
(1975) 08 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 185 of 1968

S.D. Joshi and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-08-1975

Acts Referred:

Citation : (1975) ACJ 518

Hon'ble Judges : Muni Lal Verma, J

Bench : Single Bench

Advocate : G.C. Garg, for J.V. Gupta, for the Appellant; S.K. Sayal, for the Respondent

Final Decision : Dismissed

Judgement

Muni Lal Verma, J.—The material facts which gave rise to this appeal and F.A.O. No. 171 of 1968 may be briefly stated as under:

2. Sudhir Kumar, aged about 11 years, son of the Appellants was proceeding on a cycle and he was driving it putting his feet on the paddles by crossing one of his legs through its frame, on April 17, 1966, at about 4 p.m. on the road coming from the side of the lake and falling between Sectors 18 and 19 at Chandigarh. Krishana Padda Sen Chowdhary accompanied by his friend M. Biswas was then proceeding on the foot path towards the lake. Military truck No. RD. 15198 (hereinafter called the truck) appeared there from the side of the lake. It was driven by Chander Singh, the Sepoy. When he (Chander Singh) was overtaking Sudhir Kumar, the truck hit against his (Sudhir Kumar's) cycle, as a result of which the cycle and Sudhir Kumar fell on the road and he (Sudhir Kumar) died at the spot. Thereafter, the truck struck against the pavement (footpath) on its extreme right and hit M. Biswas, who too dropped on the ground and died at the spot. The truck was stopped thereafter. Krishana Padda Sen Chowdhary succeeded in saving himself and he sent information about the accident on telephone to the Air force Police. The local Police also reached the spot and he reported the accident to it. S.D. Joshi is the father and Mrs. Kanta Joshi is the

mother of Sudhir Kumar and they claimed Rs. 20,000/- by moving application before the Motor Accident Claims Tribunal, Chandigarh (hereinafter called the Tribunal) from the Union of India, averring that the accident resulting in the death of Sudhir Kumar had occurred due to rash and negligent driving of the truck Chander Singh who was acting in the course of his employment under the Union of India at the time of accident. Their claim was resisted solely on the ground that the accident, referred to above, had taken place due to faulty driving of the cycle by Sudhir Kumar and it was he who had dashed into the rear of the truck. Another plea was latter raised by amending the written statement that Chander Singh while driving the truck was performing an act of the Sovereign at the time of accident and, therefore, the Union of India was not liable for damages. Hence, the case was tried by the Tribunal on the following issues;

1. Was the accident due to any negligent act on the part of the driver of the vehicle involved ?
2. What is quantum of compensation due, if any, and from whom ?
3. Relief.
4. Whether the vehicle in question was performing the act of the sovereign and if so, to what effect ?

The Tribunal decided issue No. 4 in the negative. It held under issue No. 1 that the accident had taken place primarily due to negligent and rash driving of the truck by Chander Singh, though Sudhir Kumar had also contributed to it and that the negligence of Chander Singh was 75 per cent while negligence on the part of Sudhir Kumar was 25 per cent. Assessing the compensation at Rs. 4,000/-, the Tribunal directed the Union of India to pay Rs. 3,000/- to S.D. Joshi and Mrs. Kanta Joshi. Dissatisfied with the said result, S.D. Joshi and Mrs. Kanta Joshi have come to this Court in this appeal.

3. The Union of India too impeached the award rendered by the Tribunal in F.A.O. 171 of 1968. Since both these appeals are against one award, the same being disposed of by one judgment.

4. The facts that the accident resulting in the death of Sudhir Kumar had taken place, that Chander Singh was then driving the truck in the course of his employment under the Union of India; and that Sudhir Kumar was aged about eleven years when he died, are admitted. Assailing the finding recorded by the Tribunal on issue Nos. 1 and 2, Mr. G. C. Garg, learned Counsel appearing for the Appellants, contended that the accident was solely due to negligent driving of the truck by Chander Singh and that the compensation amount assessed by the Tribunal was inadequate. On the other hand. Mr. S.P. Jain, learned Counsel appearing for the Union of India, argued in opposition that the accident was due to the negligence of Sudhir Kumar or at least he had contributed to the happening in such a manner that his negligence could not be assessed less than that of Chander Singh; and that: the compensation amount assessed by the

Tribunal was excessive. In my opinion, the contentions raised by Mr. G. C. Garg are well founded and the arguments advanced by Mr. S.P. Jain are unmeritorious. Of the numerous definitions of "negligence," among the best has been declared to be "the failure to observe, for the protection of the interests of another person, that degree of care, precaution, and vigilance wide the circumstances justly demand, whereby such other person suffers injury." Whether negligence exists in a particular case has to be determined by a consideration of all the attendant or surrounding facts and circumstances, and the test of negligence is the exercise of ordinary care and caution which is expected of a prudent man in the circumstances of particular case. It is expected of drivers of automobiles especially heavy vehicles just like military trucks as in the instant case, to be cautious while overtaking a cyclist or a person who walks or drives a vehicle on the road. The duty to exercise ordinary care including the reasonable use of his faculties of sight and intelligence to observe and appreciate danger or the threatened danger of injury, is upon the driver of the overtaking automobile. If he fails in that duty, and such failure is the proximate cause of the injury he is guilty of negligence. He cannot hit, much less crush, another person simply because the said person is moving in the middle of the road, or that he is not in well control of the vehicle driven by him. It is the driver of the overtaking vehicle who is in its control and who can watch the movements etc. of the person or the vehicle which is being overtaken. Therefore, the driver of the overtaking automobile is under duty to see, and he is in a position to do so, that he leaves sufficient space between his automobile and the vehicle, or the person to be overtaken so that there shall not be any collision between the two. He has also to observe that he overtakes the vehicle or the person moving ahead when the latter has moved to the extreme left side and he should also manage his vehicle in such a manner that there is no danger or even threatened danger of any mishap. He has to see that the speed of his vehicle when overtaking, is such that it can be pulled up if the person or the vehicle to be overtaken, has failed to behave in a manner as was expected of him at the time of overtaking. The driver of the vehicle to be overtaken has to see forward in order to manage it and is not in a position to look behind, much less to watch the movement of the overtaking vehicle or automobile. So, there is no duty on him to observe all the precautions stated above, which are expected of the driver of the overtaking vehicle or automobile. His duty is to move on the left side of the road. Now, when the aforesaid test or considerations are applied to the facts and circumstances of the present case, the conclusion is inevitable that it was Chander Singh alone who was responsible for the negligence which caused the accident. Sudhir Kumar was a child of about eleven years. He was peddling the cycle putting one of his legs across its frame somewhere between the left side and middle of the road. Therefore, the duty imposed upon Chander Singh had increased and it was required of him to slow down the truck and to overtake him (Sudhir Kumar) when he had taken his cycle on the extreme left side of the road and he (Chander Singh) should have left ample space between the said cycle and the truck so that there could not be any possibility of collision between the two. He

did not act in that manner. On the contrary, after hitting Sudhir Kumar, the truck had bumped against the pavement on the right side and further knocked down M. Biswas who was moving on it (the pavement). Both of them, viz, Sudhir Kumar and M. Biswas, were so severely hit that they had died at the spot. The truck could be stopped at a distance of about twenty-five or thirty yards away from the place where Sudhir Kumar had been knocked to death. The aforesaid behavior of Chander Singh and the truck speak volume of negligence on the part of Chander Singh.

5. The facts discussed above give rise to a legitimate and reasonable inference that the truck was driven by Chander Singh at a terrific speed, that he did not care to see that the child (Sudhir Kumar) had taken the cycle to the extreme left side of the road, that he (Sudhir Kumar) was in its full control; and that he (Chander Singh) did not leave sufficient space between the truck and the cycle so as to avoid any mishap even if Sudhir Kumar being terrified or otherwise lost the control of the cycle at the time of overtaking. Therefore, the maxim "Res Ipsa Loquitur" which literally means "thing speaks for itself" and is a rule of evidence, applies by and operation of that doctrine, the facts, stated above, themselves furnish circumstantial evidence of strong nature, of negligent driving of the truck by Chander Singh. There is unimpeachable sworn testimony of Krishana Padda Sen Chowdhary (A.W.I) in proof of the aforesaid facts. These facts were not denied specifically by Chander Singh when he appeared as R.W. 1. He further admitted that he had seen the child (Sudhir Kumar) cycling in a manner, stated above, and that his (Sudhir Kumar's) movements were then shaky, from a distance of one hundred yards. Krishana Padda Sen Chowdhary was an employee of the Air Force. Neither he had any ill-will against Chander Singh nor had he any friendship with Sudhir Kumar or his parents. He sent information about the incident immediately on telephone to the Air Force Police. He also reported the accident to the local police without any loss of time. Exhibit P. 1 is the copy of first information report recorded by the police on the basis of his statement. It contains exactly the same story which was narrated by him before the Tribunal. So, it (Exhibit P. 1) affords ample corroboration of his testimony. His testimony was accepted by the Tribunal and I see no reason to disbelieve it. Chander Singh who appeared as R.W. 1 was admittedly an interested witness being tort-feaser. He was court-martial for the accident and had been awarded six months rigorous imprisonment. He could not possibly witness the impact if, as stated by him, the cycle had hit against the left rear wheel of the truck. He admitted that he did not apply the brakes fully at the time of the accident. It may, however, be noted that in reply put in by the Union of India it had been conversely stated that he had applied the brakes at that time. Therefore, it is clear that no credence can be placed on his statement that Sudhir Kumar had himself struck against the left rear wheel of the truck, and the said version sounds to me like an idle tale. The result is that the evidence and the circumstances of the case when taken collectively do not point out that Sudhir Kumar had contributed to the negligence which caused the accident and I have not been able to persuade myself to agree

with the Tribunal that Sudhir Kumar was guilty of contributory negligence to the extent of 25 per cent. Therefore, I vacate the finding of the Tribunal on issue No. 1 to that extent and hold that Chander Singh was solely responsible for negligent driving of the truck which caused the accident and resulted in the death of Sudhir Kumar.

6. Human life is invaluable and like the beauty of the sun rise or the splendor of the stars, it is beyond the reach of the monetary tape measure. Therefore, determination of damages for the loss of human life has always been extremely difficult and when the deceased is a child, it becomes all the more baffling. The future of a child is uncertain. How far could Sudhir Kumar shape himself to meet the challenges of life was unpredictable. How much the applicants could have spent on his schooling, how far Sudhir Kumar could succeed in equipping himself for education and in availing the chances of employment and how far he (Sudhir Kumar) could, had he lived, serve the Appellants, are problematical matters. It was observed in *Perumal and Anr. v. State of Madras* 1971 A.C.J. 144 that in view of the uncertainties of life, a sum of Rs. 5,000/- would be just and reasonable compensation for the loss of a child. In that case the deceased Rani was a girl of eight years and the compensation amount of Rs. 3,000/- awarded by the Tribunal was enhanced to Rs. 5,000/-. In another case reported as *Parsani Devi v. The State of Haryana* 1973 A.C.J. 531 (decided by a Division Bench of this Court), a sum of Rs. 5,000/- awarded as compensation for the death of a child aged thirteen years was held to be reasonable. Still in another case reported as *Joginder Kaur v. The Punjab State* 1969 A.C.J. 28 damages for the death of a child aged nine years was assessed at Rs. 5,000/-. Therefore, i, in the interest of uniformity would assess Rs. 5,000/- as compensation for the death of Sudhir Kumar and in disagreement with the Tribunal vacate its finding on issue No. 2, and hold that the Appellants are entitled to Rs. 5,000/- if not more, as compensation for the death of their son.

7. The principle that negligence of a servant acting as such within (he scope of his employment is imputed to his master is disputable and well-recognised. Chander Singh was driving the truck during the course and scope of his employment under the Union of India. So, the Union of India being his employer is liable for the consequences of the negligence committed by him (Chander Singh) in driving the truck. As such, the Union of India is liable to pay the aforesaid amount of compensation, i.e. Rs. 5,000/- to the Appellants.

8. The finding on issue No. 4 recorded by the Tribunal was not agitated before me, and I think rightly. The truck was employed in carrying Lieutenant Jaswant Singh from the camp to his house in Chandigarh and it was on return that the accident had occurred due to negligent driving of the truck by Chander Singh. No rules indicating that the truck could be used for the purpose of carrying a Lieutenant from the camp to his house was referred to me. I do not think that carrying a Lieutenant from some place to his house can be said to be a sovereign function of the State. That was a work which could be undertaken by private

individuals. There was nothing peculiar about it. Therefore, it cannot be said that the truck was employed in the performance of an act of the sovereign at the time of accident, I am supported in this view by the decision of their Lordships of the Supreme Court in *Shyam Sunder and Ors. v. The State of Rajasthan* 1974 A.C.J. 296 .

9. It, thus, follows from the discussion above that this appeal must succeed partly, and there is no merit in F.A.O. 171 of 1968, preferred by the Union of India, and the same fails. Hence, I allow this appeal partly and enhancing the compensation, direct the Union of India to pay Rs. 5,000/- within three months from today to the Appellants.

10. It is added for the sake of clarity that if any sum has already been paid to the Appellants by the Union of India on account of compensation, the same may be adjusted towards the said amount of Rs. 5,000/-.

11. Since the Appellants' success has been partial. I leave the parties to bear their own costs of the appeal. F.A.O. 171 of 1968 preferred by the Union of India is, however, dismissed with costs.