
(1972) 03 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 174 of 1968

State of Punjab and Others

APPELLANT

Vs

Lt. J.P.S. Kapoor

RESPONDENT

Date of Decision : 07-03-1972

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110A(3), 77, 78

Citation : (1973) ACJ 216

Hon'ble Judges : Gopal Singh, J

Bench : Single Bench

Advocate : J.S. Wasu and H.S. Sawhney, for the Appellant; H.S. Gyani, for the Respondent

Final Decision : Allowed

Judgement

Gopal Singh, J.—This appeal is by the State of Punjab and the Punjab Roadways against Lieutenant J.P.S. Kapoor. It is directed against the award of Motor Accidents Claims Tribunal, Punjab dated May 28, 1968. Facts leading to the appeal are as under:

On September 14, 1964 at 6.45 a. m., the Respondent left Officers Mess at Ajit Road, Jullundur Cantt. on Scooter No. PNA-31 to attend the office of his Unit. When he reached the crossing of Ajit Road and Nalva Road, a passenger Bus No. PNJ 6170 belonging to Appellant No. 2 struck against the scooter. The scooter and the Respondent were thrown at a distance of 20 feet and the Respondent received injuries on being struck against the wall of the culvert where the accident took place. The bus was being driven by Chanan Singh driver. According to the case of the Respondent, the bus at the time, the accident took place was being driven at a very high speed and that the driver neither slowed down nor blew any horn when he crossed the point of junction of the two roads and that it is as a result of rash and negligent driving on the part of the driver of the bus that the Respondent met with the accident and sustained injuries.

2. As a consequence of the accident, the left leg of the Respondent was completely fractured and the right ankle was also fractured. By the striking of the head of the Respondent against the wall of the culvert, the Respondent received on the head a contused wound 4 inches x 3 inches rendering the Respondent unconscious immediately after the receipt of that injury. The Respondent remained unconscious continuously for a period of 2 months from the date of the receipt of the injury.

3. The occurrence of the accident is said to have been seen by Sarvjeet, who was proceeding to her school and happened to be near the place of the accident. She, however, narrowly escaped when the Respondent struck against the wall. At the time, Subedar Baldev Singh of 161 Field Regiment happened to be close to the place of the accident. He lodged the first information report at the Police Station, Jullundur Cantt. The Respondent was removed to the Military Hospital, Jullundur Cantt, situated near by and was given medical aid. In order to make more competent medical aid available to the Respondent, he was removed from the military hospital at Jullundur Cantt, to the military hospital at Delhi Cantt, on October 2, 1964 and he remained under the treatment of Major H. R. Luthra. For 2\\ months he remained unconscious. Five operations had to be performed. He remained bedridden till November 30, 1966. He was invalided for military service because of the physical deformities including the fracture of the leg and the facial paralysis and stammering of the tongue. After discharge from the military hospital, he continued under treatment of Dr. Karam Singh.

4. The Respondent filed application, on November 26, 1966 against the Appellants u/s 110-A of the Motor Vehicles Act, 1939 hereinafter called the Act claiming compensation for a -sum of Rs. 5,25,000. In support of his claim, the Respondent appeared as A."W. 1 apart from producing Sarvjeet A. W. 2 and Dr. Karam Singh A.W. 3. The father of the Respondent,. Professor Shyam Singh also supported the claim of the Respondent as A. W. 4. The plea of the Respondent that the accident occurred as a result of rash and negligent driving on the part of driver of the bus was controverted and liability of the Appellants for the claim of the Respondent denied. It was also pleaded on behalf of the Appellants in the written statement filed that the claim of the Respondent was barred by time and in any case the quantum of compensation claimed was excessive and uncalled for. The above pleadings of the parties gave rise to the following issues:

(i) Was the accident due to any negligent act on the part of the driver of the bus involved or that of the applicant himself or that of both and with what effect.

(ii) Is the claim application within time and if not, are there any sufficient reasons to condone the delay.

(iii) What is the quantum of compensation due, if any, and from whom.

At these three" issues were determined-by the Tribunal in favour of the Respondent. Hence ? the present appeal.

5. Mr. J.S. Wasu, appearing on behalf of the Appellants has contended that the Claim of the Respondent is barred by time and he has not made out any sufficient cause for condonation of delay, that the evidence on the record does not justify the inference that the accident occurred on account of rash and negligent driving on the part of driver of the bus and that in any case the amount of compensation awarded is excessive.

6. The present application has been filed u/s 110-A of the Act. The relevant provision in so far as the question of limitation is concerned is Sub-section (3) of that section. That provision runs as follows:

No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident.

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

The accident took place in the morning on September 14, 1964. The application was made on November 26, 1966, two years and seventy three days after the date of the accident. Thus, the Respondent has to make out the facts, which constitute sufficient cause preventing him from making the application within sixty days from the date of the accident. Major H. R. Luthra, who was examined on interrogatories found the following three injuries on the person of the Respondent:-

(i) Head injury with cerebral contusion and left hemi paresis.

(ii) Compound comminuted fracture of tibia and fibula (left).

(iii) Pott's fracture of right ankle.

He opined that fractures were treated with plaster immobilization and skin loss was made good by a series of operations in which a pedicle graft was raised from the abdominal wall and employed to cover the denuded area over the left leg. He further observed that series of operations were carried on during a period of more than a year and a half. He said that since admission of the Respondent, he was a bed-patient and continued to be so. He added that he had been invalided for service w.e.f. November 16, 1966, and had to be dispatched home on account of invalid-ment. Dr. Rana, Neuro Surgeon in the military hospital gave the opinion that during the course of recovery, the Respondent had typical epileptic form convulsions. As regards the compound fracture of tibia and fibula of the left leg, the fracture had united with some degree of postero-medical angulations. During rehabilitation he had a crack fracture at the side of old callus, which continued to be treated during that period. He gave the opinion that the patient suffered from the paralysis of left hand and the hand lacks power of grip. He also opined that proximal muscle of shoulder and elbow showed only return of normalcy to the extent of 10 per cent He opined that the head injury was unlikely to allow the Respondent to regain normalcy. At the end, he came to

the conclusion that keeping in mind the comminuted fracture of left leg of both bones of tibia and fibula and long course of treatment lasting for two years with the result of poor recovery from paralysis, the Respondent was unfit to resume duty and that left hemiparesis coupled with the leg injury was responsible for his disability. Dr. Rana also opined that the mental faculties of the Respondent had been retarded. Soon after discharge from the Military Hospital, Delhi Cantt., the Respondent was under treatment of Dr. Karam Singh A.W. 3. He gave the opinion that the Respondent suffered from paralysis of the left half of the body on account of head injury, that there was a gross deformity in the left leg of the Respondent, that the Respondent because of these two injuries and the mental shock received by him was emotionally upset and suffered from paresis of the tongue, which means inability to speak. He opined that as a result of the injuries received by him, the Respondent was far from being a normal person.

7. In this statement, the Respondent said that soon after the receipt of the injuries consequent upon the accident that occurred in the morning on September 14, 1964, he became unconscious and regained semi-consciousness in the military hospital in Delhi Cantt. after 2½ months from the date of the occurrence and found his legs in plaster and his head bandaged and in that semi-conscious state of mind and mentally in alert, he continued under treatment and remained confined to bed in the hospital upto November 30, 1966 and during that period, large number of operations had to be performed upon him. and he had to remain bed-ridden and was rendered physically and mentally unfit for any work and was unable to give any rational instructions or to look after his interest or to make an application for claim on account of injuries suffered by him in the accident.

8. On the basis of the above evidence of unimpeachable character, I am satisfied that the Respondent has established facts showing that he was unable to make the application till November 26, 1966 when it was made. It is not a case, in which the Respondent could be charged either with any deliberate negligence or culpable inaction or with want of any bona fides for not moving the Tribunal earlier than the date, he did. His head and the leg injury had made him confined to bed physically deformed. Because of the leg injury with paralysis of half of the body and that of the face coupled with mental perplexion and abnormality, there could not be a fitter case for condonation of delay than the present one. The Respondent was thus, prevented on account of sufficient cause from filing claim application earlier than the date, he did. The Tribunal noticed his condition when he was brought before it. It is stated that he was bodily lifted out of the taxi, had no grip of the left hand, suffered from facial paralysis and completely unable to walk.

9. Considering the above facts, the Tribunal quite rightly exercised discretion for condonation of delay in the making of claim application. by the Respondent. No ground has been made out to interfere with the discretion exercised by the Tribunal for condoning delay in the making of claim application. Thus, the point

raised on behalf of the Appellants that the claim application by the Respondent is barred by time and delay should not have been condoned, has no substance.

10. Now, I come to the second point as to whether the injuries were sustained by the Respondent as a result of rash and negligent driving on the part of Chanan Singh, driver of the bus. The Respondent has stated that the bus being driven by Chanan Singh was coming along the Nalva Road at a fast speed and that it never blew any horn and struck against his scooter. He has stated that the injuries were sustained by him because of such driving of the bus by the driver. He has stated that the speed of his scooter before the accident, was between 20 and 25 kilometers per hour. His testimony has been corroborated by the evidence of Sarvjeet. She has stated that she did not hear any horn having been blown by the driver of the bus prior to its striking the scooter, which came from the side of Ajit Road. She has stated that the bus struck against the scooter and the scooter was thrown off just in front of her on the metal led portion of the road and that the driver of the scooter struck against the side of the culvert close by and became unconscious. Sarvjeet is independent witness. Her presence had been admitted by the driver. There is no reason to doubt the correctness of her statement that the driver of the bus did not blow any horn and it was the bus which stuck against the scooter making the Respondent dash against the culvert.

11. To rebate the evidence of the Respondent as to the rash and negligent driving of Chanan Singh, driver being responsible for the accident, there were produced on behalf of the Appellants two witnesses, Amrik Singh R.W. 2- and Chanan Singh driver R.W. 3. Amrik Singh states that he was traveling in the - bus proceeding along Nalva Road towards Jandiala side. He has vaguely stated that it was the scooter which was coming at a fast speed and stuck against the bus and not that the bus struck against the scooter. Chanan Singh driver stated that the Respondent was driving his scooter on the wrong side of the road keeping on the right side of the road and not on its left and it is on account of that reason that the scooter being driven by the Respondent at a high speed on wrong side of the road struck against the bus and hence the accident. No question was asked either from the Respondent or Sarvjeet A.W. nor even from Amrik Singh R.W. as to whether the Respondent was driving the scooter on the right side of the road and was not keeping to its left. It is only the driver, who has taken up that stand in his statement. If that was the case of the Appellants, there was no reason why this information was not sought to be elicited in course of cross-examination of the Respondent or Sarvjeet or to prove in examination-in-chief in the testimony of their own witness, Amrik Singh that the scooter was being driven by the Respondent on the wrong side of the road. Having faintly raised the point and becoming conscious of the difficulty, the counsel appearing on behalf of the Appellants did not pursue it further. It is the right front of the scooter which soon after the occurrence was found damaged. Chanan Singh driver states that he perceived the presence of the scooter from twenty feet from the centre of the crossing of the road. If he did so, there was no reason why he should not have slowed down the vehicle by applying brakes. The inspection note

recorded by the Tribunal shows that the width of the metalled portions of both Nalva Road and Ajit Road, is the same and so also is the extent of the brick portion on either side of both the roads. The distance of katcha portion of both roads is also stated to be the same. Under these circumstances, the Tribunal has quite rightly observed that there is no justification for the claim on behalf of the Appellants that the bus was being driven along a main road and that it is the Respondent driving the scooter, who had to stop for a short while before crossing the main road. There is nothing to show that Nalva Road is the main road and Ajit Road is not the main road. Both of them being equal in width, one against the other could not be described to be the main road. Section 77 of the Act provides:

A state Government or any authority authorised in this behalf by the State Government may, by notification in the Official Gazette or by the erection at suitable places of the appropriate traffic sign referred to in para A of the Ninth Schedule, designate cerate-roads as main roads for the purposes of the regulations contained in the Tenth Schedule.

12. The traffic sign given in Part A of the Ninth Schedule has indication of a main road crossing a small road a long with the text "main road ahead". No notification to the effect of the Nalva Road being the main road having been published in the official gazette has been brought to my notice nor any evidence has been led to show that there existed a traffic sign as given in Part A of the Ninth Schedule indicating Nalva Road to be the main road. Thus, Appellants have on facts miserably failed to make good the claim as urged in course of arguments on behalf of the Appellants that Nalva Road is the main road and Ajit Road is not the main road. On the other hand, Section 78 of the Act provides that every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by a (mandatory traffic sign) and in conformity with the driving regulations set forth in the Tenth Schedule and shall comply with the directions set forth therein. Regulations 6 of the Tenth Schedule is relevant in this connection, It runs as under:

The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

13. By virtue of this regulation, Chanan Singh, driver while driving the bus was under obligation to slow down when he: was approaching the road intersection of the road junction formed by the crossing of the Nalva Road and Ajit Road. He should not have entered that intersection or junction until he had made himself aware that he could so enter without endangering the safety of persons on the road. There cannot be any doubt about flagrant violation of this regulation on the part of Chanan Singh driver. He did not make himself aware of the fact that by persisting with his onward running of the vehicle, he would be endangering the safety of the persons on the road. The driver, has, thus clearly infringed this

mandatory traffic regulation and persisted with his rash and negligent driving by crossing the road at a high speed and that too without caring to blow horn. The finding of the Tribunal that the accident occurred as a result, of rash and negligent driving on the part of the driver is fully warranted.

14. Finding that the claim application of the Respondent could not be held to be barred by time and the conclusion rightly arrived at by the Tribunal as to the act of rash and negligent driving being imputable to the driver of the bus, the counsel for the Appellant did not seriously challenge the correctness of the amount of compensation assessed by the Tribunal. The correctness of the sum of Rs. 4000/ awarded on account of pain and discomfort past, present and, future and sum of Rs. 2000 claimed to have been spent by the parents on traveling expenses for their two visits a month to look-after and to attend on the Respondent has not at all been assailed. Even otherwise these two items of Rs. 4000 and Rs. 2000 as assessed by the Tribunal do not admit of any further reduction.

15. On the date of the occurrence, the Respondent was working as an officer in the army. He was of the rank of a Lieutenant. His date of birth is November 21, 1942. He was a twenty two years of age on the date of that unfortunate occurrence. During the period of his service career in the army, he was to be promoted from the rank of a Lieutenant to that of a Captain, from that of a Captain to Lieutenant Colonel and then becoming a Colonel and latter on Brigadier and so on. The Tribunal has estimated that he was likely to be in service up to the age of fifty years, namely for 28 years more. Considering his future promotions and prospects accompanied by high salaried jobs, he has adopted the basis of his earning salary at Rs. 10,000 a year on an average. On the date of the occurrence, he was drawing Rs. 550 per mensem. This comes to Rs. 6600 per annum. Taking into consideration his promotional rise in ranks and the higher and the higher salaries, to which he would have been entitled, there is every justification for calculating his salary earnings on an average at Rs. 10,000 per year. Thus the sum of Rs. 2,80,000 assessed by the Tribunal on account of service career is fully called for. It has been assessed by the Tribunal, that after retirement, he would have enjoyed pension at the rate of Rs. 500 per month, which comes to Rs. 6,000 per annum. In the form of pension, at least for 15 years after retirement at the age of 50, the Respondent has been deprived of Rs. 90,000 consequent having been declared unfit for service because of the injuries suffered by him in the accident. He has been deprived of all enjoyments of life, which could fall to the lot of a normal healthy person of the status of a Lieutenant. With the present physical deformity and paralytic he has been deprived of the privilege of a condition married life. A sum of Rs. 20,000 assessed on account of loss of enjoyment of life is not at all excessive. The above items awarded aggregate to Rs. 3,96,000 and justifiably constitute the loss suffered by the Respondent due to the accident, of which he was a victim for no fault of his.

16. For the reasons recorded above, I disallow the appeal with the direction that the Appellants shall pay the costs of the Respondent.