
(1981) 12 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : F.A.O. No's. 89, 90 and 91 of 1980 in Cross Objections No's. 109, 110 and 112 of 1980

The Himachal Road Transport Corporation

APPELLANT

Vs

Mohinder Lal

RESPONDENT

Date of Decision : 10-12-1981

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B

Citation : (1981) 10 ILR HP 630

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : D.K. Khanna, for the Appellant; Chhabil Dass and Y. Paul, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Misra, C.J.—This judgment will dispose of F.A.Os. Nos. 89, 90 and 91 of 1980 since these arise out of the same judgment. It will also dispose of the Cross-Objections of the Respondents.

2. The appeals are directed against the award made by the Motor Accident Claims Tribunal, Kangra Division. The Tribunal has held that the motor accident was due to the negligence of the Appellant and its driver.

3. On 18th July, 1974, the Appellant's omnibus No. HPC-183 was going from Chamba to Pathankot. It had 19 passengers. At about 4.15 P.M. when it was about one or one and a half kilometre from a place known as "Daradda" it rolled down the khad. Many passengers were injured and some were killed. One of the fatal casualties was the driver himself. Among the dead was one Ved Prakash who died on the spot as a result of the injuries sustained by him due to the accident. Rajinder Lal and Mohinder Lal, Respondents, were lucky to escape death but received various injuries. They had to be hospitalised. Rajinder Lal suffered a permanent injury inasmuch as he cannot lift his right hand above his

shoulders.

4. Shrimati Kusum, widow of Ved Prakash, and her minor son Sunit Kumar alongwith Shrimati Surmi Devi mother of the deceased, filed an application u/s 110-A of the Motor Vehicles Act claiming compensation of Rs. 5,00,000 Rajinder Laland Mohinder Lal also filed separate application claiming compensation of Rs. 50,000 and Rs. 30,000 respectively. It was alleged that the accident had taken place due to the negligence of the driver.

5. The Himachal Road Transport Corporation, the Appellant, resisted these applications. It was averred that the bus met with "an unavoidable accident as a result of sudden breakage of two spring leaves i.e. main and the second leave which resulted in locking up of the steering". It was also averred that the driver "despite his best efforts for avoiding the accident applied the brakes, skid marks of which were visible up- to the distance of 4 metres on the road as reported by the Inquiry Committee, goes to show that there was no negligence what soever on the part of the driver who gave his life in that accident and the accident was solely due to the abrupt breakage of two spring leaves, which is a purely sudden mechanical failure. Had there been any negligence on the part of the driver he would have jumped out from the illfated bus and saved himself."

6. Mr. D.K. Khanna, learned Counsel for the Appellant, has vehemently contended before me that the accident was due to latent defect in the spring leaves which had broken and jammed the steering wheel. He submits that the Appellant has produced sufficient evidence to prove this fact and since the claimants had failed to show any negligence on the part of the driver, the claim petitions should have been dismissed by the Motor Accident Claims Tribunal.

7. Before I refer to the law and various authorities cited before me by Mr. Khanna, I would analyse the evidence produced by the parties. I may at this stage record that the evidence produced by the Appellant in all the three applications is the same whereas the evidence produced by each claimant is necessarily different on the question of compensation.

Mohinder Lal describes the accident thus:

The accident was the result of the negligence of the driver as he could not negotiate the curve due to rash driving. He was driving with one hand and was smoking with the other hand. He was also talking with the conductor by turning back. He was scolding the conductor about the checking which was done by the conductor.

Mohinder Lal is an educated person. He did his B.Sc. in 1973 and was going to Chandigarh to seek admission in M.Sc. His statement about the cause of the accident remains unchallenged. In cross-examination not a single question was asked about it. Rajinder Lal corroborates Mohinder Lal. Rajinder Lal is also an educated person. He had passed his B.A. examination in 1974 and was going to Chandigarh to seek admission in the Law College. His statement also goes

unchallenged. Jai Dial, a blacksmith, who was also travelling in the ill-fated but, deposes that the bus was being driven at a high speed and the driver, while driving, was looking back and talking with a passenger when the accident took place. Of course, he goes on to say that he could not say as to how the accident had happened since he had become unconscious.

8. The only other eye witness about the accident is the conductor who was produced by the Appellant. He is Kishori Lal. He states that just before the accident he heard a sound of "thud", the driver applied the brakes, and the accident took place. He also states that the road where the accident took place is straight. His statement shows that the bus had just negotiated a curve when he heard the sound of "thud". Now this witness had not made any statement even during the inquiry which was conducted by the Deputy Commissioner soon after the accident. For the first time, if the witness is to be believed, he disclosed the facts in the Court. In other words, he was making a statement about the accident practically after four years since he was examined on 25th May, 1978. He has not been believed by the Tribunal and I see no reason to differ. Indeed if this was the case of the Appellant then Mohinder Lal, Rajinder Lal and Jai Dial, who were examined in 1975, would have been suggested this defence in cross-examination.

9. The Appellant has examined Shri. S.K. Aggarwal, an Executive Engineer, Shri. Bugar Singh, Garage Supervisor, and Shri. R.S. Sonkhla, Assistant Engineer, to show that the accident was the result of a latent defect in the vehicle inas much as the two leaves on the right hand side of the spring had suddenly broken and these had jammed the streeing which resulted into the bus rolling down the khad.

10. Now S.K. Aggarwal was a member of the Inquiry Committee which was set up by the Government soon after the accident. The members of the Inquiry Committee had visited the place of the accident after three or four days. In the Court Aggarwal states that the bus had negotiated a number of turns before reaching the place of accident and so the driver must have been driving at a slow speed. This is only a conjecture and in the face of the evidence discussed above cannot be given any weight. Aggarwal noticed that there were skid marks showing that the driver had applied the brakes. These skid marks were visible upto a portion of 4 metres on the road and went upto the side of the berm from where the bus fell down. Aggarwal is an Executive Engineer of the Public Works Department and there is nothing on the record to show that he was a Mechanical Engineer. His evidence is no better than that of a lay-man.

11. Bugar Singh is the Garage Supervisor of the Appellant Corporation. He had reached the place of the accident within about an hour and a half. He states:

I found marks of application of foot-break on the road. It seemed that the driver tried his best to avoid the accident but as the two front spring leaves of the right side had broken, the accident could not be avoided. I saw the broken spring leaves.

Admittedly the broken spring leaves were seen by him when he went down the khad to the place where the bus was lying after the accident. Whether the accident was due to the breaking of the two front spring leaves, cannot be concluded from this statement since it is his surmise only. In cross-examination he admits that the spring leaves could be broken due to the fall of the bus also. He also admits that the bus was not being checked regularly since it was a new one. He states:

The accident bus was received in this Region in a new condition on 2nd November, 1973. It had travelled 40,000 kms upto the day of the accident. A bus ordinarily travels 3,00,000 kms. As it was a quite new bus, there was hardly any necessity to check it. It only required minor repairs or service which was done.

No maintenance log book of the bus was produced. He went on to admit in the cross-examination "I cannot say whether the spring leaves were broken prior to the accident or after the accident."

12. R.S. Sonkhla is working as Assistant Engineer, Machanical, with the Public Works Department. He visited the place of the accident after four days, that is on 22nd July, 1974. He did not prepare any inspection report about the damage to the bus. He only prepared a certificate Exhibit R-2 which baldly states that the accident was due to the breaking of the two front spring leaves which had jammed the steering resulting in the accident. Even during his examination in the Court he does not state how he came to that conclusion. The relevant part of his statement is:

On the request of the Police I inspected bus No. HPC-183 and issued the certificate Exhibit on 22nd July, 1974. I also inspected the spot. My certificate is Exhibit R-2. In my opinion the vehicle met with an accident due to mechanical defect. In my opinion the first and the second leaves of the vehicle were broken, causing the jamming of the steering wheel. When the steering wheel was jammed the bus dragged on to the side to which it was tilted. In my opinion the accident is pure accident and this is not due to any negligent or rash act of the driver.

Neither in his certificate nor before the Court he states any fact from which he came to the conclusion that the spring leaves had broken before the accident had taken place and that these spring leaves had jammed the steering. In cross-examination he admits that "the leaves can be broken in a fall of the vehicle like this" though he hastens to add that the leaves were broken first and then the vehicle went off the road when it was not controlled. He again does not give any reason why he came to that conclusion. An expert is expected to state the basic facts and then to give the reasons, keeping in view the basic facts, as to why he comes to a particular conclusion. It is then for the Court to accept the conclusion or to reject the same. Where an expert just gives the conclusion reached by him without giving any reason, the court cannot attach any weight to such opinions. It may, however, be noticed that this very witness admits that even if the leaves

were broken before the accident the brakes could be applied effectively and the vehicle could be stopped.

13. From the evidence it is apparent that near about the place of accident there are good many turns. Sonkhla tells us that at or about the place of accident the road is zig-zag though there is no sharp or blind turn. While driving the bus the driver apparently lost control of the bus, and though he applied the brakes he could not stop the bus which rolled down the khad.

14. In the facts and circumstances of this case the maxim *res ipsa loquitur* becomes applicable putting an onus on the Appellant to show that they had taken all reasonable care.

15. Mr. Khanna contends that the doctrine of *res ipsa loquitur* cannot be applied since the Appellant had shown the cause of the accident.

16. Now it is true that the doctrine of *res ipsa loquitur* is not a magic formula but is only a rule of evidence. Where the facts speak for themselves, an onus is cast on the owner and the driver of the omnibus to show that they had taken all reasonable care and that the accident had taken place despite such care. In my opinion this onus cannot be discharged by giving some explanation. Before one can be said to have discharged the onus it is one's duty to prove according to law that the explanation given is true and reasonable.

17. The doctrine of *res ipsa loquitur* is explained in Winfield and Jolowicz on Tort 11th edition, page 99, in the following words:

In order to discharge the burden of proof placed upon him it is usually necessary for the Plaintiff to prove specific acts or omissions on the part of the Defendant which will qualify as negligent conduct. Sometimes, however, the circumstances are such that the Court will be prepared to draw an inference of negligence against the Defendant without hearing detailed evidence of what he did or could not do. Thus, for example, the presence of an unlighted vehicle on the road at night will, if there is no other lighting, be regarded as *prima facie* evidence of negligence on the part of the driver. It is important to appreciate, however, that this means no more than that, in the absence of an explanation from the Defendant, the Plaintiff has discharged his burden of proof. The inference of negligence is by no means irrebuttable, and the nature of the evidence required from Defendant in rebuttal will depend in each case on the strength of the inference against him and the standard of care called for in the circumstances. In *Henderson v. Henry E. Jenkins and Sons* (1972 A.C. 282), where the Plaintiff's husband was killed by a heavy lorry whose brakes failed on a steep hill, the Defendants pleaded that the brake failure was due to a latent defect in the main brake fluid pipe. They proved that they had cleaned and carried out visual inspections of the pipe at the proper intervals and that the cause of its failure was corrosion in a part of the pipe which could only be inspected by removing the pipe itself from the vehicle. Notwithstanding that neither the manufacturers of the vehicle nor the Ministry of Transport recommended removal of the pipe for

inspection in normal circumstances, it was held by a majority of the House of Lords that the Defendants had not done sufficient to rebut the inference that they had been negligent: they should have gone to show that nothing had occurred in the life of the vehicle which would cause abnormal corrosion or call for special inspection or treatment... in each case the question is the same: has the Defendant rebutted the inference of negligence raised against him by the Plaintiff's evidence?

While discussing the conditions for application of this doctrine on page 100 it is stated:

The principal requirement is that the mere fact of the accident having happened should tell its own story and raise the inference of negligence so as to establish a prima facie case against the Defendant. The story must be clear and unambiguous; if it may tell one of half a dozen stories the maxim is inapplicable.

It is also stated that the accident must be such as should not have happened in the ordinary course of nature without negligence. The burden on the Defendant is described thus (on page 104):

What, then, must the Defendant do to discharge this burden? In principle, if the maxim is no more than a convenient way of expressing the idea that the Plaintiff can raise a prima facie case by circumstantial evidence, the answer can only be that he must do sufficient to rebut the inference of negligence raised by the Plaintiff, and what that entails will, as we have seen, carry with the strength of the inference and the standard of care called for in the circumstances. Certainly the Defendant will be exonerated if he shows how the accident actually occurred and if this true explanation is consistent with due care on his part; and if he cannot do this he will still escape liability if he proves that there was no lack of care on his part or on the part of persons for whom he is responsible."(emphasis supplied)

18. Lord Normand in his speech in *Barkway v. South Wales Transport Co. Ltd.* 1950 AELR 1 392, said:

The fact that an omnibus leaves the roadway and so causes injury to a passenger or to someone on the pavement is evidence relevant to infer that the injury was caused by the negligence of the owner, so that, if nothing more were proved, it would be a sufficient foundation for a finding of liability against him. It can rarely happen when a road accident occurs that there is no other evidence, and, if the cause of the accident is proved, the maxim *res ipsa loquitur* (SIC) is of little moment. The question then comes to be whether the owner has performed the duty of care incumbent on him, or whether he is by reason of his negligence responsible for the injury. The maxim is no more than a rule of evidence affecting onus. It is based on common sense, and its purpose is to enable justice to be done when the facts bearing on causation and on the care exercised by the Defendant are at the outset unknown to the Plaintiff and are or ought to be within the knowledge of the Defendant.

Lord Porter in his speech said (on page 394):

The doctrine is Dependent on the absence of explanation, and, although it is the duty of the Defendants, if they desire to protect themselves, to give an adequate explanation of the cause of the accident, yet, if the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether, on the facts as established, negligence is to be inferred or not.

19. In *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, the facts were these. One Dr. Balkrishna was driving his car on a road which had stone dividers in the middle. A truck came from the opposite side at a high speed and after crossing the road dividers hit the car damaging it and injuring Dr. Balkrishna and his co-passenger. The defence of the truck owners was that all precautions to keep the lorry in road worthy condition were taken but at the material time the "axle brake ring"(SIC) of the motor lorry came out and the driver, therefore, lost control of the vehicle, and because of this defect, which can develop in a running car, the driver had lost control of the steering wheel resulting in the accident. It was found that there was no such thing as "axle brake ring" although the owners explained that what they meant by "axle brake ring" was the brake link on the rod end. The Supreme Court ruled:

In order to sustain a plea that the accident was due to the mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care... The burden of proving that the accident was due to a mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and that despite such care the defect remained hidden.

It was also held that it is the duty of the owner not only to point to the mechanical defect but also to plead specifically that the defect is a latent defect and could not have been discovered by the use of reasonable care. The Court also ruled that though Section 110-A of the Motor Vehicles Act does not in term lay down that the compensation can be awarded only if negligence is proved on the part of the Defendants, it is but elementary that the owner's liability and the claimant's right(SIC) to receive compensation arises only if there has been a failure on the part of the owner to discharge a duty cast on him by law. In other words, unless it is proved that there has been negligence on the part of the Defendant, the claimant is not entitled to compensation simply on the ground that the accident had taken place resulting in a death or an injury. The Supreme Court thus overruled and reversed the decisions of the High Courts of Bombay, Andhra Pradesh and Patna to the contrary. However, the Appellant cannot draw any help from this judgment since in the present case the onus was on it to prove that the accident had taken place because of a latent defect which could not be discovered by the use of reasonable care.

20. Mr. Khanna relies on a judgment of the Delhi High Court in *Mandi Kulu Road Transport Corporation v. Janak Raj Singh and Ors.* 1968 A.C.J. 363. In that case

it was held that the accident was due to the breaking of the stub axle of the vehicle which was held as a latent defect which could not be discovered by any amount of diligence on the part of the owner. He also cites a judgment of the High Court of Madhya Pradesh in *Ram Dulare Shukla v. Madhya Pradesh State Road Transport Corporation and Ors.* 1970 A.C.J. 127, in which shackle pin of the wheel of a bus slipped resulting in the accident. It was held that the accident was caused by latent defect. A sudden rupture in the steering mechanism resulting in the vehicle suddenly veering across the road and dashing against another vehicle because of the complete failure of the steering and braking system was held as a latent defect by the Privy Council in *Tan Chye Choo and Ors. v. Chong Kew Moi* 1970 A.C.J. 325. The High Court of Karnataka in *Padmavati and Ors. v. Dugganaika and others* 1975 A.C.J. 222, held that the flying away of the right front, wheel of the jeep from the axle Without any evidence that the defect was patent and the jeep was being driven rashly and negligently by the driver was a case of sheer accident.

21. All these cases were decided on their own facts and can be of no help to the Appellant. I have, therefore, no hesitation in upholding the judgment of the Tribunal that the "Appellant has failed to prove that the accident was due to any latent defect and that the spring leaves had broken and had jammed the steering mechanism resulting in the accident.

22. I will now deal with the Cross Objections of the Respondents.

23. In F.A.O. No. 90 of 1980, Ved Prakash was aged 26 years at the time of his death. He was a forest contractor having an annual income of Rs. 7,350 . It has been found by the Tribunal that he was giving Rs. 500 per month to his wife (Shrimuti Kusum). It applied "multiplier method" and chose 15 as the multiplier. However, it came to the wrong conclusion that 6000×15 came to Rs. 50,000.

24. A Division Bench of this Court in *The State of Punjab v. H.L. Kochhar* ILR 1980 H.P. 271, following an earlier Division Bench judgment of this Court in *Himachal Road Transport Corporation v. Jai Ram etc.* ILR 1979 H.P. 267, found that the "multiplier method" serves the best the compensation contemplated by Section 110-B of the Motor Vehicles Act. In Jai Ram's case the Bench had pointed out that in the case of a deceased who was hale and hearty and was round about 35 years of age at the time of his death, it would be safe to take the multiplier ranging from 15 to 18 years provided there were no other compelling circumstances for adopting a multiplier which was lower or higher than these limits. In Kochhar's case one of the deceased was 40 years old at the time of her death and it was found that it would be safe to take 17 years multiplier. One of the deceased was 27 years of age at the time of his death. The fair multiplier was found to be 22.

25. In the instant case Ujjal Ram, father of the deceased Ved Prakash, came in the witness box. He was of 70 years. He deposed that his father had died at the age of 100 years. In other words, there is a history of longevity in the family of

the deceased. In my opinion the fair multiplier should be 22. The total amount would thus come to $6000 \times 22 = 1,32,000$. To this should be added Rs. 3,000, the conventional figure of damages for loss of expectation of life. Thus the total compensation to which the claimants are entitled would come to Rs. 1,35,000. They will be entitled to interest at the rate of 6 from the date of the award of the Tribunal till payment.

26. Now only the widow, Kusum, and the minor son, Sunit Kumar, have been found entitled to compensation. They will be entitled to receive the compensation in equal shares. Half of the amount, which is the share of the minor, is directed to be deposited in a fixed deposit account which will bring the maximum return as interest. This deposit will be made by the Tribunal. The minor's mother, Kusum, will be entitled to receive interest from this amount in order to bring-up the minor. When the minor attains majority, the amount will be paid to him. II during the minority some amount becomes necessary to be spent on the welfare of the minor, Kusum will make necessary application according to law for the same.

27. Shrimati Kusum will be paid Rs. 15,000 out of her share of the compensation. The rest of the amount will be deposited in a fixed deposit account for 10 years. Kusum will be entitled to receive the interest, if she so desires, in order to maintain herself. This has been done in order to ensure that the amount goes to the young widow and nobody defrauds her. Cross Objection is, therefore, allowed in the terms already set out.

28. In F.A.O. No. 91 of 80, Cross Objection has been filed on behalf of Rajinder Lal. Rajinder Lal is now working as an Advocate. The only disability he suffers because of the injury due to the accident is that he cannot raise his arm above the level of his shoulders. He has already been awarded Rs. 30,000 as compensation. I have scrutinized the record and I find that 4 just compensation has been paid to him. The Cross Objection is therefore, dismissed. However, I find that the Tribunal was not justified in ordering that the amount of compensation awarded to him be deposited in a fixed deposit. I would, therefore, order that this amount be paid to him straight away.

29. In F.A.O. No. 89 of 80, Mohinder Lal has filed Cross Objection. He had suffered minor injuries in the accident which were simple in nature. He is now normal and is attending to his work. He has been awarded Rs. 5,000. I see no justification in raising this amount. The Cross Objection is, therefore, dismissed.

30. The result is that all the appeals are hereby dismissed. Cross Objection of Shrimati Kusum and another, as ordered above, is allowed. The Respondents will be entitled to their costs in the appeal. One set of costs as regards the counsel's fee.