
(1983) 06 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 93 of 1983

Shri Parminderjit Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-06-1983

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1983) ACJ 518

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; Munishwar Puri, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This order will dispose of F.A.Os. Nos. 93 and 94 of 1983, as the question involved is the same in both the appeals and they arise out of the one award of the Motor Accident Claims Tribunal, Chandigarh (hereinafter called the Tribunal).

2. According to the allegations made in the claim petition filed on behalf of Mangal Kishore Kaul, appellant, on the date of the accident, i.e. November 18, 1981, he as the Pillion-rider alongwith his friend Parminderjit Singh, who was driving scooter No. CHU-5757, had gone to the Railway Station, Chandigarh, for the reservation of the railway seats for a group of Punjab University students who had to go on tour. There, they were asked to come again at 11 A.M. At the time of the accident, the two friends were going on the road leading to Panchkula towards the railway station over-bridge. When the scooter being driven on its extreme left side reached very near the same, the offending bus driven by Piara Singh, driver, came at a very rash speed from the opposite side. It suddenly turned towards its extreme right side and struck against the scooterist. As a result, the scooter driver was flung away longwith the scooter. With the impact, one of the claimants" right leg was totally crushed. The right leg had got fractured on the lower half near the foot and there were multiple fractures on the

right thigh, both bones, and numerous other injuries. On account of the injuries and the sufferings, the claimant claimed Rs. 5,00,000/- by way of compensation whereas the driver of the scooter viz., Parminderjit Singh, claimant, claimed Rs. 12,000/- by way of compensation for the injuries suffered by him on his right wrist and the legs and also as damages for the damage caused to the scooter. In the written statement filed on behalf of the respondents, in reply to paragraph 24 of the claim petition, the stand taken was that as a matter of fact the scooter driver was driving it at a very fast speed, rashly and negligently in a zig-zag manner towards Mani Majra. When it was about to reach, the height of the over-bridge, he suddenly swerved it towards back side without giving any signal. When he saw the offending bus coming from Mani Majra side, he again tried to turn the scooter and in a fix, he struck against the bus. He was puzzled on seeing the approaching bus as a result, the knee of the pillion rider touched the bumper of the bus. The scooter driver could not control the scooter and fell down on the left side. The bus was coming at a very slow speed on its extreme left side. Its driver immediately applied the brakes and stopped it then and there. Thus, according to the respondents, the accident had taken place on account of the rash and negligent driving of the scooter by the scooterist. In the replication filed on behalf of the claimant, the stand taken in the claim petition was reiterated and it was further stressed that the offending bus had gone to the wrong side of the road and after causing the accident, had turned to its left side after covering some distance and had then stopped. On the pleadings of the parties, the Tribunal framed the following issues in each of the claim petitions :--

1. Whether the accident took place due to rash and negligent driving of the respondent, Piara Singh ?
2. Whether the claimant is entitled to any compensation ? If so, to what extent and from whom ?
3. Relief.

Under Issue No. 1, the Tribunal came to the conclusion that the claimants had failed to prove that the accident had taken place due to the rash and negligent driving by Piara Singh, respondent. Unfortunately, no finding was given on Issue No. 2, though the parties had led their evidence on that issue as well. In view of the finding on issue No. 1, both the claim petitions were dismissed with costs. Dissatisfied with the same, the claimants have filed these two separate appeals.

3. The main controversy between the parties in this appeal is whether the finding as recorded by the Tribunal on Issue No. 1 is sustainable on the basis of the evidence produced on the record.

4. The claimants, in order to prove their case, examined the eye witness J. S. Sandhu, P.W. 8 and Naurang Singh, Police Motor Mechanic, P.W. 5, besides themselves also entering the witness-box as P.W. 10 and P.W. 11. In rebuttal, the respondents only produced Piara Singh, respondent, the driver of the bus, and closed their evidence.

5. After hearing the learned counsel for the parties and going through the entire evidence on the record under Issue No. 1. I am of the considered opinion that the whole approach of the learned Tribunal in recording the finding under this issue was wrong and illegal.

6. In motor accident cases, the approach to find out as to who was rash or negligent in causing the accident is different than the one when a person is charged in a criminal Court on a culpable charge. It may be that prima facie it is for the claimants to prove the negligence on the part of the respondent, yet the onus is not that heavy as is required to prove a criminal charge for rash and negligent driving of the vehicle. The observations of their Lordships of the Supreme Court in *N.K.V. Brothers (P) Ltd. v. M. Karumai Ammal* 1980 A.C.J. 435, though noticed by the Tribunal, have not been correctly followed. It has been observed in the above said case,--

The requirement of culpable rashness u/s 304-A, Indian Penal Code, is more drastic than negligence sufficient under the law of Torts to create liability.

It has been further observed therein,--

Accidents Claims Tribunal must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving.

As regards the present case, the stand taken by the respondents in the written statement is not supported by the testimony of the driver, Piara Singh, respondent, who appeared as R.W. 1. It is in his statement, that there were passengers in the offending bus. If there was any negligence on the part of the scooterists, as alleged on behalf of the respondents, then, it was in all fairness to produce the conductor of the said bus or any of the passengers travelling therein in that behalf, Not only that, no report regarding the accident, was lodged with the Police on behalf of the driver, as the first information report was lodged by Mangal Kishore Kaul, claimant. Besides, the Police also recorded the statement of the eye-witness, J.S. Sandhu P.W. 8, on the day of the accident itself. It is on the record and has not been denied at the bar, that the. Ahlmad of the Court of Shri K.S. Bhullar, Judicial Magistrate, First Class, Chandigarh, was summoned with the record in first information report No. 153 dated November 18, 1981 of Police Station Mani Majra in the case State Versus Piara Singh under Sections 279 and 338, Indian Penal Code. In spite of all this, the learned Tribunal has observed,--

Yet another significant fact is that there is no evidence on the record to show that Piara Singh, bus driver, was prosecuted under the Indian Penal Code for committing this accident. The only plausible inference that can, thus, be drawn is

that he was never prosecuted for this offence. The fact that he was not prosecuted also goes to show that the claimants were unable to produce satisfactory evidence before the police during the investigation regarding the blame worthiness on the part of Piara Singh.

The learned counsel for the respondents was directed to file the affidavit in this Court in case no police chalan was pending against Piara Singh, driver, under sections 279 and 338, Indian Penal Code. According to the written statement, it was the scooterist who had got puzzled on seeing the offending bus approaching as a result of which the knee of Mangal Kishore Kaul, claimant, touched the bumper of the bus, whereas, according to the statement of Piara Singh, R.W. 1, he had told his officers that the scooter had struck against his stationary bus. He further stated that the scooterist had not sustained any injury and that he had not seen the scooter falling down. According to him, he was driving the bus on the correct side of the road and that he had not struck the bus against the scooter. In the present case, fortunately, the Traffic Police reached the spot immediately after the accident had taken place. The offending bus was detained at the spot. The first information report, a copy of which is, Exhibit P. 2 on the record, was recorded promptly. The photo graphs, Exhibits P. 3 to P. 10, taken at the time of the accident by the Traffic Police were produced on record on behalf of the claimants. Thus, from the totality of the circumstances of the case, it is quite evident that it was the right side of the bumper of the offending bus which had struck against the right side of the scooter. This is clear from the testimony of S.I. Naurang Singh, P.W. 5, the Police Motor Mechanic, who had examined both the vehicles and whose version was never challenged in cross-examination. The only question put to him in cross-examination was that the left rear portion and the left side of the scooter were intact. Shri J.S. Sandhu, P.W. 8, also supported the version of the claimants as given at the earliest in the first information report, Exhibit P. 2, which was recorded at 2.10 P.M. on the day of the occurrence. Since the version, as alleged in the written statement filed on behalf of the respondents, is not supported by the testimony of Piara Singh, driver, the onus was on the respondents to prove that the accident had not taken place due to the negligence of the part of Piara Singh, driver, which negligence prima facie rather stood proved from the evidence of Shri J.S. Sandhu, P.W. 8, Mangal Kishore Kaul, P.W. 10, Parminderjit Singh, P.W. 11 and S.I. Naurang Singh P.W. 5.

7. It was agued that on behalf of the respondents that in any case, the present is a case of contributory negligence because the scooter driver was also equally responsible for causing the accident resulting in injuries to the pillion rider Mangal Kishore Kaul, claimant. I do not find any force in this contention. No such plea was taken in the written statement filed on behalf of the respondents nor was any evidence led in this behalf. The solitary statement of Piara Singh, respondent, does not inspire any confidence. The respondents were in a position to prove the passengers of the offending bus and its conductor, in support of their version. The non-production of any such evidence on their part goes a

longway to prove negligence on the part of the bus-driver. As a result of the above discussion, the finding of the learned Tribunal under issue No. 1 is reversed and it is found that the accident had taken place due to the rash and negligent driving of the offending bus by Piara Singh, respondent.

8. As observed earlier, unfortunately, no finding has been recorded by the learned Tribunal under issue No. 2. It has been often observed that the Trial Court should ordinarily give findings on all the issues when the evidence has been recorded thereon so that there may not be any chance of remand at the appellate stage. But for this omission, the case has to be remanded for recording the finding on issue No. 2.

9. For the reasons recorded above, the appeals succeed and are allowed. The impugned award of the Tribunal is set aside and the case is remanded to it for decision on issue No. 2 and then to pass the award in accordance with law. The parties through their counsel have been directed to appear before the Tribunal on 9.6.1983. The record of the case be sent back forthwith.