
(1983) 09 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. III of 1977

Union of India (UOI)

APPELLANT

Vs

Pushpa Thakur and Another

RESPONDENT

Date of Decision : 05-09-1983

Acts Referred:

Citation : (1983) 09 P&H CK 0021

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

Bench : Single Bench

Advocate : Harbhagwan Singh, A.G. and P.S. Duhan, for the Appellant; G.S. Chawla, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—On August 28, 1972 at about 9 a.m. a military truck, coming from the side of Delhi went on to the wrong side of the road and hit into a culvert. There were four persons sitting on this culvert at that time. They all sustained injuries. One of them, namely Bhim Singh later succumbed to his injuries and died. The other Miss Pushpa Thakur, suffered fractures on both of her legs leading to amputation of her right leg. This accident took place near the bus stop on the Delhi-Mathura road Sawli.

2. The Tribunal found that the accident here had taken place entirely due to the rash and negligent driving of the truck driver. A sum of Rs. 50,000/- was awarded as compensation to the claimant Miss Pushpa Thakur for the injuries suffered by her and a similar amount, as compensation, to the legal representatives of Bhim Singh, deceased.

3. This order will dispose of the two separate appeals filed by the Union of India challenging the award of compensation to the claimants in these two cases.

4. It was the contention of Mr. P.S. Duhan. Deputy Advocate General (Haryana) that the accident in this case could not be attributed to any negligence on the part of the truck driver and at any rate the Union of India could not be held liable

as the accident occurred in the exercise of the sovereign functions of the Union of India.

5. It is the common case of the parties that Miss Pushpa Thakur, Bhim Singh, deceased and two other persons were sitting on a culvert when the military truck came on to the wrong side of the road and hit into it, causing injuries as mentioned above. The claimants blamed this accident upon the negligence of the truck driver, pleading that it had been caused by his rash and negligent driving as it was being driven at a very fast speed without proper care. The plea of the Respondent-truck driver as also Union of India, on the other hand was that there was a bus standing in the middle of the road. The driver of this bus all of a sudden moved his bus towards the right, thereby making it impossible for the truck driver to control his vehicle and the accident was, therefore, not caused by any negligence on his part. It was denied that the truck was being driven at a fast speed.

6. The version of the accident as per the case put forth by the claimants was deposed to by Miss Pushpa Thakur, when she appeared in the witness box, as PW 4. It was her testimony that they were sitting on the culvert, while waiting for a bus going towards Delhi, when a Haryana Roadways bus came from Palwal and stopped on the other side of the culvert. All of a sudden, a military truck came from the same side, that is, the side of Palwal (Delhi) at a fast speed and hit into them. To a similar effect was the statement of PW 2 Mrs. F.B. Masih and PW 3 Mrs. Vidya, who testified that they too were sitting on the culvert along with Miss Pushpa Thakur and Bhim Singh, deceased, when this accident occurred. They too, it was deposed, received injuries at that time. Besides this there is the testimony of PW 7 Kishan Singh, patwari, who stated that he was sitting at the bus stop when this accident occurred. According to him, the military truck tried to pass between the standing bus and the culvert, when it hit into the culvert where four persons were sitting. The bus, he stated, was parked on the left side on pucca road, that is, its correct side.

7. The driver of the military truck appeared as PW 2 and deposed that he saw the bus parked on the left side of the road near the culvert but just as he was to pass this bus, the driver thereof without giving any signal turned towards its right and then in order to avoid an accident with the bus, he diverted his vehicle towards the right and it then went and struck against the culvert. He accepted the fact that there were persons sitting on the culvert, who received injuries at that time.

8. What emerges from the evidence discussed above is that the military truck went on to the wrong side of the road and struck against the culvert. All the witnesses examined by the claimants testified that the truck was coming at a fast speed at that time. This was no doubt denied by RW 2 Pandukhet, but the fact remains that there is no suggestion that he tried to slow down the truck or stop it nor is there any explanation why he did not try to do so. Even if, it be assumed, as stated by him that the bus standing there suddenly turned towards

its right, there was undoubtedly a duty of care which the truck driver owed to other road users, including the claimant Miss Pushpa Thakur and Bhim Singh, deceased. The facts and circumstances of this case do not in any manner suggest that he fulfilled or observed it. Indeed the fact that the truck was neither slowed down nor stopped is a circumstance which supports the evidence of the claimants that the truck was coming at a fast speed.

9. Further even if it be assumed that there was some negligence on the part of the bus driver in this accident, it would not be a matter of any consequence so far as the liability of the truck driver stood with regard to compensating the claimants for the loss suffered by them. The truck driver and the bus driver could at best be as joint tortfeasors giving thereby a right to the truck driver to seek contribution from the bus driver, but in so far as the claimants are concerned, the liability of the truck driver would extend to the entire amount awarded.

10. In the facts and circumstances of this case and for the reasons discussed above, there can be no manner of doubt that the accident in the instant case took place entirely due to the rash and negligent driving of Pandukhet, the driver of the military truck.

11. Further, counsel for the Appellants could not point to any circumstance to warrant any reduction in the amount awarded as compensation, to the claimants. Indeed this aspect of the case was not in any manner challenged. It follows that the driver of the military truck was clearly liable for the entire amount awarded.

12. The main question which arises in this appeal is with regard to the liability of the Union of India for payment of the amount awarded. The plea raised being that the accident here had occurred in the exercise of the sovereign functions of the State and therefore, no action lay against the Union of India

13. A reference to the evidence on record would show that the truck in question was part of the First Armed Division. This Division had moved to Ferozepore during the 1971 Indo-Pak war. When the war was over, this Division was ordered to move back to its permanent location at Jhansi and it was during this movement that this truck met with the accident. At that time this truck was carrying rations and also some sepoy. It was these facts which were stressed by the Deputy Advocate General with a view to claim immunity for the Union of India on the ground that the truck was at the relevant time engaged in the sovereign functions of the State and therefore, no liability lay upon the Union of India.

14. The matter regarding the liability of the State for the tortious act of its servants was considered by a Full Bench of this Court in *Bakshi Amrik Singh v. Union of India* 1974 A.C.J. 105 (P. and H.). After a review of various authorities on this subject it was held that the State could not be liable if the tortious act complained of had been committed by its servant in the exercise of its sovereign powers, by which it was meant, powers that could not be lawfully exercised except by a sovereign or a person by virtue of delegation of sovereign rights- It

was further observed that though sovereign functions of the State had not been exhaustively enumerated, certain rules of guidance appeared well settled. Amongst the rules so set out was that for determining whether the claim for immunity should 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. Where the State seeks immunity for the negligence of its servants, the area of employment referable to sovereign powers must be strictly determined. In other words, the Court must always find that the impugned act was committed in the course of an undertaking or employment which was referable to the exercise of delegated sovereign powers.

15. Further, as regards the military, it was laid down that though maintenance of the army was a sovereign function of the Union of India, it did not follow that it was immune from all liability for all tortious acts committed by army personnel.

16. In *Bakshi Amrik Singh's case* 1974 A.C.J. 105 (P. and H.) the accident had occurred when a military truck employed for checking military personnel on duty met with an accident with a car. It was held that the Union of India was not liable as the accident had occurred in the exercise of sovereign powers. In coming to this conclusion, the Court took note of the fact that it was only a military-man who would be deputed to check military personnel and an army vehicle had been put at the disposal of an armyman for this purpose and further that the checking of military personnel was intimately connected with army discipline and was thus a function which could only be performed by member of the armed forces.

17. Another relevant precedent concerning an accident with a military vehicle is provided by the judgment of the Division Bench of the High Court of Madras in *Thangarajan Vs. Union of India (UOI)*, . The accident here took place when a military lorry was carrying gas from a factory to a ship belonging to the Indian Navy. It was held that the conclusion was irresistible that the military lorry was being driven in the exercise of sovereign functions of the State so as to exclude the liability of the Union of India.

18. Applying the principles set out in *Bakshi Amrik Singh's case* 1974 A.C.J. 105 (P. and H.) as also *Thangarajan Vs. Union of India (UOI)*, , it cannot but, be held that the accident had also occurred during the exercise of sovereign functions of the State and consequently the Union of India could not be held liable for the tort committed by its servant, the driver of the military truck. The truck being employed at the relevant time for the movement of an Armed Division of the Indian army from the front to its permanent location. It follows, therefore, that the Union of India is not liable for the amount awarded as compensation to the claimant Miss Pushpa Thakur.

19. In dealing with the other appeal filed by the Union of India against the legal representative of Bhim Singh, deceased, it is significant to note that this appeal has been filed only against one of them, namely Kanhaiya Lai son of Bhim Singh,

deceased. The claimants in this case were not only Kanhaiya Lai but also his widow and other children. A sum of Rs. 50,000/- had been awarded to them all. The amount awarded was not apportioned in any particular share amongst these claimants and consequently, they all must be deemed to have equal share therein. Here no appeal has been filed against any of these claimants, other than Kanhaiya Lai, it follows that the appeal of the Union of India can succeed only in respect of the share of Kanhaiya Lai for the amount awarded and no more.

20. Before concluding, the plea made by the Supreme Court for enactment of legislation to regulate and control the claims of the State for immunity in such cases must again be emphasised and reiterated. It is indeed cruel to deny compensation from the Union of India to claimants like Miss Pushpa Thakur, who lost her right leg in the accident and suffered a fracture in the other or to the legal representatives of Bhim Singh, deceased, merely because the victims here had the privilege of being knocked down by a military vehicle being used in the exercise of sovereign functions of the State. As is well known award of compensation merely against the offending driver alone is often an illusory relief considering his poor financial capacity to meet such liability. Having regard, therefore, to the sad and compelling circumstances of the claimants as have arisen on account of the accident here a strong recommendation is made to the Union of India as also to the Chief of Army Staff, New Delhi to make an ex-gratia payment of Rs. 50,000/- as compensation to Miss Pushpa Thakur and to the extent of the share of Kanhaiya Lai in the compensation awarded to the legal representatives of Bhim Singh, deceased. Pending consideration of this recommendation, it is directed that no recovery be made from the claimants of any amount paid to them under the award made by the Tribunal. With these observations the appeal filed by the Union of India against Miss Pushpa Thakur is hereby accepted and the other to the extent of the share of Kanhaiya Lai for the amount awarded. It is clarified, however, that the driver of the vehicle involved in the accident shall of course be liable for the entire amount awarded. In the circumstances there will be no order as to costs.