
(1982) 09 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 234 of 1975

Surjit Singh Bhatia

APPELLANT

Vs

Segalla Ramulu and Others

RESPONDENT

Date of Decision : 01-09-1982

Acts Referred:

Central Motor Vehicles Rules, 1989 — Regulation 6, 7
Constitution of India, 1950 — Article 300
Motor Vehicles Act, 1988 — Section 110A

Citation : (1983) ACJ 603

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : Arun Jain, for the Appellant; K.S. Sandhu, Addl. A.G. and V.P. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—In an accident which took place at a crossing in Amritsar on 3.3.1972 at about 4.30 p.m., the claimant, Surjit Singh Bhatia received injuries in respect of which he filed an application u/s 110-A of the Motor Vehicles Act seeking Rs. 40,000/- as compensation.

2. According to the claimant he was sitting on the pillion seat of the motor cycle No. P.N.K. 9723 which was being driven by Jaswant Singh. He was coming from his office on the road in Amritsar Cantonment going from north to south when a military jeep came from the side road and struck and grazed against the motor cycle on account of the negligence and carelessness of the driver of the jeep. The motor cyclist and he were thrown down and suffered injuries thereby. He further stated that the driver of the jeep did not blow any horn or give any signal to indicate the direction in which he intended to proceed.

3. The driver of the jeep Respondent No. 1 Sepoy Segalla Ramulu as also the Union of India denied that any accident had taken place between the motor cycle and the jeep. The plea put forth in the written statement was that on the day of

the accident a motor cycle was coming from Thiammaya Road at great speed. Upon seeing the jeep, the driver of the motor cycle, all of a sudden, applied full brakes with the result that the driver lost control over the motor cycle and fell down on the road along with the pillion rider. It was stated that the motor cycle did not touch the jeep at all. There were skid marks of the motor cycle up to a distance of 40 feet on the road. There was thus, no negligence in this accident on the part of the driver of the jeep.

4. The Tribunal came to the finding that there was no impact between the motor cycle and the jeep and the accident was the result of the motor cyclist having fallen when brakes were applied while it was travelling at high speed. It was consequently held that there was no rash and negligent driving of the military jeep.

5. A plea had also been raised on behalf the Union of India that the accident had taken place while the driver of the jeep was performing duties for the State in the exercise of its sovereign powers and the Union of India was thus not liable for this accident. The Tribunal again held in favour of the Respondents by upholding this plea of the Union of India. The compensation that the claimant was entitled to was assessed at Rs. 7,185.70. In view, however, of the findings on the two earlier issues referred to above, the application of the claimant for compensation was dismissed.

6. In appeal now, the findings of the Tribunal on all these matters have been challenged.

7. Taking up the issue relating to negligence it will be seen that the claimant besides appearing in the witness-box himself as P.W. 9 and deposing as to the manner in which the accident took place also examined P.W. 8 Jaswant Singh, the driver of the motor cycle and P.W. 2 Madan Lal, P.W. 3 Vijay Mohan Arora, P.W. 4 Harbhajan Singh and P.W. 5 Paramjit Singh as eye witness thereto. The Respondents, on the other hand, sought to rely upon the testimony of the driver of the jeep R.W. 1 Segalla Ramulu and R.W.2 Lt. Col. K.S Dhillon who was travelling in the jeep at the time of the accident.

8. It was the testimony of the claimant P.W. 9 Surjit Singh that on 3.3.1972 at about 4.30 p.m. he was returning to his office and was sitting on the pillion seat of the motor cycle being driven by Jaswant Singh while they were coming from the side of canteen from north to south. When they reached the crossing of Flag Staff House, an army jeep came from the right with Sepoy Segalla Ramulu as the driver thereof. Lt. Col. K.S. Dhillon was travelling in the jeep. The speed of the motor cycle was 30 to 40 kms. per hour at that time. The jeep came to the crossing at a fast speed. No horn was blown nor was any signal given and the left side of the jeep came and struck against the front wheel of the motor cycle and on account of the impact both he and Jaswant Singh fell down along with the motor cycle. He suffered a fracture of his right leg which was operated upon twice and now his leg had been shortened by one inch which is a permanent

disability. A similar statement was made by P W. 8 Jaswant Singh, the driver of the motor cycle. It was his statement that the jeep came on to the crossing when he had already reached it and the accident, thus, took place due to the negligence of the jeep driver.

9. The eye-witness account of the occurrence as given by P.W. 2 Madan Lal, P.W. 3 Vijay Mohan Arora, P.W. 4 Harbhajan Singh and P.W. 5 Paramjit Singh is all to the same effect namely that the motor cycle was coming at the normal speed while the jeep came to the crossing at fast speed and hit into the motor cycle as a result of which both the persons on the motor cycle fell down and received injuries.

10. A contrary version was put forth by the driver of the jeep R.W.I Sepoy Segalla Ramulu who deposed that the jeep was going at a speed of 20 kms. per hour when he reached near the crossing. He slowed down. The crossing was clear. He blew the horn and went across. From his left he saw a motor cycle coming at a speed of 60-65 kms. per hour. When he had gone about 25 yards beyond the crossing he was asked by Lt. Col. Dhillon to stop the jeep. He then stopped the jeep and reversed it and brought it near the crossing. He and Lt. Col. Dhillon then got down and found that the motor cycle had fallen on the ground two to three yards from the crossing. There were marks on the road to indicate brakes having been applied by the motor cycle up to a distance of about 20 yards. He stated quite categorically that there had been no impact between the motor cycle and the jeep at any time. A similar statement was made by R.W. 2 Lt. Col. K.S. Dhillon. He too deposed that the speed of jeep at the crossing was 20 to 25 kms. per hour and at that time when the jeep was going across the crossing, the motor cycle was 100 to 150 yards away. The motor cycle had been coming at a speed of about 60-65 kms. per hour. After they had gone some distance from the crossing he heard a thud of something falling. They had gone about 100 yards beyond the crossing at that time. He then got the driver of the jeep to reverse it and on coming back to the crossing they found that two persons who had been riding the motor cycle had fallen on the ground. He too noticed skid marks of the motor cycle to a distance of about 60 feet. It was his statement also that the jeep had not hit the motor cycle.

11. The evidence on record would show that the driver of the motor cycle Jaswant Singh and the claimant Surjit Singh Bhatia, the pillion rider thereof, both fell and suffered injuries at the crossing. The evidence led by the Respondents is clear and unambiguous that the motor cycle was coming at a fast speed and brakes had been applied and there were skid marks on the road to indicate it. The testimony of P.W. 5 Paramjit Singh also refers to the application of brakes by the driver of the motor cycle.

12. The claimant, on the other hand sought to show that it was the jeep which was travelling at fast speed whereas the motor cycle was coming at a normal speed and the jeep came and hit into the front wheel of the motor cycle. Counsel for the claimant strongly relied upon the testimony of the witnesses examined by

the claimant in seeking to show the accident here had taken place due to the rash and negligent driving of the jeep driver. Counsel for the Respondents, on the other hand sought to lay great stress upon the fact that there was no mark of any damage to the jeep as a result of this accident to lend corroboration to the testimony of the witnesses examined by the claimant that the jeep had hit into the motor cycle. It was further argued that there was also no corroborative evidence to support the statement of P.W. 8 Jaswant Singh the owner of the motor cycle that some damage had been caused to the motor cycle in this accident which would be consistent with the motor cycle having been hit by the jeep.

13. In dealing with the contentions raised by the counsel for the Respondents with regard to there being no damage to the jeep and the lack of corroborative evidence regarding damage to the motor cycle it is pertinent to note that the case of the claimant was not that the motor cycle had been run over by the jeep but only that the jeep had grazed against the motor cycle. The evidence was that it was the left side of the jeep that had hit the front wheel of the motor cycle. This will suggest that it was the front tyre of the motor cycle which had been hit by the jeep. In this situation, counsel for the claimant contended and rightly, that no damage could be expected to have been caused thereby to the jeep which is made of much sturdier metal. Similarly, damage to the motor cycle by mere grazing would obviously be of a minor nature and it is no wonder that such damage would be repaired by a relation of Jaswant Singh free of cost. This circumstance is thus, well explained by the claimant and cannot be taken to negative his version.

14. The significant aspect of the case to take note of is the fact that the accident here took place at a crossing. According to the driver of the motor cycle the road he was travelling on was the main road while according to the jeep driver both the roads were main ones. There is a clear duty imposed upon the driver of a motor vehicle, by Regulation 6 of the "Tenth Schedule of the Motor Vehicles Act, to slow down his vehicle when approaching a crossing and not to enter it until he has become aware that he can do so without endangering the safety of the persons thereon. Regulation 7 further provides that on entering a crossing the driver of the motor vehicle shall give way to vehicles proceeding on the main road and in other cases to all traffic approaching from his right hand side. Both these regulations appear to have been obeyed by the jeep driver and the motor cyclist only in their breach. It would appear that both roads were of the same status and there was, therefore an equal duty cast upon both the jeep driver and the motor cyclist to enter the crossing by slowing down and ensuring that they could do so without endangering the safety of any person there. The circumstances clearly suggest that neither of these vehicles took this precaution. Though in dealing with this matter two factors deserve note, one that the jeep after this accident came to a halt between 50 to 100 yards from the crossing whereas the motor cycle reached the crossing leaving behind a trail of skid marks to indicate not only the use of brakes by him but also the speed at which

the motor cycle must have been going at that time. In other words, both these matters are a pointer to the fast speed and negligence of both the driver of the jeep as also of the motor cycle. The use of the brakes by the motor cyclist do provide him a ground for mitigation of his blame in the accident in that an attempt was made, no matter how belated, to seek to avoid the accident. No such indication is available in the case of the jeep driver.

15. In the circumstances even if it be assumed that there was no direct contact between the jeep and the motor cycle this by itself would not absolve the jeep driver from blame in this case. It is well settled that where on account of the rash and negligent driving of a motor vehicle an accident or injury to a road user appears likely, such road user would be justified in taking all reasonable steps as may be necessary in the circumstances to seek to avoid such accident or injury and in this situation, the driver of the offending motor vehicle would be liable for all loss or damage suffered by the road user thereby even if there is no actual contact between him or his vehicle with the offending motor vehicle.

16. In seeking to avoid the finding of negligence against the jeep driver counsel for the Respondents sought to lay great stress upon the fact that in the statement made by the claimant to ASI Tulsi Ram Singh regarding this accident the claimant had stated that the jeep and the motor cycle had struck against each other while they were trying to stop their vehicles and only a minor impact had taken place and he did not, therefore, wish to take any action. This statement was denied by the claimant Surjit Singh. No such statement as signed by Surjit Singh has been placed on record. What has come on record is merely an entry in the roznamcha said to have been made on the basis of such a statement made by Surjit Singh the original statement having been destroyed. Be that as it may, the statement made to the police by an injured not blaming anyone for the accident and seeking no action in the matter cannot by itself be taken as conclusive to negative negligence or to bar a claim by the claimant for compensation for the loss caused to him or injuries suffered by him. Such a statement is indeed, relevant and important in deciding the issue of negligence. The issue of negligence has, however, to be decided having regard to the totality of the circumstances of the case and the evidence on record. Seen in this light this statement of the claimant even if it were to be accepted as having been made by him cannot detract from the finding in the fact of evidence on record in this case that the accident here was caused by the rash and negligent driving of both the driver of the jeep as also the driver of the motor cycle for which both were equally to blame.

17. In so far as the claimant Surjit Singh Bhatia is concerned, his remedy for the injuries suffered by him lies against both the driver of the jeep as also the driver of the motor cycle as qua him they were both joint tortfeasors and he can, thus, sue both or either for the recovery of the entire amount claimed.

18. The next question which falls for determination in this case is whether the Union of India is immune from liability under Article 300 of the Constitution of

India on the ground that the accident occurred during the course of the exercise of sovereign powers. In dealing with this matter it deserves note that in the original written statement filed in this case on 20.3.1973 no such plea was raised. After all the evidence had been recorded in this case, amendment of the written statement was prayed for by an application put in on 6.5.1973. It was in pursuance of this application being allowed that an amended written statement came to be filed containing the plea that the driver of the jeep was acting in the exercise of the sovereign powers of the Union of India at the time of the accident and consequently, the Union of India was not liable for his negligence.

19. It is well settled that the question whether the accident took place in the exercise of sovereign powers is one to be decided as a question of fact. The evidence in this behalf in the present case consists of the testimony of R.W. 2, Lt. Col. K.S. Dhillon and this was indeed the sole evidence relied upon on behalf of the Union of India. He stated that at the time of the accident he was proceeding in the jeep from the divisional headquarters to the office of the Deputy Commissioner to discuss relief measures for the persons who were in the war zone. No cross-examination was directed towards this part of the statement but no benefit from this can accrue to the Union of India when regard is had to the fact that when Lt. Col. Dhillon was examined there was no such plea put forth on behalf of the Respondents. It is further pertinent to note that there is only the oral statement of Lt. Col. Dhillon to this effect. No corroborative evidence is forthcoming like any written order or agenda of any meeting with the Deputy Commissioner or even the log book of the jeep concerned.

20. The matter regarding the liability of the State for the tortious acts of its servants came up for consideration before a Full Bench of our High Court in *Bakshi Amrik Singh v. Union of India* 1974 A.C.J. 105 (P. and H.). The law laid down therein, in so far as it is relevant for the purposes of this case, was that the mere fact that the vehicle which is involved in an accident is owned by the Government and driven by its servants does not render the Government immune from liability for its rash and negligent driving. It has to be proved further that at the time of the accident the person driving the vehicle was acting in the discharge of the sovereign functions of the State. The mere fact that the act complained of was committed by a public servant in the course of his employment is not enough to absolve the Government of liability for damages for injury caused by such act. Where the State pleads immunity against a claim for damage resulting from injury caused by the negligent act of its servants, the area of employment referable to sovereign powers must be strictly determined. The court must find that the impugned act was committed in the course of an undertaking or an employment which is referable to the exercise of the delegated sovereign powers.

21. It was further laid down in the above authority that maintenance of army is a sovereign function of Union of India but it does not follow from this that the Union of India is immune from all liability for any tortious act committed by a

personnel. In determining, therefore, whether the claim of immunity should or should not be allowed, the nature of the act, the transaction in the course of which it was committed, the nature of the employment of the person committing it and the occasion for it, have all to be considered.

22. Keeping in view the principles set out in the Full Bench authority referred to above, the evidence on record cannot by any means be considered sufficient to render the Union of India immune from liability for the negligence of the jeep driver. It was incumbent upon the Respondents to have come forth with better and convincing proof that it was indeed in the exercise of sovereign functions that the accident had occurred. The mere statement of Lt Col. Dhillon cannot suffice to deny the claimant his remedy against the Union of India.

23. Turning now to the question relating to the quantum of compensation that the claimant would be entitled to, the evidence on record would show that he suffered a fracture of his right leg and he had to undergo two operations on this account. This has now led to shortening of his leg by one inch which is, indeed, a permanent disability.

24. P.W. 6 Dr. Rachhpal Singh deposed that he operated upon the claimant on 8.3.1972 and a nail and a plate had to be fixed. This was removed on 10.7.1972 and for this purpose again an operation had to be performed. According to Dr. Rachhpal Singh, the claimant must obviously have suffered a great deal of pain and suffering by the injury and the operation. There is then the testimony of A.W. 7 Dr. Karam Singh Grewal, Orthopaedic Surgeon who deposed to the shortening of the leg of the claimant by one inch and further that the movements of his hip were limited and he could not squat on the ground. He had to be advised to walk with crutches with partial weight bearing. A.W. 9 Surjit Singh claimant himself deposed that he was still suffering pain in his right leg and the disability that he had suffered on account of this accident could affect the chances of his further promotion. He also deposed to the expenses incurred by him on his treatment which included paying an attendant Rs. 60/- per month for a period of four months besides the cost of medicines and special diet.

25. There was no serious challenge to the evidence led by the claimant with regard to the nature and the seriousness of the injuries suffered by him as also the expenses incurred by him thereby.

26. The Tribunal assessed the expenses incurred by the claimant to Rs. 1,945.70 and also special damages at Rs. 5,000/- . While there is little scope to differ from the amount assessed by the Tribunal as the expenses incurred by the claimant keeping in view the nature and the extent of the injuries suffered by the claimant, particularly the permanent disability caused by virtue of the shortening of his leg as also the pain and suffering caused thereby to him the claimant was clearly entitled to a much larger amount as damages than was assessed by the Tribunal. Having regard to the totality of the circumstances of the case and the evidence on record, the claimant must be held entitled to Rs. 20,000/- as

damages and to make it a round figure Rs. 2,000/- as the expenses incurred by him on his treatment. In the result the claimant is accordingly awarded Rs. 22,000/- as compensation in this case alongwith interest @ 10% per annum from the date of the application to the date of the payment of the amount awarded. This appeal is consequently hereby accepted with costs. Counsel fee Rs. 500/- .