
(2000) 03 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 112 of 87

Ravinder Kaur and Others

APPELLANT

Vs

Haryana State and Another

RESPONDENT

Date of Decision : 17-03-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2001) 1 ACC 647 : (2001) ACJ 635 : (2000) 126 PLR 352 : (2000) 2 RCR(Civil) 746

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Deepak Suri, for the Appellant; Raghubir Chaudhary, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—This appeal arises out of the judgment/award of the Motor Accident Claims Tribunal (hereinafter referred to as tribunal) in MACT case No. 42 of 1985. The case pertains to an accident which took place on 12.6.1985 at 12.00 noon on the National Highway known as G.T. road. There is a fly bridge on the G.T. road near the place of accident which is at a distance of 1 Kilometer from Ambala Cantt. Shashtri colony falls on the left side while going from Ambala Cantt to Delhi. The bus involved in the accident was being driven by respondent No. 2 at the time of the accident. It was owned by respondent No. 1. It was proceeding from Ambala Cantt bus stand. Pritarn Singh Sethi came on the scooter from Shastri Colony which falls on the left side of the road. He was carrying a pillion rider alongwith gas cylinder. When he reached the main road leading from Ambala Cantt to Delhi, the accident took place. The scooter was completely smashed. Pillion rider Baldev Singh alongwith gas cylinder fell down. However, Prtiarn Singh received injuries in the accident and died because of the injuries. The appellants had claimed Rs. 6,49,000/- by way of compensation.

2. The claim was resisted by respondent No. 1 who has filed written statement.

Following witnesses were examined from the side of appellants:-

1. PW.1 Ravinder Kaur (wife of the deceased)- appellant No. 1.

2. Baldev Singh, pillion rider (eye witness)

3. From the side of the respondent, driver of the bus Samey Singh was examined. Documents were also produced in this case. Ex.R.1 to Ex.R.5 are the photographs of the place of the accident produced by the respondents. Eight photographs have been produced by the appellants. In addition to this evidence, true copy of the F.I.R. and photo copy of the income tax return has been produced as Ex.A.2 and Ex.A.3.

4. The Tribunal vide its impugned judgment decided issue of rash and negligent driving against the appellants. Through it is said under issues No. 2 regarding compensation that in case issue No. 1 would have been decided in favour of the claimants, they would have been entitled to Rs. 1,53,512/-. However, as issue No. 1 regarding rash and negligent driving was decided against the appellants, the claim petition was dismissed.

5. After hearing the learned counsel for the parties, it is not possible to differ with the findings of the learned Tribunal. Learned counsel for the petitioner has argued that the bus driver was driving the bus at a high speed and he could not control the bus. However, as it seems that the scooterist came from Shashtri Colony which falls on the left hand side. He had come from kacha path from the side of Shashtri Colony which was on a lower level from the road. This being the position, the scooterist must have come at a high speed because he was carrying a pillion rider alongwith gas cylinder and because of the High Way which was on higher level. Considerable momentum must have been acquired by the scooter before it reached High Way, making it impossible to stop after seeing the bus. The photographs produced by the appellants would show that the bus had gone totally on the right hand side of the road in a kacha portion and the scooter came underneath the bus. This can happen only when the bus driver was required to swerve bus towards extreme right in order to avoid impact with the scooter which was coming from the left side kacha road. It is argued that the bus was being driven fast. Admittedly, the accident had taken place where the fly over ends. Moreover, on a National High Way it cannot be expected that the bus, should go on at carts speed and keep on blowing horn all the time. It is duty of the vehicle driver approaching from kacha path to High Way to see that his path is clear. The position would have been different if the scooterist would have taken turn to the left after coming on the High way but the position shows that he wanted to take turn to the right and for that he had to cross the road. The bus driver cannot be blamed for this accident. The driving of the scooter in such a negligent manner not only endangers one's life, that of the pillion rider but also endangered so many other persons such as passengers of the bus or truck or any other vehicle.

6. Counsel for the appellant relied upon the deposition of Baldev Singh, pillion rider, he has been examined as PW.2. According to him they were coming from

Shastri Colony after taking gas cylinder. When the scooterist entered G.T. road a bus came on high speed from the side of Ambala Cantt. The bus hit the scooter in spite of the fact that he gave signal to the bus to slow down. No horn was blown by the bus.

7. It is difficult to believe that how a person holding gas cylinder could give signal. Again, if any signal had been made by this witness, it was meaningless when the scooter entered all of a sudden. This witness has admitted in the cross-examination that there is pacca road which connects Shastri Colony with the G.T. Road. However, he has admitted that there is also kacha passage and it was this kacha passage which was used by them to reach G.T. road. He has admitted that level of the G.T. road at the place of the accident was 6" higher as compared to the kacha passage. He has stated that he fell on the brink of the road towards Shastri Colony. The bus was on the left side of the road. If he had fallen on the brink of the road towards Shastri Colony, he must have fallen on the left side of the G.T. road while going from Ambala Cantt to Delhi. When the scooter had gone totally on the right side of the road, it means that this witness had definitely fallen first before impact of the scooter took place with the bus, as the bus was totally on the right hand side of the road and the scooter was beneath it, as is clear from the photographs. This being the position, however, harsh the findings will be against the appellants, the same have to be upheld. Counsel for the appellant has cited the case of Smt. Sarla Dixit and another Vs. Balwant Yadav and others, . It is collision between truck and scooter taking place at middle of inter-section of the two roads, and it is observed in it that scooterist having crossed half of inter-section it cannot be said that the truck driver could not have seen him. The truck was driven by a novice without license. Driver of the truck was unable to stop the truck there and then. It was held that the driver was alone guilty of negligence and there was no contribution by the scooterist. However, in the present case, leaving aside the question of contributory negligence, even the negligence of the driver of the bus is not proved.

In view of the above reasons, this appeal is without merit and is dismissed as such.