
(1991) 07 P&H CK 0004
In the Punjab And Haryana At Chandigarh

S.P. Jaiswal

APPELLANT

Vs

U.O.I. and Another

RESPONDENT

Date of Decision : 24-07-1991

Acts Referred:

Citation : (1991) 2 ACC 580

Hon'ble Judges : Gokal Chand Mittal, Acting C.J.; Harjit Singh Bedi, J

Bench : Division Bench

Judgement

Harjit Singh Bedi, J.—By this judgment, we propose to dispose of Letters Patent Appeal Nos. 72 of 1988 and 350 of 1991. The facts of the case have been taken from LPA No. 72 of 1988.

2. Car No. HRD 5123 belonging to Mrs. Meera Jaiswal, wife of the appellant, (and the claimant in the connected appeal) was involved in an accident with Bus No. CHW 135 driven by Ramesh Chander, on January 9, 1980, at about 8.00 AM, when the car was coming from the side of Sector 33, Chandigarh, and going towards Sector 27. As per the averments made in the claim petition, the traffic light was green for going through and when the car was almost three fourth through the crossing of Sectors 20 and 30, the bus driven, very rashly and at a very high speed by its driver, struck the car on the front side, with the result that the car turning towards its left made a complete about-turn, climbed the traffic island and smashed into the light pole. The averments further show that the appellant sustained grievous injuries as a result of the accident leading to the fracture of two ribs, damage to the right kidney, head injury and injuries to the spine, lumber and cervical region, resulting in the acute pain all the times. It has been averred that the appellant remained admitted in the PGI from January 9, 1980 to January 19, 1980, and thereafter, he received treatment at Chandigarh. Nilokheri, Karnal, and Delhi. The appellant claimed a sum of Rs. 1,00,000/- as compensation for the injuries suffered by him. A sum of Rs. 35,000/- towards the damage sustained by the Car was claimed by Mrs. Meera Jaiswal.

3. In reply to the claim petition, the respondent pleaded that the bus was being

driven at a slow speed and very carefully and that the accident had taken place as a result of the rash and negligent driving of the car driver. On the pleadings of the parties, the Tribunal framed the following issues on 8th January, 1981:

1. Whether the accident took place due to rash and negligent driving of the bus by Ramesh Chander resulting in causing injury to the claimant?

2. If issue No. 1 is proved to how much compensation the claimant is entitled to and from which of the respondents?

3. Relief.

4. While recording its finding on issue No. 1, the Tribunal held that the accident had taken place as a result of the rash and negligent driving of the appellant himself. The Tribunal also went into the evidence of the appellant and found that it could not be relied upon. The Tribunal, however, on issue No. 2 made a formal assessment of the compensation that would have been payable to the appellant but in view of the finding on issue No. 1, the claim application was dismissed. In first appeal before this Court, the findings recorded by the Tribunal were re-affirmed with the result that the present Letters Patent Appeal is before us.

5. We have examined the matter with reference to the pleadings as also the evidence on record.

6. Exhibit P-1 is the site plan of the place of accident. It shows that the car was almost through the crossing when it was hit by the bus coming from its right side. It also shows the tyre skid marks after the impact between the bus and the car in the direction where the bus finally stopped. The site plan also shows that as a result of the impact, the car took a complete about-turn and hit a light pole. It is further significant that the distance between the point of impact and the resting place of the bus was almost 90 feet and this is clearly indicative of the fact that the bus was being driven at an excessive speed. This fact also belies the statement of the bus driver Ramesh Chander appearing as R.W. 1 that the bus was moving at a speed of six to seven kilometres per hour. Had it been so there was no need apply the brakes in such a harsh manner so as to cause skid marks nor would the bus driver had covered a distance of 90 feet from the place of impact to the place where it finally stopped. There is yet another factor which shows the negligence of the driver. In this connection, the following passage from the evidence of Ramesh Chander, bus driver, (R.W. 1) is relevant:

When I was going to pass the crossing, I suddenly noticed red light. However, by the time I reached near the crossing green light had suddenly appeared.

From this statement, it can be inferred that the bus driver was negligent and was inattentive while driving. Had he been careful he would have noticed the red light from some distance and would have accordingly slowed down the vehicle, but it appears that having almost entered the crossing when the red light was on, he chose to go through it leading to the accident. It has come in the evidence of the bus driver that between the red and green lights, the yellow light would

come on for some time and, as such, the assertion that there was a sudden change from red to the green light is obviously wrong. Sitting on the Letters Patent Appeal side we would be hesitant to upset the findings of fact recorded by the Tribunal and endorsed by the learned single Judge, but we feel that the evidence in this case has not been clearly appreciated and has, in fact, been misconstrued. We are of the view that the doctrine of *res ipsa loquitur* is applicable in the present case and accordingly, we reverse the findings on Issue No. 1 and hold that the accident took place due to the rash and negligent driving of the bus by Ramesh Chander, its driver.

7. Having held as above on issue No. 1, we now proceed to examine the prayer regarding compensation that has to be determined in favour of the appellant. We feel somewhat handicapped with regard to the evidence of the injuries suffered by the appellant as the record of the PGI where the appellant stood admitted for about ten days was not traceable by that Institution and, as such, could not be produced in Court. The appellant, however, cannot be denied the benefit of compensation on that basis and, as such, we have examined the evidence on record. The appellant appearing as his own witness, stated that when he was X-rayed in Delhi, it was discovered that the third vertebra was displaced over the body of the fourth which was causing pain. He has also stated that he was advised to use cycro lumber belt continuously and the pain in his back persists all along after the accident. The statement of the appellant is corroborated by the evidence of Dr. C.L. Parnami (PW 5) and Dr. Vinod Singal, Senior Resident, Department of Orthopaedics, PGI, Chandigarh (PW 8). Further support has been sought by the appellant from Exhibit PW 8/B which indicates a suspected fracture as also some damage to the kidney as urine with blood visible to the naked eye had been passed the appellant after his admission to the PGI.

8. Dr. Parnami (PW 5) is categorical about the seriousness of the injuries suffered by the appellant. His testimony has been discharged by the Tribunal on the ground that he was a private practitioner. We find that this reason is untenable as the evidence of that doctor has been corroborated by Exhibit PW 8/B and also by the evidence of Dr. Vinod Singal (PW 8).

9. On the question of compensation that has to be determined, some element of guess work is always involved. The Tribunal had assessed the amount on account of pain and suffering at Rs. 5000/-. Considering the nature of injuries suffered by the appellant, we find that this amount is totally unrealistic. Some amounts were spent by him for his treatment and he remained admitted in the PGI for about ten days. He was also under the treatment of various other doctors in Delhi and elsewhere. He has apparently undergone a great deal of agony and expense. We accordingly increase the amount under this head to Rs. 40,000/-.

10. In the connected LPA No. 350 of 1991, the claim has been made by appellant Meera Jaiswal on account of the damage suffered by Car No. HRD 5123. The Tribunal had assessed the amount of compensation at Rs. 8000/-. We feel that this compensation too is not adequate. In this connection, the evidence of Rajiv

Gupta, Works Manager, Chandigarh Motors, Chandigarh (PW 6) is relevant. He prepared the assessment Exhibit P.12 for spare parts which would have been used in the car, which indicates that the expense on these alone would have been Rs. 16,550.57 in addition to the labour charges. In answer to a question put in cross-examination, Rajiv Gupta (PW 6) specifically stated that the estimate Exhibit P-12 related to the parts which were damaged on account Of the accident. Keeping in view that some expense would have been incurred towards labour charges, we quantify the compensation at Rs. 20,000/- on account of damage to the car.

11. In view of what has been stated above, the Judgment of the learned single Judge is set aside and we allow a sum of Rs. 40.000/- to the appellant in LPA No. 72 of 1988 and Rs. 20,000/- to the appellant in LPA No. 350 of 1991. We also direct that the appellants would be entitled to the payment of interest at the rate of 12 per cent per annum from the date of filing of the claim petition to the date of actual payment. It is, however, clarified that if any amount has been received by the appellants from the Insurance Company, such amount would be adjusted against the amount of compensation that we have now determined. There will be no order as to costs.