

(1972) 03 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No's. 78 and 114 of 1969

Ved Prakash Sethi

APPELLANT

Vs

Musafir Transport Co. Ltd., Mansa and Others

RESPONDENT

Date of Decision : 09-03-1972

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110B, 110D

Citation : (1972) 03 P&H CK 0049

Hon'ble Judges : Pritam Singh Pattar, J

Bench : Single Bench

Advocate : Maharaj Bakhsh Singh, for the Appellant; L.M. Suri and R.M. Suri, for the Respondent

Final Decision : Dismissed

Judgement

Pritam Singh Pattar, J.—By this judgment I shall dispose of F.A.O. 78 of 1969 and F.A.O. 144 of 1969 which are directed against the order dated 25th July, 1968 of M. Gurbachan Singh Bajwa Motor Accident Claims Tribunal, Punjab, by which he awarded Rs. 20,000/- as compensation u/s 110-B of the Motor Vehicles Act in favour of Ved Parkesh against Musafir Transport Company, Mansa, Ram Singh driver of the bus involved in the accident and the New India Assurance Company Limited with whom the bus was insured.

2. Briefly stated the facts of this case are that Ved Parkash on 14th September, 1965 at about 7.15/7.30 p.m. was driving his Ambassador Car No. DLI-12 from Mansa to Budhlada on the left side of the road and when he crossed the Gandhi College under construction on the Sirsa Barnala road, a bus No. PNB-6019 driven rashly and negligently at high speed by Ram Singh driver of the bus came from the opposite direction and was not under his control. He took his car towards the extreme left on the katcha portion of the road to save himself from the bus. However, the bus which was driven rashly and negligently struck against his car on the front right side and pushed it back resulting in very serious injuries to both the legs and other parts of the body of Ved Prakash. Savinder Singh P.W.

was also travelling with him in the car and he also received injuries. Ved Prakash, therefore, filed application u/s 110A of the Motor Vehicles Act against the above Respondents for the recovery of Rs. 65,250/- alleging that the occurrence took place due to rash and negligent driving of the bus by Ram Singh driver and he suffered serious injuries and spent lot of money on his treatment and incurred damages in the management of the property. He also claimed damages for physical and mental pain suffered by him.

3. The Respondent denied that the bus was driven rashly and negligently by Ram Singh. They alleged that due to Indo-Pak War during those days vehicles were prohibited from showing lights. That it was dark at the time of the occurrence and the Petitioner himself was driving the car without lights, rashly at a high speed and the accident took place as a result of his own rash and negligent driving. They denied all the allegations of the Petitioner. It was alleged that Messrs Asa Ram and Brothers, Finance Corporation, Bhatinda were also one of the insured of the bus and they were also joined as Respondents. The jurisdiction of the Tribunal to entertain the claim application for compensation for damages to the car was questioned. On these pleadings of the parties the following issues were framed by the Tribunal:-

1. Has this Tribunal no jurisdiction to entertain this application or to grant relief regarding damage to the Car?
2. Was the accident due to any negligence on the part of the driver of the bus involved or that of the applicant himself or that of both and to what effect?
3. What is the quantum of compensation due, if any, and from whom?
4. Is the Insurance Company or Respondent No. 4 not liable for the payment of any Compensation?
5. Relief.

The learned Tribunal held that it has no jurisdiction to entertain the claim for damages, to the car or any other property caused in a motor accident and decided issue No. 1 accordingly in favour of the Respondents. It also held that the accident took place as a result of rash and negligent driving of the car and the bus and it, therefore, fixed the fault of the driver of the bus fifty per cent more than that of the driver of the car and decided issue No. 2 accordingly. He assessed the total compensation due to the Petitioner at Rs. 40,000/-. But since the driver of the bus was responsible for fifty per cent more than the fault of the driver of the car it fixed the responsibility of the Respondents at Rs. 20,000/-. On issue No. 4 it was held that the Insurance Company was responsible to pay compensation to the. extent of Rs. 20,000/- only as mentioned in the insurance policy. As a result it gave an award of Rs. 20,000/- in favour of Ved Parkash Petitioner against the Respondent with costs. It was directed that the entire amount will be payable by the New India Assurance Company as insurer within a period of two months from the date of the award, failing which it will carry

interest at the rate of six percent per annum.

4. Feeling dissatisfied the Insurance company, Ram Singh, driver of the bus and the Musafir Transport Company filed F.A.O. No. 114 of 1969 alleging that the decision of the Tribunal was wrong and incorrect and it may be set aside and the application of the Petitioner may be dismissed.

5. Ved Parkash filed F.A.O. No. 78 of 1969 for enhancement of the compensation amount to Rs. 40,000/-. He also claimed compensation amounting to Rs. 15,250/- for the damages caused to the car in the accident. The learned course for the Appellants in F.A.O. No. 114 of 1969, Mr. L.M. Suri contended that F.A.O. No. 78 of 1969 filed by Ved Parkash was barred by limitation and it may be dismissed. According to Section 110-D of the Motor Vehicles Act any person aggrieved by an award of a Claims Tribunal may within 90 days from the date of the award prefer an appeal to the High Court provided that the High Court may entertain the appeal after the expiry of this period, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

6. In this case the award of the Tribunal is dated 25th July, 1968. The appeal (F.A.O. 78/1969) was filed by Ved Parkash on 28th May, 1969. The application to get the copy of the award was filed on 5th August, 1968. Copy was ready for delivery on 19th February, 1969 and it was delivered to the Appellant on 12th March, 1969. The appeal was filed on 28th May, 1969. However, it was returned to the Appellant on 29th May, 1969 with the objection that the copy of the order attached to the grounds of appeal was insufficiently stamped. The appeal was filed after making up the deficiency of the stamp on 13th June, 1969. It was held in Custodian, Evacuee Property, Punjab and Others Vs. Parbhu Dayal Chhajan Lal and Others, .

It is the duty of the counsel when filing an appeal to see that all the documents requiring stamp are properly stamped. He cannot shelter himself behind his clerk, and if his clerk has been guilty of any carelessness, he is responsible for that. A valuable right accrues to the Respondent by reason of the period of limitation for filing the appeal having elapsed, and it would not be fair to him to admit the appeal. Thus, where the trial court's judgment is not stamped, it cannot be deemed to have been filed at all and it cannot be allowed to be stamped after the period of limitation for filing appeal has expired

To the same effect was the law laid down in Jai Bhagwan Vs. Om Prakash and Others, , Mehar Chand Bandari v. Secretary of State AIR 1935 Lah. 124 Shahadat v. Hukam Singh, AIR 1924 Lah 401 and Shrimati Amrit Kaur v. Iqbal Singh and Ors. 1971 P.L.R. 82.

7. This law laid down in these authorities fully applied to this case. The copy of the award attached to the memorandum of appeal was stamped with a Court-fee of Rs. 5.25, but it required court fee of Rs. 5.85 and thus there was a deficiency of Rs. 0.60. The limitation for filing this appeal expired before 13th June, 1969, that is, before the refiling of the memorandum of appeal after making up the

deficiency of the court fee stamps. Consequently there was no proper appeal and this F.A.O. 78 of 1969 must be dismissed on this ground alone. The Appellant had made an application on 18th July, 1969 for condonation of the delay alleging that there was a bonafide and unintentional mistake and there was no negligence. It was simply mentioned that insufficiency in the stamp was removed immediately. This is no ground for condonation of delay. I, therefore, hold that in view of the law laid down in the aforesaid authorities, F.A.O. No. 78 of 1969 was filed after the expiry of the period of limitation and it must be dismissed on this short ground.

8. The decision of the trial court on issue No. 1 was not contested before me by either party to the appeal and no argument was addressed on this issue. It was laid down by a Division Bench of this Court in B.S. Nat v. Bachan Singh and Ors. 1971 A.C.J. 37 that the Claims Tribunal has no jurisdiction to award compensation for loss or damages to property in an application filed u/s 110-A of the Motor Vehicles Act, and that the only claim for compensation in respect of a bodily injury or death sustained in a Motor Accident is within the jurisdiction of the Claims Tribunal. In view of this authority the decision of the Tribunal on issue No. 1 was not contested by the learned Counsel for Ved Parkash, Appellant.

9. To prove issue No. 2 the Petitioner examined himself and other witnesses. Ved Parkash Petitioner as A.W. 10 testified that on 14th September, 1965 at about 7.00 or 7.15 p.m. he was going in his own car from Mansa to Budhlada on the correct side of the road along with Shavinder Singh when he passed Nehru Memorial College he saw bus coming from the opposite direction at a high speed without blowing horn. He gave horn but the driver of the bus did not leave any side on the road, and therefore, he took his car on the katcha side on the left and even then the bus struck against his car violently smashing the same and he received serious injuries. He was taken out of the car and was placed on the road. In the meantime a car belonging to S. Nardev Singh Advocate came and then he was taken in it to Mansa Hospital. Due to Indo-Pak war in those days the drivers of the vehicles were running without their lights on, under the orders of the Government.

10. To the same effect is the statement of Shavinder Singh (A.W. 1), who is a resident of Mansa and on that day he was traveling in the car with Ved Parkash. He testified that he was selling lottery tickets at the bus stand and he wanted to go to Budhlada and at his request Ved Parkash took him in the car. He was sitting on the front seat of the car. He fully corroborates the statement of Ved Parkash, Petitioner (A.W. 10).

11. Sham Lai (A.W. 2) on that day was sitting as a passenger in Bus No. PNB-6019 involved in the accident. On that day he had gone to Bhatinda for getting some parts of his lathe repaired. The bus according to him started at 5.30 p.m. from Bhatinda and was coming at a fast speed. He testified that the bus was driven at a fast speed and they requested the driver not to drive the bus at a fast speed, but he did not listen to them. According to him the parking lights

of the car of Ved Parkash were on at that time. The speed of the bus at that time was 40 miles per hour and the bus went to the wrong side and struck against the car on the front side. The accident, according to him, took place on the katcha portion on the left side of the road. The passengers of the bus took out the occupants of the car and made them lie on the ground. The allegations of the Petitioners are proved from the sworn testimony of these witnesses. There is nothing on the file to shake their testimony and I have no reason to disbelieve them.

12. As against this Wazir Singh (R.W. 1) testified that he was traveling as a passenger in the bus. He stated that the small parking lights of the bus were on and that the accident took place little before Nehru College at Mansa after the crossing on the main road. According to him the bus was going slow at a speed of 10.15 miles per hour on its left side and the car came from the opposite side and struck against the bus. Similar are the statements of the other witnesses of the Respondents.

13. Sukhdev Singh (R.W. 2) did not make any statement and he was simply tendered for cross-examination. Ram Singh (R.W. 4) is the driver of the bus and he simply stated that he was driving the bus slow and the accident took place due to the negligence of the car driver and there was no visibility and that he was challenged by the police, but was acquitted by the criminal Court.

14. Similar is the statement of Jagjeet Singh (R.W. 3) who was the conductor of the bus. Gurcharan Singh (R.W. 7) was simply tendered in evidence. Balbir Singh (R.W....) corroborated the statement of Wazir Singh (R.W. 1). However, it was admitted by Jagjeet Singh (R.W. 3) in cross-examination that after the accident the car stopped on the left katcha side. To the same effect was the admission made by Sukhdev. Singh (R.W. 2) in his cross-examination. He admitted that the bus was standing on the pacca road with one wheel on the katcha, when the accident took place. The admissions made by these witnesses fully corroborate the allegations of the Petitioner that the car was driven on the left side of the road and that the accident took place on the katcha portion of the road on the left side, of the road. The car was damaged and, therefore, it could not be removed from that place. All these witnesses of the Respondents never appeared before the police or the Magistrate to give evidence. It is thus obvious that the car was driven on the correct side of the road at the time of the accident and the accident took place when the bus went on the wrong side of the road, and struck against the car.

15. Khushbakat Rai (A.W. 3) was the photographer who prepared the photographs exhibits A.W. 3/1 to A.W. 3/7 and their negatives are A.W. 3/8 to A.W. 3/13. He took the photographs which were prepared on the next day. It is clear from these photographs that the accident took place on the left side of the road where the car was going and the bus was taken on the wrong side when it struck against the car. In *Kumari Swarna Lata Kapoor and Ors. v. Jogendrapal Ramrakha Punjabi and Ors.* 1970 A.C.J. 71. it was held-

Where an omnibus leaves the road and an accident takes place on the off side and this is proved without more, then the principle of *res ipsa loquitur* is at once attracted. Negligence will be presumed as the cause of the event. Unless the Defendant rebuts this presumption, the Plaintiff succeeds. To merely point out what the immediate cause of the bus leaving the road was, e.g., there was a tyre burst or that it went into a skid is by itself no rebuttal of the presumption. To displace the presumption the Defendant must prove, or must show from the evidence, either that the immediate cause was due to a specific cause, which does not connote negligence on his part but points to its absence as more probable, or he must show that all reasonable care in and about the management of the vehicle was taken. The burden, in the first instance is on the Defendant to disprove his liability.

The observations made in this authority apply to this case. The lights of the car and the bus were off at the time of the accident. According to the statements of the witnesses the parking lights of the car were on. The driver of the bus took the bus on the wrong side of road and, therefore he is obviously guilty of rash and negligent driving as a result of which the accident took place. The reason given by the Tribunal in the judgment that both the drivers were guilty of negligence in driving the vehicles rashly and negligently are not correct. He simply stated that both the vehicles were running without their lights on at a time when it became dark. That it was a single road whose width is 11 feet and no driver of the vehicle would like to take his vehicle off the road under such circumstances. According to him any body taking his vehicle on the road at such a time when the black out had been ordered did so at a great personal risk as well as risk to the safety of other users of the road. These observations are not based on any evidence, but are the personal views of the Tribunal. From the positive evidence of Ved Parkash Petitioner and his witnesses it is cogently and convincingly proved that the accident took place due to the negligence of Ram Singh driver of the bus and I decide issue No. 2 in favour of the Petitioner. The decision of the Tribunal, to the contrary, is modified.

16. Ved Parkash Petitioner was 31 years of age on the date of accident. The finding of the Tribunal that he would live up to the age of 60 years was not contested before me by either party to the appeal. No arguments were addressed on this point. This finding of the Tribunal is, therefore, accepted.

17. Dr. Inderjit Singh, Senior Medical officer, Civil Hospital, Mansa, (A.W. 4) stated that on 14th September, 1965 at 8.00 p.m. Ved Parkash was brought to Civil Hospital Mansa. He examined him and the copy of his report is Exhibit A.W. 4/1. He found eight injuries on his person which are detailed in Exhibit A.W. 4/1. According to him injuries Nos. 1 and 3 were grievous and injuries Nos. 4, 5 and 6 were simple. He advised X-ray of the remaining three injuries Nos. 2, 7 and 8.

18. Dr. D.D. Sharma (A.W. 5) Medical Officer, In charge Civil Hospital, Hissar stated that on 27th December, 1965 Ved Parkash was admitted in General Hospital, Chandigarh with a history of accident about three months back. Prior to

that he was admitted to Rajindra Hospital, Patiala where he had multiple operations after the accident. Removal of right Patla was done, fracture setting of left leg was done and intra medullary nailing was done of the left femur at Patiala. When this doctor examined him he had non-union of the operated left femur. There was also malunion of the left leg and stiffness in the right knee. He testified that Ved Parkash was again X-rayed on 9th February, 1966 when angulation at the site of operation was seen and he was subjected to another operation known as wedging of the Plaster. Again he was called after three months and another X-ray was taken on 6th May, 1966. This also indicated absolute non-union and after removal of plaster the fragments were moving like fresh fracture. He then referred him to Dr. Karam Singh Grewal, Professor of Orthopedic, Medical College, Amritsar, where he was operated upon. He further testified that left knee of Ved Parkash is absolutely fixed and the right knee is also not fully functioning. The nail which was put in last at Amritsar was yet inside his left femur. The muscles of his left thigh were adherent. In his opinion his left leg is completely disabled after the accident. He had cent per cent disability of his right leg also for a period of six months.

19. Dr. Karam Singh Grewal (A.W. 6) Orthopedic Surgeon, V.J. Hospital, Amritsar testified that he examined Ved Parkash Applicant and he had mal united fracture of the left leg bones and he also operated the mal united fracture of the left thigh bone. He had a shortening of 3 1/2 of his left lower limb compared to the right. The limb is externally operated as a whole. His hip and knee are stiff. According to him he cannot lift his right leg straight. The leg bones are mal united. He testified that the thigh bone was ineffectively fixed in previous X-ray. But later on it was fixed by a Munchar Nail. The bone, however, had still mal union. According to him, the disability of his left leg is permanent and he assessed the same at 90 per cent. The disability of his right leg is also permanent and he assessed the same at 20 per cent. He testified that Ved Parkash is mentally depressed on account of various operations and he passed through terrible sufferings and pains and there is no chance of his improvement 20. Ved Parkash Petitioner as A.W. 10 testified that he was removed to Rajindra Hospital, Patiala, where he remained as indoor patient for 1 1/2 months after the accident. His both legs were broken and he also received many other injuries on his body. He was put in plaster of paris upto neck as ribs had also broken. He used to go to Rajindra Hospital for about one month. The plaster was removed. As no improvement was there he was again put in plaster of paris and it remained for one month. After the removal of the plaster he did not feel any improvement and then he got himself examined by Dr. D.D. Sharma, who was then working in the General Hospital Chandigarh, where he was told that the previous operation was not successful and the bones were not properly united and he did fresh operation. He remained in private ward in General Hospital, Sector 16, Chandigarh from the end of December, 1965 to 18/19th January, 1966. After six months he was told that the operation was not so successful. He was then referred to Dr. Karam Singh Grewal, V.J. Hospital, Amritsar, where he was also operated upon. He got himself X-rayed for a number

of times and the doctors told him that no further improvement was possible.

21. He produced receipts exhibits A-14 to A-19 regarding amounts he paid to taxi owners and Ors. when he was taken to various hospitals as he was unable to move. The total amount incurred by him as shown in all these receipts comes to Rs. 2062.50. However the Tribunal allowed Rs. 3,000/- on account of the amount spent by him on his treatment in transport to go to the various hospitals for a period of more than six months. The Petitioner has not been able to produce the documentary evidence regarding the amount spent by him on diet, medicines etc. However, I am of the opinion that the amount of Rs. 3,000/- allowed by the Tribunal is quite reasonable and proper and I allow the same.

22. The Tribunal has allowed Rs. 2,000/- as compensation to the Petitioner for pain and suffering and this sum was not contested before me by the learned Counsel for the Appellants. The Petitioner stated that he owned land and his income from the land was from Rs. 7,000/- to Rs. 8,000/- per mensem. He was doing private service in a firm at Chandigarh and was getting Rs. 200/- per month.

23. According to the medical evidence discussed above the permanent disability of his left is 90 per cent and that of right leg is 20 per cent. Therefore in this state of health he can neither do any service nor can attend to his land and also cannot do any business or profession. His movement for the rest of his remaining life has become difficult on account of the permanent disability of his leg. The Tribunal assessed compensation at the rate of Rs. 75/- per month for his physical disability and this amount, in my opinion, is not excessive at all for a full period of 29 years for which he has to live up to the age of 60 years. The total amount of compensation comes to Rs. 26,000/- The Tribunal also granted him compensation amounting to Rs. 9,000/- for loss of enjoyment of life. Thus the total compensation due to the Petitioner on account of this, accident was assessed at Rs. 40,000/-. But he allowed him Rs. 20,000/- because the driver of the bus and the Petitioner were alleged to be guilty of contributory negligence. This finding regarding contributory negligence has been set aside under issue No. 2 above.

24. Taking into consideration the facts and circumstances of this case the amount of compensation of Rs. 40,000/- is quite reasonable as the Petitioner has become disabled for whole of his life. However F.A.O. No. 78 of 1969 of the Petitioner regarding enhancement of compensation to Rs. 40,000/- has been held to be barred by limitation. I, therefore, hold that there is no substance in F.A.O. No. 114 of 1969 of Musafir Transport Company and it must fail. As a result both the appeals, Nos. 78 and 114 of 1969 are dismissed. In the circumstances I make no order as to costs.