

(1998) 12 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1193 of 1994

Smt. Kirpal Kaur and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (1999) 121 PLR 500 : (1999) 2 RCR(Civil) 155

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

Bench : Single Bench

Advocate : Pankaj Sharma, for the Appellant; C.M. Sharma, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This appeal is by the claimants who have been denied compensation on the ground that they have failed to prove that the accident had been caused by the rash and negligent driving of offending truck. Claimants are widow, two sons, a daughter and the father of Adeep Singh, deceased.

2. It is the case of the claimants that on 13.8.1991, when Adeep Singh, deceased, was coming on his scooter bearing registration No. PCU-7420 near Supply Depot Barrier No. 6, Jalandhar Cantt, a military truck driven by Om Bahadur turned towards Jalandhar Cantt. from G.T. Road and dashed against the scooter of Adeep Singh. As a result of accident, Adeep Singh died on the spot. Claimants alleged that the military truck was being driven rashly and negligently. On appearance, respondents did not deny the accident and admitted that Adeep Singh died because of accident. However, the respondents denied that the military truck was being driven rashly and negligently. The pleaded that one eye-witness, namely, Paramjit Singh, had stated before the police that the accident occurred due to fault of the deceased and the driver of the military vehicle is not to be blamed for the accident.

3. Claimants in order to prove that the accident was caused due to rash and

negligent driving by the driver of the offending military truck, examined two eyewitnesses, AW-2, Kashmir Singh, and AW-3, Paramjit Singh. The Motor Accident Claims Tribunal discarded the statement of both these witnesses. It doubted the presence of AW-2, Kashmir Singh, at the time of accident. The statement of Paramjit Singh, AW-3, brother-in-law of Adeep Singh, deceased, has been discarded on the ground that during inquest proceedings, Paramjit Singh had not blamed the driver of the military truck, but had stated that the deceased was at fault. The statements of RW-1, Om Bahadur and RW-2, Prem Bahadur, driver and co-driver of the military truck to the effect that the deceased could not control his scooter, as a result of which his scooter struck against the military truck on its left side of bumper, were accepted by the learned Tribunal.

4. The death of the deceased as a result of accident involving the truck and the scooter is not in dispute. The question which requires consideration is whether Adeep Singh died on account of rash and negligent driving of the truck driver. As noticed, the Tribunal has rejected the claim petition on the ground that AW-2, Kashmir Singh was not present at the time of accident and Paramajit Singh, brother-in-law of the deceased, who had reached the place of accident immediately thereafter, stated during the inquest proceedings that accident had not occurred due to rash and negligent driving of the truck driver.

5. I have gone through the record and heard learned Counsel for the parties at length.

6. The case of the claimants rests on the statements of AW-2, Kashmir Singh and AW-3, Paramjit Singh, as also the site-plan prepared by the military Authorities immediately after the accident. AW-2, Kashmir Singh on the date of accident, was serving in the Army in F.O.L Depot at Jalandhar Cantt. He in his statement stated that he was coming from the Depot and going to Dakoha. At Barrier No. 6, G.T. Road, and the road which joins it from the Supply Depot side, a scooterist was coming from Dakoha side and turning from G.T. road towards the barrier side on the left side of the road whereas military 1 Ton truck belonging to Army came from Rama Mandi Chowk and was turning from G.T. road towards the barrier on the right side of the road. The truck was following the scooter while turning when it hit the scooter. He stated that the military truck pulled the scooter along with it as a result of impact of the accident. The scooter was smashed and the scooterist died on the spot. He also stated that there was not much of traffic on the road. The road was clear and dry and the weather was clear. He stated that the military truck flashed no light and gave no signal while turning. He stated that the body of Adeep Singh was taken to the Military Hospital. He stated that he also went to the military hospital. In his cross-examination, he stated that the children of the deceased gave in writing to the police in the Military Hospital that the post-mortem of the dead-body be not conducted. He denied that the children had also given in writing that driver of the military vehicle was not at fault and so they did not want to get any case registered. He denied the suggestion that the military vehicle was moving at a

slow speed and had already taken turn when scooterist fell in a pit and struck against the left side of the vehicle due to his negligence. He denied that the accident took place due to negligence of the scooterist. AW-3, Paramjit Singh, as already stated, is brother-in-law of the deceased. He as AW-3, stated that at about 10.15 A.M. on 13.8.1991, he was going on scooter on G.T. road. Near the Indira Filling Station, a 1x Ton military truck crossed him. The said truck was coming from Rama Mandi side. It was coming at a speed of about 50 to 60 kms. per hour. It was almost going to over-run him, but he saved himself by getting off the road on the kacha berm. He stated that at about 5-6 yards ahead, the military truck turned to the right towards the barrier on the supply road. He heard a loud bang and when he reached near the said place, he found that scooter No. PCU-7420 was totally smashed and the scooterist was dead. His head was smashed and bleeding. He stated that the military persons in the vehicle insisted to take the dead body of Adeep Singh to Military Hospital. He told them that Adeep Singh was already dead and there was no use of carrying him to the hospital. In regard to the statement made during the inquest proceedings that the truck driver was not at fault, AW-3, Paramjit Singh stated that since his daughter was to be married next day, they requested for the dead body so that cremation could take place on the same day. He stated that they were told by the police that the dead-body would be handed over to them only if they give in writing to the effect that dead-body be handed over without post-mortem. He further stated that the police wrote something and got their signatures and advised them to get it endorsed from the S.D.M. so that the dead-body could be given. He stated that the needful was done and the dead-body was cremated on the same evening. In cross-examination, when he was confronted with the writing which he had signed while taking the dead-body, he stated that his statement was not recorded by the police, but his signatures were obtained on a written document. Respondents in order to prove that the accident took place due to fault of the deceased, examined RW-1, Om Bahadur, driver of the offending truck. In his examination-in-chief, he said that when he was turning from G.T. road towards the Supply Depot near Barrier No. 6, the deceased was coming from Ludhiana side on his scooter at a high speed and he tried to over-take the truck and struck against the vehicle. He stated that the scooterist died on the spot. In his cross-examination, he conceded that the road was clear. There was no rain and pool of water. He conceded that left indicator light of the truck was not in working order. He further conceded that he was going at high speed on the G.T. road before turning. He stated that the military police, Jalandhar Cantt. inspected the site of accident and prepared a sketch. Likewise, RW-2, Prem Bahadur, co-driver stated that the scooter being driven by the deceased, came from Ludhiana side and when the deceased tried to over-take the truck at a high speed, his scooter struck against the truck. He said that the accident took place due to fault of the deceased. In his cross examination, he stated that the scooterist hit the front bumper of the truck.

7. From a perusal of statements of AW-2, Kashmir Singh and AW-3, Paramjit

Singh, it is clear that the deceased had already taken a turn towards Barrier No. 6 when the military truck while turning from G.T. road towards the barrier, hit the scooter from behind. A close scrutiny of the sketch of the accident, Ex.PW8/A, prepared by the military authorities shows that the scooterist was hit by the military truck from behind. In the sketch which admittedly was prepared immediately after the accident, scooter is shown at a distance of about 12 feet from the place where the military truck allegedly hit the scooter. In case the scooter had hit the truck from its left side, it is not possible that it would be thrown at a distance of 12 feet. RW-1, Om Bahadur though in his statement admitted that he was coming at a high speed on G.T. road, but stated that while turning he slowed down. From a perusal of sketch plan, the second part of statement of RW-1 does not appear to be correct. In case he had slowed down his truck while turning from G.T. road to the Barrier side and scooter had hit on its left side, there was no possibility of scooter being thrown at a distance of 12 feet. In fact, a perusal of statements AW-2 and AW-3 clearly demonstrates that the speed at which the truck was being driven, was high and this version stands supported by the statement of RW-1, Om Bahadur, when he said that he was driving the truck at a high speed on the G.T. road. From the sketch, it is evident that the scooter was lying nearly in the middle of the road and at a distance of about 12 feet where the accident occurred. Further, according to RW-1, Om Bahadur, driver of offending vehicle, the weather was clear and the road was not wet. It is difficult to believe that the deceased took turn at a high speed and fell in a pit and struck against the military truck on its left side and fell down. It is a case where *Maxim Res Ipsa Loquitur* is applicable and it can be said that in view of the evidence on record with regard to the fast speed of the truck on G.T. road and the nature of weather and road, the accident took place because of negligent driving of the military truck by its driver and the deceased died due to injuries sustained by him in the accident.

8. The criticism of the Motor Accident Claims Tribunal in regard to statement of AW-2, Kashmir Singh that he was not present at the time of accident, is unfounded. The learned Tribunal has held that in case AW-2, Kashmir Singh was present, the police would have recorded his statement. On record, Exhibit R-1, report of Darshan Singh, ASI, has been produced. This report was recorded by the A.S.I. on coming to know of the accident on his arrival at military hospital. He recorded that some respectable persons were present near the gate of Mortuary of military hospital and one of the respectable persons named therein was Kashmir Singh son of Piara Singh, i.e. AW-2. It appears that Exhibit R-1 escaped the notice of the Tribunal, otherwise the statement of AW-2 Kashmir Singh would not have been discarded merely because of the doubt of his being present at the time of accident.

9. Learned counsel appearing on behalf of respondents contended that AW- 3, Paramjit Singh stated before the police that the accident occurred due to fault of the deceased and the driver of the military vehicle is not to be blamed for the accident. Mr. CM. Sharma, Advocate, contended that no F.I.R. was registered nor

post-mortem of dead-body was got conducted. He submitted that the Motor Accident Claims Tribunal has rightly held that the driver of military truck was not at fault. It is true that the learned Tribunal has relied upon Panchnama and signatures of Paramjit Singh on Panchnama and has held that accident took place due to negligence of deceased, Adeep Singh, but at the same time, the learned Tribunal has failed to take into consideration the circumstances under which Paramjit Singh put his signatures on the Panchnama. In his statement in Court, Paramjit Singh stated that his daughter was to be married next day and therefore, a request was made for handing over the dead-body so that the cremation could be done on the same day. He stated that "police said that we should give in writing and then they would hand over the dead-body to us without post-mortem. The police wrote something and got our signatures and advised us to get it endorsed from the SDM before the dead-body could be given. The needful was done. The body was cremated on the same evening.....". "xxx:.....My statement was not recorded by the police but my signatures were obtained on the written document". From a perusal of the statement of Paramjit Singh, it is clear that the statement made by him before the police was only with a view to obtain the dead-body of Adeep Singh on the same day because of marriage of the daughter of Paramjit Singh on the next day. The statement of Paramjit Singh, as recorded by the police, that the truck driver is not to be blamed for the accident, cannot be considered to be a circumstances to hold that the driver of military truck was not at fault. As noticed earlier, the statements of AW-2 and AW-3, Kashmir Singh and Paramjit Singh respectively, given in Court tally with the Sketch, Ex.PW-8/A, got produced from the Military authorities by the claimants by way of additional evidence.

10. As regards reliance by the Tribunal upon the writing given to S.D.M. Jalandhar, signed by Jaswinder Singh son of the deceased, it is only to be stated that he was not an eye-witness to the accident and the writing was given only with a view to obtain the dead-body of Adeep Singh as the marriage of daughter of Paramjit Singh, AW-3, was to take place the next day and they wanted to cremate the dead-body a day earlier to that. Moreover, in the letter addressed to S.D.M. Jalandhar, he had only stated that there is no foul play involved in the accident. This statement does not amount to admission regarding negligence of Adeep Singh, deceased. Furthermore, this statement has no relevance as he was not an eye-witness to the accident. In my considered view, the evidence on record clearly establishes that the accident was caused entirely due to rash and negligent driving by Om Bahadur, driver of the offending military truck.

11. The next question to be considered is as to the quantum of compensation payable to the claimants. The evidence on record shows that Adeep Singh, deceased, was between 45-47 years of age of the time of his death. He died leaving behind his widow, two sons and one daughter, besides his father, Daulat Singh. During the pendency of the appeal, Daulat Singh, father, has died. All the children of the deceased were unmarried and except Ravinder Singh, son, all were dependent upon the deceased. Ravinder Singh who was the eldest son of

the deceased, was serving in the Navy. AW-3, Paramjit Singh in his statement had stated that Adeep Singh was a cloth merchant by profession and used to sell cloth on scooter. According to AW-3, the deceased was earning Rs. 5,000/6,000/- per month. According to Kirpal Kaur (widow), AW-1, her husband's income was Rs. 5,000-6,000/- per month. Claimants have not produced any documentary evidence on record to show as to what was the actual income of the deceased. However, keeping in view that the respondents too have not led any evidence in rebuttal to the evidence adduced by the claimants with regard to income of the deceased, the income of the deceased can safely be assessed at Rs. 3,000/- per month. Out of this income, deceased, had he been alive, must have been incurring expenses to the extent of 1/3rd on himself. By reducing 1/3rd amount, the dependency deserves to be assessed at Rs. 2,000/- per month, i.e. Rs. 24,000/- per annum. Considering the age of the deceased, a multiplier of 13 is applicable and the compensation payable to the claimants on this basis would work out to Rs. 3,12,000/-. Accordingly, the claimants are hereby awarded a sum of Rs. 3,12,000/- (Rs. Three lacs, Twelve Thousand only) as compensation to which they shall be entitled to along with interest at the rate of 12 per cent per annum from the date of application to the date of payment of the amount awarded. Out of the amount awarded, a sum of Rs. 1,20,000/ shall be paid to be widow, Kirpal Kaur, Rs. 1,00,000/- shall be paid to daughter, Rajwinder Kaur, as she was unmarried and youngest of the children, aged about 17 years at the time of accident, Rs. 80,000/- shall be paid to Jaswinder Singh, son, who was aged 21 years at the time of accident and was not earning and Rs. 12,000/- shall be paid to Ravinder Singh, son, who at the time of death of his father, was employed. Claimants shall be entitled to interest proportionately to the amount awarded to them. In addition to the compensation awarded above, widow, Kirpal Kaur, shall also be entitled to Rs. 7,000/- towards general damages, i.e. Rs. 2,000/- as funeral expenses and Rs. 5,000/- as loss of consortium. The appeal is accepted with costs. Counsel fee Rs. 1,000/-.