

(2001) 01 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 966 of 1996

Smt. Pamela Gambhir

APPELLANT

Vs

Smt. Santosh Nayyar

RESPONDENT

Date of Decision : 20-01-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2001) 2 RCR(Civil) 337

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Ashit Malik, for the Appellant; Mr. Suvir Dewan, for the Respondent

Judgement

R.L. Anand, J.—By this judgment I dispose of as many as 5 FAOs - No. 966 of 1996 titled Smt. Pamela Gambhir and another v. Smt. Santosh Nayyar and another; No. 965 of 1996 titled Smt. Pamela Gambir v. Mrs. Santosh Nayyar and another, No. 967 of 1996 titled Smt. Pamela Gambir v. Mrs. Santosh Nayyar and another, No. 968 of 1996 titled Smt. Pamela Gambir v. Mrs. Santosh Nayyar and another, No. 1741 of 1996 titled Master Jaskaran Singh alias Nikku v. Smt. Santosh Nayyar and another, as in my opinion all these appeals can be disposed of by one judgment. Moreover, all these appeals have arisen from the common award dated 12.9.1995 passed by Motor Accident Claims Tribunal, Karnal, who decided issue No. 1 against the claimants. The Tribunal did not assess any compensation with regard to the death of G.S. Gambhir, Miss Pooja Gambhir and injuries to Mrs. Pamela Gambir.

2. The brief facts of the case are that vide impugned award as many as 5 claims petitions were decided by the Tribunal. Accident in this case took place on 5.7.1991 when Dr. G.S. Gambhir (deceased) along with his wife Smt. Pamela Gambhir (injured), daughter Pooja (deceased) and Master Jaskaran was coming from Noida (Delhi) for Patiala and they were travelling by Maruti car No. PIP 567 driven by deceased G.S. Gambir. According to the averments made in the claim

petitions, the car was being driven at a normal and proper speed on left hand side of the road when a sudden truck bearing registration No. DEG 4875 came from behind. It was being driven rashly and negligently by Jagpal Singh. It may be mentioned here that driver of the offending truck namely Jagpal Singh also died subsequently. The truck hit the car from behind with great force and on account of the impact of the accident the car was smashed into pieces. Dr. G.S. Gambhir died at the spot, while Pooja received multiple grievous injuries and she succumbed to her injuries later on in General Hospital, Panipat. Mrs. Pamela Gambhir and Master Jaskaran also received multiple grievous injuries. It is the case of the claimants that the accident took place due to sheer negligence of driver Jagpal Singh and in this accident the car was also badly damaged. All the five claim petitions were filed claiming compensation on account of death, injuries and damage to the car.

3. Notices of the claim petitions were given to the respondents, who filed the written statement and denied the allegations. According to the respondents, the negligence was on the part of deceased Dr. G.S. Gambhir and not on the part of Jagpal Singh.

4. The learned Tribunal framed the following issues for the disposal of the claim petitions :-

"1. Whether the accident in question took place due to rash and negligent driving on the part of respondent No. 1 Jagpal Singh while driving truck No. DEG 4875, as alleged in the petitions ? OPP

2. To what amount of compensation, the claimants are entitled and from whom ? OPP

3. Whether the petitions are bad for mis-joinder and non-joinder of necessary parties ? OPR

4. Whether the claimants have no cause of action to bring these petitions ? OPR

5. Whether the driver of the offending vehicle was not having valid driving licence at the time of accident in question, if so to what effect ? OPR

6. Relief."

5. The parties were given the opportunity to lead evidence and for the reasons given in paras 12 to 16 of the award, the Tribunal decided issue No. 1 against the claimants and in favour of the respondents. No compensation was assessed for the death/injuries/damage to the claimants for the reasons that finding on issue No. 1 has gone against the claimants. Issues NO. 3 to 5 were, however, decided against the respondents and finally on the strength of the finding given under issue No. 1, the Tribunal disposed of all the claim petitions by awarding compensation under no fault liability.

6. I have heard Mr. Ashit Malik, Advocate on behalf of the appellants, Mr. Suvir Devvan, Advocate on behalf of respondent-Insurance Company and with their

assistance have gone through the records of the case.

7. Before I deal with the submissions raised by the learned Counsel for the parties, it will be appropriate for me to incorporate paras 12 to 16 of the impugned award, which read as under :

"Issue No. 1

12. In order to prove their stand that the accident took place due to rash and negligent driving of truck by respondent No. 1 Jagpal Singh, the petitioners examined PW1 Smt. Pamela Gambhir alone as regards the incident of accident. The other witnesses examined by the claimants do not relate to eyewitness account. PW1 Smt. Pamela Gambhir stated in examination-in-chief that her husband Dr. G.S. Gambhir was driving the Maruti car on his left hand side of the road at a speed of 60 KMPH and near Kohand one truck came from behind and stuck against the car which was dragged up to a sufficient long distance and on account of this impact she became unconscious. Of course in examination-in-chief she stated that the accident took place due to rash and negligent driving of truck by its driver but this does not mean that the truck driver should be held responsible for causing the accident. The other evidence on record is also requires to be examined, rather examined very minutely in this case. She further stated that the car had been insured for third party and theft only. In cross-examination he made it clear that the truck was coming from behind the car. She volunteered that her husband stopped the car but the speed of the truck was so high that it dashed into the car. From her statement, especially the part which she volunteered, it is quite clear that her husband suddenly stopped the car at a very busy road like G.T. Road on which the traffic was very high and especially at a time when the truck was coming at a fast speed from behind. Of course she stated that the car was totally damaged from the back side but when we have a glance at the photographs placed on record by the petitioners themselves and statement of PW4 Sh. Om Parkash Sharma, Surveyor a loss assessor, from whom the damage to the car was not assessed by Smt. Pamela Gmbhir it does not appears os. This surveyor prepared his report Ex.PW4/1 and he took six snaps Ex.PW4/2 to Ex.PW4/7 of the damaged car from different angles. In cross-examination PW4 On Parkash Sharma stated that the front side of the car was totally damaged and the left side of the car badly pressed and dislocated inside. Left side window of the car was also reported by him to be badly damaged. The back portion of the car was reported by him to be disaligned and damaged. He got prepared photographs of the damaged car on 10.11.1991 or near about it at Chandigarh.

13. Before coming to the photographs, referred to the evidence adduced by the respondent is also required to be made. PW2 Vishambar Singh is the person on whose statement the case was registered. Of course according to the FTR the truck struck against the car from behind but in the court Vishambar Singh made quite a different statement and he stated that when he was on his cycle in the area of Kohand on G.T. Road he saw one car coming from the side of Delhi and

ahead of that car was one car and that the car driver attempted to overtake that truck but one bus came from the opposite direction. He stated that he did not see whether the car collided against any vehicle or not but when he reached the site after the accident he found that the car was lying in ditches/pits by the side of metalled road on its left hand side while coming from Delhi and front part of the car was in broken condition, In cross-examination the witnesses admitted it to be correct that criminal case was registered on his statement but at the same time he stated that the statement forming basis of FIR was signed by him but he did not follow what had been written in that statement. He stated that he was educated only upto 2nd or 3rd standard. He specifically stated that he did not make statement to the police that the truck collided against the car from behind. He added that the police might have written so itself in his statement. Some photographs prepared by the police at the spot were shown to the witness and he admitted that these photographs were of the car, truck and the injured or dead persons.

14. Now coming to the photographs on record of the case, these photographs are the most valuable piece of evidence in this case to help the court to come to conclusion as to whether the truck collided against the car from behind as claimed by the petitioners or whether it was the car driver Dr. G.S. Gambhir who himself was responsible for causing the accident in the manner disclosed by the respondents in their written statements and the evidence adduced by them. In photograph Ex.P4/1 and another photograph Ex.PW4/2 the car does not appear to have been damaged from backside. From the photographs Ex.PW4/6 and Ex.PW4/7 it is quite clear that the left side of the car was badly damaged right upto the engine part. From the photograph Mark-B it is clear that the left side window/doors of the car were badly damaged. Photograph Mark-C also shows the car badly damaged from its left side. The report of the surveyor Sh. Om Parkash Sharma is quite clear that the car had not been damaged from behind except disalignment.

15. The learned Counsel for the respondents have argued that witnesses can tell a lie but circumstances do not and in the present case circumstances are such as point to the negligence of Dr. G.S. Gambhir in causing the accident. Let us suppose the car was going at a speed of 60 KMPH on G.T. Road, as claimed by PW1 Pamela Gambhir herself. If a truck, may be at a higher speed strikes the car from behind, result will be that the speed of the car will be accelerated and not that the car will be crushed under the truck, unless the car driver applies brakes suddenly and halts the car and in case he does so then it is the car driver who is to be held responsible for causing the accident and not the truck driver who could anticipate that the car driver will suddenly bring the car on its left hand side. It has come in evidence that one bus came from the opposite side and in order to avoid collision of the car against that bus the car driver Dr. Gambhir swerved it to his left side and in that attempt he collided the left part of the car against the truck and consequently the car might have been dragged upto same distance. Smt. Pamela Gambhir herself has admitted that her husband stopped

the car but the truck collided against it. Naturally if the car is suddenly stopped on busy road a vehicle coming from behind must strike against it but in the present case it does not appear so because had the truck collided from behind it was the back part of the car which was to be badly damaged and crushed under the truck but this is not so in the present case.

16. From the above discussion, the only inference that can be drawn is that Dr. Gambhir, in his attempt to avoid collision of the car against some oncoming vehicle, suddenly swerved the car to his left hand side and dashed the left front and side part against the truck and the truck driver under no circumstances can be held to be negligent in driving his truck and responsible for causing the accident. This issue is decided accordingly against the petitioner."

8. The reading of above paras would show that the Tribunal has mainly relied upon the evidence of RW2 Vishambar Singh and some photographs which were taken at the spot. However, the Tribunal has ignored the very vital fact in this case which goes to the root of the case. It has come in the statement of PW1 Pamela Gambhir that the offending truck came from behind and struck their car from behind. To this extent there is no cogent rebuttal to the statement of PW1 Pamela Gambhir. The very fact that the offending truck had struck the car from behind is itself suggestive of the fact that it is an act of negligence on the part of Jagpal Singh. Accordingly to traffic rules and norms, every driver of the vehicle when he is on highway is supposed to maintain distance between the two vehicles so as to cover any sort of emergency. Assuming for the sake of argument that Dr. G.S. Gambhir applied the brakes of his car all of a sudden, it was also the duty of Jagpal Singh to be very alert, when he was driving the heavy speeding vehicle like to apply the brakes immediately so that there should be no impact between the truck and car. Even the photographs which have been relied upon by the Tribunal are suggestive of the fact that the impact of the truck with the car was so powerful that the car was totally damaged. Even the photographs Exs.PW4/1 to PW4/7 are clearly suggestive of the fact that the truck struck from behind and it also covered the left side, which indicates that the driver of the truck lost the control. He could not maintain distance between the truck and the car as a result of which accident took place. We all know that Maruti car is a very light vehicle as compared to the truck. In these circumstances, I reverse the findings of the Tribunal on issue No. 1 and decide this issue in favour of the appellants.

9. With the reversal of findings of the Tribunal on issue No. 1, the next point for determination is what should be the compensation which should have been awarded to the appellants. The Tribunal ought to have assessed the compensation also. Be that as it may, all the five appeals are allowed and the impugned award is hereby set aside and directions are given to the Tribunal to give its findings on issue No. 2 only. It shall decide the claim petitions within six months from the receipt of the copy of the order. There shall be no order as to costs.

10. Parties are directed to appear before the Tribunal on 19.2.2001.

Records of the Tribunal be sent forthwith.

11. Appeals allowed.