
(1991) 09 P&H CK 0008
In the Punjab And Haryana At Chandigarh

Shingara Singh

APPELLANT

Vs

Ajit Singh and Another

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Citation : (1993) 1 ACC 490

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Judgement

V.K. Jhanji, J.—The present appeal has been preferred against the award dated 24.2.1989 of the Motor Accidents Claims Tribunal, Gurdaspur, whereby the claim petition of the appellant was dismissed. The appellant filed the claim petition on the ground that his brother, Udham Singh, was standing on the right side of G.T. road near Naushera Majja Singh on 28.11.1985, when bus No. PNB 218 passed by him, and when it was put in reverse gear, the deceased was run over by the said bus. It was alleged that the accident took place due to the negligence of the driver, who did not give horn and drove the bus rashly. Due to the accident, head of the deceased was crushed and he died at the spot. He further claimed that the deceased, who was 35 years of age, was issueless, so he is the only claimant being brother of the said deceased, and dependent upon him.

2. The claim petition was contested by the respondents. Ajit Singh, the driver, completely denied the accident. He rather stated in the written statement that no such accident took place due to his negligence. He also denied that any person died on 28.11.1985. However, respondent No. 2 to 4 admitted the accident, but denied that (he accident took place due to rash and negligent act of Ajit Singh, driver. It was averred by respondent Nos. 2 to 4 in the written statement that the bus left at 1.30 p.m. and when it reached near the place of accident, the driver of the bus was about to overtake the rehri going ahead, but the rehri abruptly turned towards its right side in spite of the fact that the driver of the bus blew horn and to avoid the accident, the driver of the bus turned the bus towards the left side of the road. It was denied that the deceased was doing any work or had

any income. It was also denied that the appellant was dependent upon the deceased or he was entitled to claim any compensation on account of death of Udham Singh, deceased.

3. The learned Tribunal on the pleadings of the parties framed the following issues.

(1) Whether the accident took place due to rash and negligent driving of bus No. PNB 218 by Ajit Singh respondent, resulting in the death of Udham Singh? OPP.

(2) To how much compensation, if any, the claimant is entitled and from which of the respondents? OPP.

(3) Whether the petition is barred by time as against Punjab State and if so, to what effect? OPP.

(4) Relief.

4. Taking into consideration the pleadings as well as evidence brought on record, the learned Tribunal found that appellant failed to prove the negligence of the driver. The learned Tribunal also found that the deceased was one of the chelas in the Gurdwara Sahib at Naushera Majja Singh and was getting no remuneration. However, it was found that deceased used to take free meals in the Gurdwara Sahib after going some service there. The petition was held not to be barred by time and the said issue No. 3 was decided in favour of the appellant. The appellant has challenged the award of the Motor-Accidents Claims Tribunal, Gurdaspur, dated 24.2.1989, by way of present appeal.

5. Learned Counsel for the appellant has contended that the learned Tribunal was not justified in law in dismissing the claim petition. He further submitted that the accident took place due to negligence of the driver and the appellant being the brother of the deceased, is entitled to claim compensation from the respondents. He has also challenged the finding of the learned Tribunal.

6. Taking into consideration the pleadings, evidence brought on record and after hearing the learned Counsel for the parties, I find no merit in the present appeal. As far allegations made in the claim petition, the deceased was crushed under the wheels of the bus when the driver applied reverse gear without blowing horn. However, Kashmir Singh, PW 2, who happened to be rehriwala whom the driver of the bus tried to save, deposed that the bus was coming at a normal speed and side of the bus hit Udham Singh. He has further stated in his cross-examination that driver of the bus had blown the horn and also applied brakes in order to overtake his rehri at a slow speed. No doubt, driver of the bus has made total denial of the accident in his written statement but the appellant cannot take advantage of the same because onus to prove that the accident took place due to negligence of the driver is on the claimant. The evidence brought on record is in direct contradiction with the pleadings on record. Thus, the learned Tribunal was right in holding that the claimant has not been able to prove the negligence of the driver. The appellant in order to prove that the deceased was getting Rs.

600/- per month from the employment of Gurdwara Sahib, made statement to that effect and Swaran Kaur, PW 5, real sister of the deceased, also stated that the deceased was earning Rs. 600/- per month. However, Kashmir Singh PW 1 has stated that the deceased had no source of income. Even Swaran Kaur, PW 5, has admitted in cross-examination that the deceased used to work as sewadar in the Gurdwara Sahib and was doing no other work, rather she admitted that the deceased had become a saint 11 years ago. In view of this I find that the learned Tribunal was justified in holding that the deceased had no source of income. No doubt, the appellant, brother of the deceased, is entitled to file a claim petition under the Motor Vehicles Act, 1939, for compensation, before the Motor Accidents Claims Tribunal, but in view of the finding that the deceased was having no income and the accident was not caused due to negligence on the part of the bus driver, the appellant is not entitled to any compensation.

7. Consequently, the appeal is dismissed. However, the parties are left to bear their own costs.