the motor-cyclist should have been more vigilant over and above observing the driving regulations in Schedule X, but then the urge keep alive is very strong and human. No one goes into an accident openly and willingly. It is idle to contend that the motor cyclist should have anticipated that the car driver would violate the regulations and thereby stop in order to let the car driver go by. This may be true in the ordinary sense but not in the sense of the driving regulations, violation of which per se puts the entire responsibility on the one who violated the regulations. Thus it is my considered view that in

the instant case the offending car has to bear the whole liability of negligence and I hold it accordingly.

9. There is no serious dispute about the salary which the deceased was drawing at the time of the accident. It was Rs 1047.50. It would be safe to round it up at Rs. 1050/- per mensem. The Tribunal assessed the dependency of the parents at Rs. 500/- per mensem i. e. slightly lower than 50 per cent. This was despite the claim of the parents that the deceased was contributing Rs. 750/- per mensem towards the family upkeep. According to the evidence of Ranjit Singh PW-10, father of the deceased, the deceased was one of his two sons, the other one being a student. Besides that the deceased had two sisters, one of whom was married and the other was a student. The father then was 52 years of age employed as Sub-Divisional Officer drawing a salary of Rs. 1,500/- per mensem. The mother was aged 60 years. From all standards the claimants were from the lower middle classes who are just a cut above the working classes. Every penny counts in such a household and earning members are expected to contribute the maximum to the upkeep of the family and to share the burden of parents. Rich they are not, but seem rich they would be, in the matter of living and dress. The parents' expectancies and the earning sons' obligation could not have been stalled at Rs. 500/- per mensem as was done by the Tribunal and I think in the circumstances the deceased would have been contributing 2/3rd of his salary to his parents and at that figure I would determine their dependency. This would figure it to be Rs. 700/- per mensem and Rs. 8,400/- per annum.

10. There is divergence of opinion on a multiplier given to parent in such like cases. Many a precedent has been cited before me, of which I need take notice of only one on the Respondents' side *Jupiter General Ins. Co. Ltd and Ors. v. Balkishan* 1985 A. C. J. 77. and one of the claimants' side: *Colonel K. S, Dhaliwal and Anr. v. Jagdip Riar and others* (1986) 89 P. L. R. 121. Parents in the early fifties and even late fifties have been awarded compensation by applying the multiplier of 10, but in the case cited by the claimants the same Hon'ble Judge, who authored the majority of the judgments, granted a multiplier of 14. All these measures are exercises of good sense in the facts and circumstances of each case. No Court can be regulated to grant in all events a multiplier of 10 and not go beyond 14. No doubt in fixation thereof it is applied the rule of thumb but then it is the judicial thumb seasoned by time and experience, by wisdom and common sense. In the instant case, I am of the view that the multiplier of 10 awarded by the Tribunal did not meet the ends of justice and it should be rested at 12, especially when the parents have crossed the crest and now are on their decline. All the imponderables which crop up in one's mind churn up to lead to this view.

11. No other point arises.

12. In view of the aforesaid discussion, the sum total is that the claimants are awarded Rs. 1,00,800/- as compensation for the loss of their son. The award regarding compensation for the damage to the motor-cycle is slightly enhanced to

Rs. 3,200/- to make a total round figure of Rs. 1,04,000/- due to the claimants. On this awarded sum the claimants shall have interest at the rate of 12 per cent per annum from the date of the application till realization in accordance with the spirit of Section 110-CCC of the Motor-Vehicles Act, 1939. Besides that they shall have their costs. The entire liability necessarily has to be borne by the Insurance Company as per the conceded position. Ordered accordingly. Cross-objections No. II-CII of 1982 are dismissed.