
(1982) 08 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 38 of 1974

Surinderjit Singh

APPELLANT

Vs

Kuldip Rai Thapar and others

RESPONDENT

Date of Decision : 23-08-1982

Acts Referred:

Citation : (1982) 08 P&H CK 0054

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : V.P. Gandhi, for the Appellant; S.P. Gupta, for Respondent No. 2, Mr. L.M. Suri and Mr. M. Puri, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This appeal is directed against the award of the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the Tribunal"; dated 15th September, 1973 whereby the claim application for compensation filed on behalf of the appellant was dismissed.

2. The claim of the appellant is that he and respondent No. 1 Kuldip Rai Thapar were going in a fiat Car No DLK: 5001 from Delhi to Panipat The Car was being driven by Respondent No. 1. The appellant was having a joy ride and was on a pleasure trip upto Panipat with him. It was about 10 30 p.m. on the night of March 25, 1969 when the accident took place because of the rash and negligent driving of respondent No. 1. It was claimed that the appellant wanted the driver of the car to be careful but he never paid any heed thereto It was alleged that the driver tried to overtake a bullock cart in the area of village Karana without displaying any sense of judgment and in order to overtake the said bullock cart, he swerved his car towards the right but was unable to get clear of the bullock cart According to the claimant, his elbow got entangled between the bullock cart and the car The speed of the car at that time was so high that the hand of the petitioner got severed from near his shoulder and the svered portion fell apart from the rest of the body inside the car itself. It was further alleged that the

appellant was taken to Civil Hospital by the driver of the Car when an operation was also performed. He further claimed that he was employed as a Salesman with Messrs Pure Drinks, New Delhi and was earning between Rs. 500/- to Rs. 600/- per mensem. This claim was contested by all the respondents. It was pleaded that the appellant was all through resting his elbow on the window of the car with the result that the portion of his arm was projecting outside the vehicle. The driver of the Car several times reminded him to keep his arm inside but he paid no heed. It was further pleaded that at the material moment a truck had come from Panipat side with dazzling lights and the glare almost blinded the driver and the appellant and they could not see in the glare of the lights of the truck the road in front of them. Though dipper of the car was used but the truck driver did not dip his lights. The car driver also slowed down the speed of the car. When he suddenly realised that there was a bullock cart in front of the car he turned the car towards the right hand. Since the appellant had rested his elbow on the window of the door of the car his elbow got entangled with the bullock cart and therefore, he received the injury. It was further alleged that the appellant had given a statement Exhibit R.W. 3/1 before the police, in the hospital, in which he admitted that there was no fault on the part of the car driver and that it was a simple accident. Respondent No. 2 and 3 i.e. owner of the car and the Insurance Company further pleaded that respondent No. 1 was driving the car without the permission or authority of respondent No. 2 and as such neither respondent No. 2 nor respondent No. 3 was liable for tortious act committed by respondent No. 1. According to respondent No. 2, owner of the car, he had left his car with Messrs Vikas Motor Limited for repairs where respondent No. 1 was employed as a Workshop Manager. He took away the car without the permission or authority of respondent No. 2. However, respondent No. 1 maintained that he had taken away the car with the consent and permission of respondent No. 2 and that he had told him that he would be going to Panipat in this connection. The version of the car driver is that respondent No. 2 had brought the car with the idea of disposing it of and it was never left by him with Messrs Vikas Motors Limited for repairs, as alleged. On the pleadings of the parties, the learned Tribunal framed the following issues:-

1. Whether the insurance company has not covered the risk of the passenger of Car No DLK: 5001, under the insurance policy ?
2. Whether the respondent No. 1 was not driving the Car No. DLK : 5001 during the course of employment or with the permission of respondent No. 2 at the time of accident ?
3. Whether the accident took place due to the negligence of respondent No. 1?
4. Whether the claimant is entitled to any compensation" If so, to what amount and from whom ?
5. Whether the claimant was also responsible for contributory negligence ?
6. Relief

The learned Tribunal decided issues No. 3 and 5 only and in view of the findings on those issues, findings on the other issues were not found to be necessary, Issue No. 3 was found against the appellant by the learned Tribunal as it was found that the accident did not take place due to the negligence of respondent No. 1, as alleged by the claimant. Under Issue No. 5 it was found that the appellant received the injury solely on account of his negligence because he allowed a part of his body to project outside the body of the car. As a result of these findings, the claim application was dismissed.

The learned counsel for the claimant-appellant contended that the learned Tribunal wrongly relied upon the alleged admission in his statement Exhibit PW3/1 recorded by Shri Naranjan Singh H.C. RW 3 on March 26, 1969, in the hospital, where he was taken after the accident According to the Learned Counsel, any admission made in ignorance of one's legal rights is of no consequence In any case, according to the Learned Counsel the alleged admission is relevant only if it is proved and each and every fact mentioned therein is put to the person alleged to have made the admission In support of his contentions, he referred to Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, and Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another, . It was further contended that in the present case, negligence was that of the driver of the car because he did not take precaution to keep the car at a sufficient distance from the bullock cart, even if the claimant was resting his elbow on the window of the car Under these circumstances, according to the Learned Counsel, it was the duty of the car driver to avoid any such accident. Having failed to take the necessary precaution, the negligence was amply proved on his part.

I have heard the Learned Counsel for the parties and have also gone through the relevant record It is the common case of the parties that the claimant and the car driver were friends and he had taken the claimant alongwith him by way of a joy ride After the accident, respondent No. 1, the driver of the car, himself took the claimant to the hospital for necessary treatment. It was there where the claimant made a statement to Shri Naranjan Singh H.C. R.W. 3, in which he admitted that there was no fault of the car driver or any negligence on his part in driving the car. It was a mere accident. In the written statement filed on behalf of the respondent No. 1, the driver of the Car, it was specifically pleaded in Para No. 24 thereof that the claimant had made a categorical and specific statement before the police soon after the accident that he had stretched his arm deliberately and that there was no negligence on the part of respondent No. 1. The incident was pure and simple accident without any negligence whatsoever on the part of the car driver and that he did not want any action against any body for it He further pleaded that the claim application now filed was an after thought and mala fide. In the replication filed to this written statement, it was stated that ".....It is denied that the petitioner made any voluntary statement before the police The petitioner was absolutely dazed and shocked after the accident and was more or less not in his senses. The statement, if any, has been obtained by

fraud, misrepresentation and is exploitation of the poor and helpless condition of the petitioner". The claimant when appeared in the witness box as A. W. 5 did not state a single word in his examination-in-chief regarding the said admission or the statement made by him before the police, recorded by R.W. 3 Shri Naranjan Singh H.C. but in his cross-examination when the original statement brought by R.W. 3 was put to him, he stated that "I have only come to know now that the police had recorded my statement. I had filed replication to the written statement filed by the respondents. I was not aware whether my statement had been recorded by the police at the time of my filing replication. The replication was written on my instructions I was not aware that any complaint was to be made against the driver of the vehicle for driving it rashly and negligent due to which is a suffered as I am quite ignorant of the legal implications." As regards his signatures on the statement dated March 26, 1969, copy of which is Exhibit AW5/1, it was stated by him that he never made any statement before the police nor did it bear his signature. The respondents in order to prove the said statement produced R.W. 3 Shri Naranjan Singh, H.C. who had recorded that statement. He has categorically stated that "...That patient is the claimant present in the Court. The original statement of the claimant Surinderjit Singh is Ex. R.W.3/1. It bears the signature of the petitioner. This statement was read over to the petitioner and after having admitted to be correct he put his signatures" Apart from that, Dr. Prem Kumar P.W. 2, Medical Superintendent, Civil Hospital, Panipat, was also produced as P.W. 2, who proved the necessary permission obtained by R. W. 3 H.C. Naranjan Singh before recording the statement of the claimant, which is Exhibit RW2/A This application was presented before Dr. E. B. Masih. He identified his signature on this application and the endorsement made by him which is to the effect that. "He is fit to give a statement" appearing above his signature. Thus, it was apply proved on the record that the claimant did make a statement in which he admitted that there was no fault of the car driver. This statement was recorded by RW-3 H.C. Naranjan Singh, after getting the necessary per mission from the doctor to the effect that the patient was in a fit condition to give a statement. It is unfortunate that the claimant denied his signature thereon and in the replication filed by him, took up the plea that the statement, if any, was obtained by fraud and misrepresentation No such evidence of any kind was produced on behalf of the claimant, nor any particulars of any alleged fraud or misrepresentation were given in the replication filed Under these circumstances, I do not find any infirmity or illegality in the order of the learned Tribunal in which it relied upon the admission made by the claimant in his statement, a copy of which is Exhibit RW5/1 The authorities relied upon by the Learned Counsel for the appellant has no bearing on the facts of the present case. It was never his case in the pleadings that the admission was made in ignorance of his legal rights. As a matter of fact, he denied having made any statement when he appeared in the witness box and since he denied his signature on his statement the question of putting him each and every fact mentioned therein did not arise. In this view of the matter, it has been rightly held by the learned Tribunal that the statement in

question was given by the claimant and that it was also signed by him. It has been held in *Dharam Chand Vs. Shiv Pat and Others*, that where the claimant made a statement before the police that the occurrence was accidental, he could not turn round and allege negligence to maintain a civil action for compensation. To the same effect is *The The Unique Motor and General Insurance Co. Ltd. and Another Vs. The New India Assurance Co. Ltd. and Others and Mandi Kulu Road Transport Corporation v. Janak Raj Singh* (1968) 70 P.L.R.D. 367: 1968 A.C.J. 363.

A part from the said admission, on the evidence produced on the record, it has been found by the learned Tribunal that the version given by the car driver appears to be correct. From the evidence, it appears that the car driver suddenly noticed the bullock cart going in front of him and that he could not notice the presence of the bullock cart prior to that on account of the glare of the lights of the truck coming from the opposite direction and that when he saw the bullock cart he turned the car towards the right and, therefore, he could not get clear of the bullock cart with a safe margin. It further appears from the evidence that the car driver did not notice the presence of the bullock cart from sufficient distance and in sufficient time. There is no cogent and reliable evidence on the record to show that the accident had taken place on account of rashness and negligence on the part of the car driver. It appears to be a simple road accident without any fault of respondent No. 1. Under these circumstances, the findings of the learned Tribunal on issues No. 3 and 5 are affirmed and in view of those findings, consideration of no other issue arises, nor has any been argued.

Consequently, the appeal fails and is dismissed with no order as to costs.