
(1965) 08 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. 96 of 1962

The Unique Motor and General Insurance Co. Ltd. and Another	APPELLANT
Vs	
The New India Assurance Co. Ltd. and Others	RESPONDENT

Date of Decision : 16-08-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1939 — Section 110B

Citation : (1965) 08 P&H CK 0002

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; A.M. Suri for Respondent No. 1, J.S. Wasu for Respondent No. 2 and H.L. Sarin, A.L. Bahri and Asha Kohli, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Sharma, J.—This First Appeal by the Unique Motor and General Insurance Company Limited, Bombay and Bikram Singh Appellants is directed against the order of the Motor Accidents Claims Tribunal, Punjab (hereinafter referred to as the Tribunal) who under the provisions of the Motor Vehicles Act, 1939 allowed Rs. 6,600/- as compensation to Piara Singh for the injuries received by him in the accident which took place on 3rd July, 1959. Rs. 4,400/- were to be paid by the Unique Motor and General Insurance Company Limited, Bombay, and the balance of Rs. 2,200/- was made payable by the New India Assurance Company Limited, New Delhi, insurer of bus No. PNB-1530, by which the injured was traveling at the time of the accident. The Unique Motor and General Insurance Company Limited, Bombay was the insurer of truck No. PNE-4809 which collided with the bus and in the course Piara Singh received the injuries.

2. The New India Assurance Company Limited, New Delhi, have also filed cross-objections under Order 41, Rule 22 of the CPC contesting their liability to pay more than Rs. 2,000/- as compensation to the injured person. They pray that the

award of the Tribunal against them be reduced to Rs. 2,000/- only.

3. The fact relevant for the disposal of the appeal and the cross-objections may briefly be stated. Piara Singh on 3rd July, 1959 was traveling as a passenger in bus No. PNE-1530, which was plying between Bhatinda and Faridkot. Narain Singh driver was driving the bus. When it reached near village Gondhara at about 5 P.M. truck No. PNE driven by Megh Raj was seen coming from the opposite direction. The truck and bus collided as a result of which Piara Singh's right hand was seriously injured. He was removed to Faridkot hospital where he remained as an indoor patient for sometime. Dr. Jagat Ram Khatri, A. W. 2, on examination noticed 13 injuries on his body, out of which 5 were grievous. Several bones of his right hand were found fractured He filed a petition u/s 110-B of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act), before the Tribunal claiming Rs. 20,000/- by way of compensation. He mentioned therein that he was earning about Rs. 300/- P. M. as wages at the relevant time. The application proceeded against Managing Director, Gondhara Transport Company Private Limited, Faridkot (Respondent No. 1) owner of the bus, the New India Assurance Company Limited New Delhi (Respondent No. 2), the Unique Motor & General Insurance Company Limited, Bombay (Respondent No. 3) and Bikram Singh (Respondent No. 4) owner of the truck The Respondents resisted the above claim application.

4. On the pleadings of the parties the Tribunal framed the following issues:-

1. Whether the accident was due to the rash and negligent act of the bus driver or the truck driver or due to contributory negligence of both or of the applicant ?
2. What is the quantum of compensation due and from whom ?
3. Relief.

The parties did not claim any other issue. The Tribunal after considering the evidence led by the parties came to the conclusion that the driver of the truck was mainly responsible for the accident but driver of the bus was also liable to some extent. He fixed the latter's liability at one-third and that of the truck driver at two-third. He did not find any material on the record to warrant contributory negligence on the part of Piara Singh applicant towards the accident. He assessed the compensation at Rs. 6,600/- and made the two Insurance Companies pay in the proportion already recapitulated. The learned Counsel for the Appellants urged that the evidence on the record indicated that the accident took place more due to the negligence of the bus driver and that in any case both the drivers were equally responsible for it and that being so the Tribunal should have ordered payment of the compensation admissible to the applicant in equal shares. He also maintained that the amount of compensation awarded to the applicant was excessive and not calculated in accordance with the accepted principles. The applicant examined Narain Singh A. W. 1 and Harminder Singh A. W. 3 besides himself as A. W. 4. Narain Singh A.W. 1 was driving the bus at the time of the accident. He described that the truck was seen coming by

him from the opposite side at excessive speed and was also wobbling and so he in order to protect his bus, turned more to the left side of the road but in spite of it the truck dashed into the right side of his bus. He further stated that as a result of the accident Piara Singh's right arm got fractured. The witness also received injuries and both of the injured persons were taken to the hospital. He admitted that the truck must have been running at the speed of 50 miles per hour when it collided with the bus. Megh Raj driver of the truck was convicted for rash and negligent driving and sentenced to one year's rigorous imprisonment by the trial Court. It may also be mentioned here that the witness during 25 years of his service was involved for the first time in the present accident. Harminder Singh A. W.3 was traveling alongwith Piara Singh applicant in the bus at the time of the accident. According to him, the truck was seen by him coming from the opposite side and that both the drivers of the truck and bus lost control of their vehicles and this resulted in the accident. Piara Singh applicant as P. W. 4 deposed that the bus was going on its proper side at a speed of 25 or 30 miles per hour, but the truck came from the opposite side at a fast speed and as the driver of the truck could not control his vehicle, it dashed into the bus, he then described the injuries received by him as a result of the accident. Mohinder Singh, Panchayat Officer (R. W. 1) stated that he also was traveling in the ill-fated bus which was going at a speed of 40 to 45 miles per hour when the driver being an old man lost control of the vehicle and as a result it dashed into the truck coming from the opposite side. He was not examined by police and he was not able to describe the portion of the truck which came into collision with the bus. He was also not able to explain whether the truck at the time of the accident was on the Kacha or Pucca portion of the road. He did not recollect whether the driver of the truck was a Hindu or Sikh. His statement was ignored by the Tribunal because the same was vague and indefinite. I am also not inclined to attach any value to it. Megh Raj R. W. 2 was the driver of the truck. He deposed in terms of the statement of Mohinder Singh. He admitted having been convicted by the Magistrate for rash and negligent driving of his truck. His statement also failed to impress the Tribunal and also this Court. Santokh Singh R. W. 3 also supported Megh Raj R. W. 2. He lodged the first information Report which was different from what he gave out before the Tribunal. He was disbelieved and for good reasons because of the two contradictory statements made by him on the same affair. The Tribunal relying on the statements of Harminder Singh and Piara Singh conclude that the driver of the truck was driving the truck at a high speed and as he could not control it, the same collided with the bus causing injuries to the applicant. His conclusions could not be assailed on any cogent ground. The driver of the truck was expected to be more careful when crossing the bus which was carrying passengers. His negligence to do so cannot be lightly ignored. Therefore it could legitimately be held that he was more responsible for the unfortunate accident than the driver of the bus. Consequently Tribunal's order fixing the liabilities of the truck and bus drivers in the proportion of two to one is sound in law and based on facts firmly brought out on the record. There is hardly any justification for coming to any other

inference.

5. The learned Counsel for the Appellants' argument that the Tribunal has not correctly assessed the amount of compensation admissible to the applicant is devoid of any force. The applicant gave out that sometime back he was working as an Accountant in the Gondhara Transport Company and was getting Rs. 155/- P. M. as his salary and that he was doing nothing after the accident because of the injury to his right hand. Dr. Jagat Ram Kharti A. W. 2 opined that the disability of the applicant's hand was more than 90 per cent. The Tribunal observed that the applicant could have earned at least Rs. 100/- P. M. for 5 years more and so the loss to him on account of the injury came to Rs. 6000/-. His estimate of the loss to the applicant is on moderate side and indeed cannot be interfered with at this stage. In this connection, reference may be made to the case of Vanguard Fire and General Insurance Co. Ltd. Vs. Sarla Devi and Others, wherein it was held:

That the appellate Court should not interfere with the amount of damages assessed by the trial Court unless it is satisfied that the trial Court had acted upon a wrong principle of law or the amount awarded was so unreasonably high that it must be assumed that the Court had been influenced by some wrong principle of law.

The same view was reiterated subsequently in State of Punjab and Ors. v. Mrs. Phool Kumari and Ors. 1962 P.L.R. 912 The order of the Tribunal as regards the amount of compensation admissible to the applicant and the proportion in which the same had to be paid by the two Insurance Companies is unexceptionable.

6. The learned Counsel for Piara Singh Respondent contended that the cross-objections put in by the New India Assurance Company Limited were not entertainable under the law. In support of his argument he relied on AIR 1944 433 (Lahore) which laid down that a Respondent cannot file cross objections against a Co-respondent when he has not appealed from the decree and the cross-objections do not in any way affect the Appellant. I have not been referred to any authority to the contrary. Therefore, I hold that the cross-objections do not lie.

7. For the reasons given above, both the appeal and cross-objections are dismissed with costs.