
(1985) 07 AHC CK 0021

In the Allahabad High Court

Case No : First Appeal From Order No's. 49, 61, 64 of 1978 and 303 of 1980

U.P. State Road Transport Corporation

APPELLANT

Vs

Kulwant Singh and Others

RESPONDENT

Date of Decision : 19-07-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 78

Citation : (1985) 2 ACC 472 : (1987) ACJ 605 : (1988) 63 CompCas 25

Hon'ble Judges : B.D. Agrawal, J

Bench : Single Bench

Advocate : Vineet Saran, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agrawal, J.—These are connected appeals u/s 110D of the Motor Vehicles Act, 1939.

2. The accident giving rise to these proceedings occurred on September 29, 1973, around 2.30 p.m. Fiat Motor Car No. UPS 5498, belonging to Munish Kumar Jain, advocate, and self-driven was on its way to the Eastern Kutcheri Road from the Budhana Gate in Meerut. Kulwant Singh, advocate, was sitting by his side and Brahma Pal Singh, advocate, was on the back seat. All the three are practising lawyers in Meerut Civil Court: The car had arrived at the Syndicate Bank crossing, when, according to the claimants, it was dashed on its right side by Bus No. USA 7103 belonging to the U.P. State Road Transport Corporation and driven by Satya Prakash. The car was to its left with a speed of about 20 km. per hour, the bus was moving fast at a speed of 50-60 km. per hour and it was to its right. The car was smashed and dragged for nearly 10-12 paces. All the three occupants of the car were injured and the car was badly damaged. The injured remained under medical treatment and suffered loss of practice besides undergoing considerable mental and physical pain and anguish.

3. The Corporation resisted the claims refuting that the accident took place due

to rash or negligent driving of the bus. According to them, the car driver was responsible for what happened. The damages claimed were also refuted as highly excessive and imaginary.

4. The Tribunal, under its award dated September 21, 1977, allowed the claims in part. The claim raised by Kulwant Singh for Rs. 69,000 was allowed for Rs. 24,000 only ; the claim of Brahma Pal Singh for Rs. 42,000 was allowed for Rs. 13,000 and the claim of Munish Kumar Jain succeeded for Rs. 17,000 while he had asked for Rs. 59,600.

5. Aggrieved, the corporation has preferred these appeals against the award. The claimants have filed respective cross-objections for the amount for which the claims were dismissed. These were heard together.

6. Learned counsel for the corporation-appellant urged that the Tribunal has erred in finding that the accident took place due to rash and negligent driving of the bus driver. The submission in the alternative is that Munish Kumar Jain driving the car breached regulations of the Tenth Schedule read with Section 78 of the Motor Vehicles Act and there was contributory negligence on such account, and it was further argued that there has to be apportionment made in approximate proportion to the respective guilt. Having heard learned counsel at length and, on perusal of the record, I am unable to agree.

7. Evidence placed on the record in this case is cogent, definite and un-rebuttal from the claimants' side. P.Ws., Kulwant Singh, Brahma Pal Singh and Munish Kumar Jain are the victims who admittedly received injury in the transaction. P.W., Dr. R. P. Gupta, and P. W., Ram Kumar Gupta, advocate, are other eye witnesses. They were on a motor cycle and a scooter respectively at the relevant time and on way from Eastern Kutchery Road. Their presence too has not been doubted. The driver of the bus could be a very material witness in rebuttal. The corporation did not examine him nor is any explanation assigned for his non-production. No other witness was produced either in defence.

8. From the account narrated on the claimants' side, the details relevant are fairly borne out. The bus was on the highway from Hapur to Meerut. At or near the Syndicate Bank in Meerut, there is an intersection. The Budhana road is about 20-25 feet in width at that place. The car was coming from Budhana gate towards the Eastern Kutchery Road where P.W., Brahma Pal Singh, resides. To the intersection aforesaid, it came from the side road. The car had already covered 60% to 70% of the intersection which is more than half thereof, which was to its left and driven at a slow speed of nearly 20 k.m. per hour. The version on these crucial points is consistent and throughout unshaken and nothing in cross-examination could be suggested to detract therefrom. The bus driven at a high speed dashed against the car, it is worthy of note, on its right side and dragged this on for 10 to 12 paces which speaks for itself both as to the high speed of the bus and in regard to the bus being on its right instead of moving towards the left as it should have. The bus came moreover without warning and

reckless of traffic which may have entered the intersection even more than half way earlier. In evidence, there is no counter-version from the other side in the positive nor could the claimants' contention be routed in cross-examination.

9. The ordinary standard of care which is adopted is what is called reasonable care, viz., that of a reasonable man. The reasonable man knows the standard of care, which the law exacts from him, to be complied with. He is presumed to be free both from over-apprehension and from over-confidence. The standard of care required under various different sets of circumstances is derived from common sense, namely, what is reasonable under such circumstances but situations do tend to repeat themselves. In the words of Charlesworth and Percy on Negligence, seventh edition (1983), page 374, "frequently one finds that where, under similar circumstances, a person has done something, which has been held previously to have been reasonable, liability may be avoided, again." Regulation 6 of the Tenth Schedule read with Section 78 of the Motor Vehicles Act is illustrative of this rule of prudence. It provides:

" The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon."

10. This clearly enjoins upon the driver to slow down when nearing a road intersection or a road junction and it prohibits entry without ensuring that this may be done without risk of safety of others thereon. It is difficult, in my opinion, to subscribe to the view of learned single judge in Hoshiarpur National Transporters (P.) Ltd. v. Motor Accidents Claims Tribunal [1980] ACJ 83 (P & H), cited for the appellant that this regulation casts no duty on the driver running on the main road to slow down his vehicle. There seems no rational basis for such exclusion. The driver on the main road as well approaches the intersection or interjunction or enters it, as the case may be, it is not the driver of a vehicle from the side road who does this. Experience shows that sometimes vehicles suddenly emerge from a side road although it is not reasonable for their drivers to do so. There is negligence in not keeping a good look while approaching the intersection and in not slowing down when the intersection is in sight (see Smt. Vidya Devi and Another Vs. Madhya Pradesh State Road Transport Corporation and Another, . In the instant case, the car having negotiated more than half of the intersection the bus driven on the main road had surely to slow down to avert a collision. There is nothing on record which may lead one to believe that the car could not be visible or that the bus was so close to the car as to render the application of brakes ineffective. It also remains unexplained what could impel the bus driver to move to his right instead of taking it to the left in the normal course. The rashness in speed is adequately exhibited by the extent of damage caused to the car on its right and the injuries resulting to its occupants.

11. The appellant's counsel laid stress on arguing that Munish Kumar Jain (PW) who drove his car was guilty of contributory negligence. There was, it is said,

breach of Regulation 7 on his part which reads as under:

" 7. The driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand."

12. In seeking to invoke this rule in the present, it should not be forgotten that the car had at the relevant time entered already more than half of the intersection. There being no other traffic in sight at that moment the car was driven ahead. P.W., Munish Kumar, testified that the bus could not be visible except a few seconds before the accident took place. There being nothing to contradict this version or to cast doubt on its authenticity, the appellant cannot maintain that the car should have been kept stationary even though the road was clear and seemingly bereft of traffic.

13. It may not be doubted that the plaintiff's negligence is contributory to the collision if there is not a sufficient separation of time, place or circumstances between the plaintiff's negligence and the defendant's negligence. The concept of contributory negligence is thus explained by Charlesworth and Percy on Negligence, fifth edition, pages 141, 145, 146 :

" It means that there has been some act or omission on the plaintiff's part which has materially contributed to the damage caused and is of such a nature that it may properly be described as negligence only in the sense of careless conduct and not given its usual meaning. Thus, it is an expression meaning negligence materially contributing to the injury, the word " contributory" being regarded " as expressing something which is a direct cause of the accident". As has been explained already in Chapter I, " negligence" ordinarily means breach of a legal duty to take care, but when used in the expression " contributory negligence" it does not mean breach of any duty at all. It means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes, at least partially, "the author of his own wrong ".

14. The difference in the meaning of " negligence," when applied to a plaintiff, on the one hand, and to a defendant, on the other, is pointed out by Lord Simon, where he said, "when contributory negligence is set up as a defence, its existence does not depend on any duty owed by the injured party to the party sued, and all that is necessary to establish such a defence is to prove...that the injured party did not in his own interest take reasonable care of himself and contributed by this want of care, to his own injury. For when contributory negligence is set up as a shield against the obligation to satisfy the whole of the plaintiff's claim, the principle involved is that, where a man is part author of his own injury, he cannot call on the other party to compensate him in full."

15. The test propounded is of foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence

if he ought reasonably to have foreseen that if he did not act as a reasonably prudent man, he might hurt himself.

16. In *Sital Dai v. Ram Singh Pearey Lal* [1980] ACJ 458 (Delhi), relied upon for the appellants, the distinguishing facts were that the truck was on a high-way and was on its correct side. Further, it was not being driven at a high speed. The deceased had suddenly come on the road and was struck by the rear portion of the truck. The decision in *Nathalal Chhaganlal v. Koli Karsan Lavji* [1979] ACJ 212 (Guj) assists the claimants rather than the appellant. There the motor cycle had already proceeded into the intersection (as in the present) and, thereafter the carrier driver knocked it down by dashing against it from its front part. It was held that the carrier is a heavier vehicle and a duty is cast on the driver of such a vehicle to be careful and cautious before entering an intersection and it has to slow down its speed and look to the right and left and then start negotiating the intersection.

17. The facts in *Delhi Transport Corporation v. Shabir Ahmad* [1972] ACJ 465 (Delhi), on which the appellants relied, bear no analogy. There the bicycle rider proceeding from a byline to the main road took two or three turns and tried to trace his steps by recrossing the road back to where he had started. The driver of the bus on the main road could evidently not have anticipated recrossing of the road by the respondent and hence no negligence could be attributed to him.

18. Under the English law, contributory negligence was regarded at one time as affording a complete defence against the plaintiff. The position changed with the enactment of the English Law Reforms (Contributory Negligence) Act, 1945. In accordance with the provisions thereof, even in respect of a plaintiff who is guilty of contributory negligence, the more just rule of division of loss according to the fault is adopted. There is no such legislation in India but on considerations of justice, equity and good conscience, the principle adopted is the same, vide *Amritsar Transport Co. (P.) Ltd. v. Swaran Kaur* [1969] ACJ 82 (P& H) and *Brij Mohan Sahni v. Mohinder Kumar* [1967] ACJ 83 (Delhi). The rule described as of last opportunity is now considered obsolete. Winfield in *Law of Torts* (twelfth edition), page 148, observed:

" Whether it is based upon remoteness of damage or not, if it means that in every case the person whose negligence came last in time as solely responsible for the damage, the rule of last opportunity is clearly illogical."

19. According to Charlesworth and Percy on Negligence, seventh edition, page 327, as a principle of law, the rule of last opportunity is now dead (See *Davies v. Swan Motor Co. (Swansea.) Ltd* [1949] 2 KB 291 ; [1949] 1 All ER 620 (CA), *Harvey v. Road Haulage Executive* [1952] 1 KB 120 (CA). But, " it may sometimes be a useful test to apply in deciding, as a matter of fact, whether an accident was caused by the fault of one or both of the parties. The chronological order of events is important and may well be decisive as in *Davies v. Mann* [1842] 10 M&W 546 and *British Columbia Electric Rly. Co. Ltd. v. Loach* [1916] 1

AC 719 (PC). It is still necessary to find out whose act caused the wrong, whether it is a combination of the acts of both parties or the sole act of one of them."

20. This also is how the matter is viewed in *The Municipal Corporation of Greater Bombay Vs. Govind V. Pethe*, . It was observed that blending the rule of last clear chance with that of apportionment of damages for contributory negligence, the approach now is to have regard to all the causes and apportion the damages accordingly, rather than select from a number of causes which was the effective and predominant one and to reject the rest. The applicant had already traversed practically the entire width of the road and could not even avert the accident as the abutting portion of the central reservation track prevented him from doing so. Considering the width of the road, the bus driver had the scooter in full view and could have easily averted the accident by slowing down the bus or turning it towards the left lane. It was held that the driver was completely negligent and there could be no justification to direct apportioning of damages by way of contributory negligence.

21. Having regard to the chronological sequence in the present as detailed above, I have no hesitation in endorsing the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the bus driver and there was no contributory negligence of P.W., Munish Kumar Jain, who drove the car, nor was regulation 7 breached by him.

22. In so far as the quantum of damages is concerned, the break-up of the amount awarded in each of these cases is as under :

A.

KULWANT SINGH

1. Medical

Rs.

(a) For loss of four teeth

5,000

(b) For fracture of nose bridge & crushing of left jaw

5,000

(c) Treatment

2,000

2. Mental shock and agony

5,000

3. Loss of practice

7,000

Total

24,000

B.

brahma pal singh

1. Mental shock and agony

5,000

2. Medical treatment

2,000

3. Loss of practice

6,000

Total

13,000

C.

munish kumar jain

1. Medical treatment

2,000

2. Mental shock and agony

5,000

3. Loss of practice

5,000

4. Damage to car

5,000

Total

17,000

23. The assessment made by the Tribunal of the compensation payable to the claimants reflects on the whole a balanced approach. The nature of injuries sustained and the suffering undergone in consequence by the three injured persons have been duly taken into consideration. Kulwant Singh, P. W., broke four of his teeth in the process, the bridge of his nose was fractured and lower jaw crushed. All the three had to remain as indoor patients in the hospital for 7 to 13 days and thereafter it took about two to three months to recoup. Daring

this period, they had to remain confined to their respective homes. Kulwant Singh had about 20 years standing as a practising lawyer in 1973. Brahma Pal Singh and Munish Kumar Jain had been practising since 1961/1968 respectively. It has been deposed by them that they were making nearly Rs. 1,000 per month. It was argued for the appellant that deduction should have been directed by the Tribunal for the lump sum payment made to the claimants-respondents on account of loss of earnings. It should not be overlooked that the compensation awarded is for the loss incurred during the period commencing when the accident took place and before the claim was brought. The compensation is not for the loss in earnings, if any, for the future. It is virtually for the period during which the respondents were unable to go to courts to attend to their cases. The respondents, therefore, do not enter into the picture. It is not disputed that compensation for the damage caused to the property, namely, the car, is also, recoverable in these proceedings. This is made clear by the provisions of Section 110(1) read with Section 110A(1)(aa) of the Motor Vehicles Act as amended. The car was purchased by PW, Munish Kumar Jain, on July 10, 1973, for a sum of Rs. 9,400. The damage caused was extensive resulting in the smashing of the four doors, both the seats, the wind screen, the rear glass, the dash board and the differential. After getting the repairs done, the vehicle had to be disposed of by the owner, which he did in November, 1973, for a consideration of Rs. 3,500 only. The Tribunal had on the whole taken a reasonable view, as I mentioned above, with respect to the quantum of compensation awarded. The claimants-respondents may not legitimately claim that this errs on the side of being incommensurate with the injury caused or the damage resulting. Even if some other authority may have awarded a little more or less, that cannot be made enough justification for interference with the assessment arrived at on taking relevant material into account. Neither the appeals nor the cross-objections in this behalf may, therefore, be said to possess any force.

24. With respect to First Appeal From Order No. 303 of 1980, it may further be observed that this appeal has been brought by Brahma Pal Singh arising out of the same claim for which the corporation has filed First Appeal From Order No. 64 of 1978. In that appeal, Brahma Pal Singh, respondent, has filed cross-objection claiming the differential between the amount claimed by him in the petition and the amount awarded by the Tribunal. The subject-matter of First Appeal From Order No, 303 of 1980 is the same as that of the cross-objection filed by him in the other appeal. There is thus a clear duplication. The cross-objections being liable to dismissal on merits for reasons discussed above, this appeal also has to fail.

25. In the result, the appeals and the cross-objections are dismissed. The parties shall bear their own costs.