
(1984) 03 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 344 of 1978

Sharda Devi and Others

APPELLANT

Vs

Bahadur Singh and Others

RESPONDENT

Date of Decision : 23-03-1984

Acts Referred:

Citation : (1985) ACJ 518

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

Bench : Single Bench

Advocate : G.S. Giani, for the Appellant; L.M. Suri, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—It was a head-on collision between a car and scooter resulting in the death of Sangram Singh and injuries to Amarjit Singh Mankoo, who were both on the scooter at that time. This happened at about 11 p.m. on January 2, 1975 on the road entering into Sector-16 from the side of Sector-17 just short of the crossing near House No. 500 in Sector-16, Chandigarh.

2. The finding of the Tribunal was that the accident had been caused by the rash and negligent driving of both the car and scooter involved in the accident and consequently the deceased Sangram Singh, who was driving the scooter was equally liable for the accident and the present Appellants, who are his mother, brother and sister were not entitled to any compensation. In a separate claim filed by Amarjit Singh Mankoo, Rs. 5,000/- were awarded to him as compensation for the injuries suffered in this accident.

3. In appeal Mr. G.S. Giani, counsel for the Appellants, sought to assail the finding of contributory negligence recorded against Sangram Singh, deceased and also put forth the further contention that the claimants were, even with this finding entitled to compensation and the Tribunal had thus fallen in error in negating their claim altogether by virtue of this finding of contributory negligence against the deceased.

4. The case as set up by the claimants, in their claim application was that the scooter was being driven on its correct side of the road when the car came from the opposite direction at a fast speed and without blowing any horn came and hit into the scooter.

5. The driver and owner of the car did not contest the claim of the claimants. The defence was accordingly, with the permission of the court, taken up by the insurance company. The version of the accident put forth by the insurance company was that it was the scooter that had come on the wrong side of the road at a fast speed and it hit into the car. It was also said that both the persons on the scooter had taken a large quantity of liquor and were intoxicated, at that time.

6. The eye-witness account of the occurrence was given by PW6 Jasbir Singh, who deposed that he was going towards his hostel with his friend Satish Kumar when this accident occurred. It was his testimony that he went to a nearby house and informed the police on telephone about the accident. The First Information Report in this case was lodged on the statement of this witness. This report being Exh. P-2. According to the testimony of Jasbir Singh the scooter was proceeding at a normal speed slightly towards its left from the centre of the road when a car came from the opposite direction at a very fast speed and hit into this scooter. After hitting the scooter the car stopped and its driver got down, but then got into the car again and drove away. It was thereafter that the police came and removed the injured to the hospital.

7. The next witness examined by the claimants was PW 7 Amarjit Singh Mankoo, who was one of the injured in this accident. It was his testimony too that the scooter was being driven at a speed of about 30 to 45 km. p.h. when the car came at a very fast speed from the opposite direction and hit into the scooter.

8. A reading of the evidence of the two eyewitnesses in this case would show that there was no other traffic on the road when the accident took place and it appears to have taken place almost in the centre of the road. According to PW 7 Amarjit Singh Mankoo, the scooter was being driven in the centre of the road though PW 6 Jasbir Singh had said that it was slightly towards the left of the centre. Mr. L.M. Suri, counsel for the Respondent insurance company sought to lay great stress upon the testimony of PW 2 Inspector Kashmira Singh that after the accident the place where the scooter was lying was seven paces from the right side and eleven from the left. The argument being that the scooter was on the wrong side of the road when the accident occurred. This argument is founded upon the assumption that the scooter was found lying at the exact place of impact with the car. This is an assumption which cannot be relied upon. The scooter being the lighter of the two vehicles, there was a greater likelihood of it being pushed away than it falling and coming to rest just at the place of impact. It must be taken, therefore, that the accident was caused almost in the centre of the road.

9. Another aspect of the matter which becomes apparent from the evidence on record is that neither the car driver nor the scooter driver made any attempt to avoid hitting into each other.

10. Mr. L.M. Suri laid great emphasis upon the fact that both Sangram Singh as also Amarjit Singh Mankoo were under the influence of liquor at the time of the accident. Evidence indeed shows that both had taken liquor. According to PW1 Dr. M.M. Goel, who conducted the postmortem examination on the dead body of Sangram Singh, deceased, there was smell of alcohol in the thorax, the lungs as also from the contents of the abdomen and the deceased had thus clearly taken liquor and in sufficient quantity too. Similarly, in the medical examination of Amarjit Singh Mankoo there is a note that his breath smelt of liquor and that he had been talking irrelevantly when he was examined in the hospital. Counsel for the Respondent, insurance company thus sought to describe the accident to be the result of drunken driving by the driver of the scooter. The fact that liquor had been taken by both Sangram Singh and Amarjit Singh Mankoo is indeed a very relevant consideration in deciding the matter relating to the blame for causing the accident, but the circumstances in which it took place, as deposed to by PW6 Jasbir Singh, it cannot be taken that the accident had been caused wholly on this account.

11. A significant circumstance here is the fact that the car driver after seeing that the two persons on the scooter were lying injured on the road drove away without any attempt being made on his part to remove them to the hospital. His running away in this manner is indicative of his guilt in the matter. There is no evidence that any horn had been blown by the car driver before this accident and as has been mentioned earlier, evidence has come that the car was being driven at a fast speed.

12. Having regard, therefore, to the totality of the circumstances of the case in the light of the evidence on record, there is no escape from the conclusion that this was a case of contributory negligence with both the car driver and the driver of the scooter being equally to blame.

13. What falls for determination next is, who was driving the scooter when the accident took place. It deserves mention here that in the claim application Sangram Singh, deceased, was named, as the driver of the scooter, but when Amarjit Singh Mankoo came in the witness box as PW 7 he deposed that it was he who was driving the scooter and not Sangram Singh. Such variation in evidence and pleadings cannot be permitted nor indeed would it be safe to accept. It must be taken as pleaded, that the driver of the scooter at the time of the accident was Sangram Singh.

14. The question now arises as to the amount payable to the claimants as compensation for the loss suffered by them on account of the death of Sangram Singh. It is only the claim on behalf of the mother, Sharda Devi that was pressed in appeal. Sharda Devi the widowed mother of the deceased was only 43 years of

age when her son died. It has come in evidence that Sangram Singh was 21 years of age at the time of his death. He was employed with the Punjab and Sind Bank, Chandigarh, as an apprentice with a stipend of Rs. 125/- per month. After six months he was to have started getting a salary of Rs. 500/- per month. He was at the same time studying for his M.A. This would suggest that the deceased was already employed and he had before him a career in banking. It is at the same time also to be borne in mind that if the deceased had lived, he in due course, would have got married and raised a family and consequently the amount that he would have had available for support of his mother would have been reduced thereby. Keeping in view the circumstances of the deceased and the claimant in the light of the principles laid down by the Full Bench in *Lachman Singh v. Gurmit Kaur* 1979 ACJ 170 (P and H), the loss to the mother may be computed at Rs. 1,800/- per annum with 16 as the appropriate multiplier. This would work out to Rs. 28,800/- . To make it a round figure Rs. 30,000/- . After making an allowance of the contributory negligence of the deceased the claimant Sharda Devi must be held entitled to and is hereby awarded a sum of Rs. 15,000/- as compensation which she would be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded.

15. This appeal is consequently accepted with costs. Counsel fee Rs. 300/- .