
(1989) 09 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : F.A.O. (MVA) No. 105 of 1982 and Cross-objection No's. 175 of 1982

State of Himachal Pradesh and Others

APPELLANT

Vs

Dumna Ram and Another

RESPONDENT

Date of Decision : 11-09-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : (1990) 1 ACC 659 : (1990) ACJ 608 : (1991) 1 ShimLC 137

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : M.L. Chauhan, A.A.G, for the Appellant; M.L. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This appeal arises out of the award of Motor Accidents Claims Tribunal, Mandi, in claim petition No. 71 of 1981, decided on 18.5.1982. The State challenges the findings of the Tribunal as to the rash and negligent driving by appellant No. 3 who was the driver of the truck No. HPM 776, at the relevant time and the quantum of compensation awarded to the claimants.

2. The facts, in brief, are that the deceased Sarwan Kumar was the pillion rider with Som Nath, deceased, who was driving the motor cycle No. HPM 758 while coming to Kunu from Padhar in District Mandi on Mandi-Pathankot Road. Truck No. HPM 776 was coming from Mandi to Jogindernagar. The allegation is that the truck was coming at an excessive speed and its body struck the motorcyclists and they succumbed to the injuries instantaneously. It is stated that although the road was wide enough to enable two vehicles to pass, but the truck driver did not leave even a gap to enable the motor cycle to pass through. The dependants claimed compensation to the extent of Rs. 2,00,000/- from the appellants since the truck was owned by them.

3. The claim was contested by the appellants and number of objections have

been raised against it. The defence, inter alia, is also that the truck was being driven at a normal speed and no accident had occurred with the truck in question. It is stated that the high speed of the motor cycle, improper manner of handling it, loss of control over it and excessive speed were responsible for the accident in question.

4. The Tribunal, on the pleadings of the parties, framed the following issues:

(1) Whether the accident as alleged occurred due to rash and negligent act of respondent No. 3? OPP

(2) Whether respondent Nos. 1 and 2 are vicariously liable for the alleged act of negligence of respondent No. 3? OPP

(3) Whether petitioners are legal representatives of the deceased as alleged? OPP

(4) Whether petitioners are entitled to compensation? If so, how much? OPP

(5) Whether the deceased died because of Som Nath's rash and negligent act as alleged? OPR

(6) Relief.

5. After hearing the matter, the Tribunal concluded that the accident was the result of the rash and negligent act of the driver of the truck and the department owning it was liable to pay compensation to the claimants. On the quantum of compensation, it awarded a sum of Rs. 40,000/- to the claimants, namely, Dumna Ram and Najku, who are the father and mother of the deceased, to be shared equally by them. This award of the Tribunal has been assailed by the claimants as well through Cross-objections No. 175 of 1982 under Order 41, Rule 22 of the Code of Civil Procedure, filed in this case, claiming enhancement of compensation to Rs. 1,50,000/-. I proceed to examine the submissions of the learned counsel appearing for the parties.

6. Mr. M.L. Chauhan, learned Assistant Advocate General, has assailed the findings of the Tribunal on the point of rash and negligent driving of the vehicle by Narpat Ram, driver of the offending vehicle. It is contended that in view of the evidence on the record, more particularly, of Assistant Sub-Inspector of Police, who investigated the case, the accident cannot be attributed to any rash and negligent driving of the truck. This submission is opposed by Mr. M.L. Sharma, who appears for the claimants.

7. Reference to the statement of Biri Singh, AW 2, and Lachhi Ram, AW 3, is relevant. They state that the truck was coming from Mandi side towards Jogindernagar whereas the motor cycle, with two persons, was coming from Jogindernagar to Mandi. It struck the truck just near the rear wheel. The truck, they say, was moving very fast. It left a very little gap on its side to enable the motor cycle to pass through. Although the truck moved to the left side, however, time being very short, the accident took place and the truck fell down in the field of Biri Singh, AW 2. These witnesses have given almost similar statements and

the prosecution has not been able to assail their versions although an effort was made, during their cross-examination to prove that the motor cycle was being driven at a fast speed while the truck was being driven slowly and in order to save the motor-cyclists, the truck driver turned it to the left but a wall sagged with the result that the truck fell in the field. However, all these suggestions have been denied by these witnesses.

8. Narpat Ram, RW 1, is the driver of the truck in question. His version is that the motor cycle was coming at a fast speed from the opposite direction. It was moving in a zigzag manner and in order to enable it to pass his vehicle, he turned to the left but his vehicle turned turtle due to the sagging of a danga. He denies having driven the vehicle at a fast speed; rather his speed was slow, he states.

9. Amar Singh, A.S.I., RW 3, has been examined in this case. He has prepared the site plan, Exh. RW 3/A. He states that the road at the place of accident was 15 feet wide and the kacha road on the left side was 10 feet and two feet on the right side. He found skid marks of the motor cycle upto a distance of 35 feet but found no such marks from the place of occurrence to a distance of 20 feet towards Pathankot side. The skid marks of the left tyre of the truck were also there upto a place where the truck had actually fallen down.

10. The perusal of the nature of evidence on this aspect of the matter indicates that the truck was being driven at a fast speed and at the point of accident, it did not leave enough space for the motor cycle to pass despite the fact that it had space on its left side. So, had it been driven properly and cautiously, the accident could have been easily avoided. These facts appear from the versions of the witnesses as well as the site plan, Exh. RW 3/A, also. The version that the motor cycle was moving at a fast speed or that the truck turned turtle due to the sagging of the danga while avoiding the accident is not believable nor there is any clear, cogent, reliable, convincing evidence to support this story. The argument that the motor cycle struck the truck near the rear wheel of the truck and, therefore, the driver was not responsible since he could not see it, is not, at all, acceptable. This argument is usually taken up in a number of cases in order to avoid tortious liability. There is no such principle which can be successfully set up to avoid liability in such cases. It is the duty and responsibility of the driver of a vehicle, more so of a heavy vehicle, to see that he drives the vehicle in such a way that he does not cause any inconvenience to pedestrians and small vehicles and leave enough space for them to pass. Care has to be taken to see that the rear portion of the body and the wheels of the vehicle, which cover more space than the front portion, do not run over pedestrians and other vehicles. The plea that the accident occurred with the rear portion of the vehicle which the driver could not see, is thoroughly misconceived and deserves dismissal. Perusal of the findings of the Tribunal on this aspect of the matter shows that they are thoroughly apt and in accordance with the evidence on record and the same are upheld.

11. Coming to the quantum of compensation, Mr. M.L. Chauhan, learned Assistant Advocate General, submits that the award is highly excessive and deserves to be reduced while Mr. M.L. Sharma, learned counsel for the claimants, urges to enhance the same in view of the evidence on the record of the case.

12. It appears from the evidence that the deceased was a young man. He was hale and hearty. He was working on part-time basis with Himachal Gramin Bank, Padhar. This bank used to pay him Rs. 30/- per month, as stated by Prem Lal Sharma, Manager, AW 6. He is supported by Dayalu Ram, AW 4, who is the Up-Pradhan, Gram Panchayat, Dalah.

13. Kashmir Singh, AW 7, is a cloth merchant at Padhar. He states that the deceased was working with him as a salesman besides working in his fields. He used to give him Rs. 200/- per month in addition to food and clothes. In addition to this, the deceased used to work with the bank on part-time basis. With his passing away, the income of his parents has finished. He further states that he used to pay Rs. 200/-, the salary of the deceased, to his father.

14. It is in the statement of Najku, AW 1, that the deceased used to earn Rs. 30/- from the bank and Rs. 200/- from Kashmir Singh, AW 7. She also states that the deceased used to work in the family holdings also where he used to produce 5/7 quintals of food-grains.

15. Perusal of the evidence clearly establishes that the deceased was earning Rs. 230/- per month from the bank and from the shopkeeper. Besides, he was doing agriculture work on weekends. It is in evidence that out of the land, the family was getting 5/7 quintals of grains, the normal value of which comes to between Rs. 1,500/- to Rs. 2,000/- per crop and so annually, it would be around Rs. 3,000/- to Rs. 4,000/- (two crops a year). It is normal that the deceased was young and his parents were in advanced stage of life; so he would be looking after the main agricultural operations. The value of his contributions to the agriculture can thus be more than others. Assessed in this way, he would be contributing to the family to the extent of Rs. 150/- per month. The total, thus, comes to Rs. 380/- per month. It is in evidence that the deceased was working on part-time basis with the bank, so in near future there was every possibility of his getting regular employment with the bank. Banks pay handsome salary. However, leaving aside Rs. 180/- per month that he would have spent after marriage on his family, the family contribution in that event comes to Rs. 200/- per month; annually Rs. 2,400/- and by applying the multiplier of 18, the compensation payable to the claimants would be Rs. 43,200/-. To this, an amount of Rs. 3,000/- is to be added for the loss of expectancy of life; the compensation awardable comes to Rs. 46,200/-. The calculation made by the Tribunal does not appear to be reasonable since it did not take into consideration the earnings of the deceased from agriculture and deduction of Rs. 5,600/- does not appear to be reasonable and proper. No conventional amount of Rs. 3,000/- for loss of expectancy of life has been awarded. Therefore, the award deserves to be modified on this aspect. Accordingly, the claimants are entitled to Rs.

46,200/- as compensation. Out of it, Rs. 40,000/- have already been paid. The appellants will pay the balance amount of Rs. 6,200/- to the claimants equally with interest at the rate of 12 per cent per annum from the date of the claim petition till payment. Parties are left to bear their own costs.