
(1967) 05 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No 39 of 1959

Veena Kumari Kohli

APPELLANT

Vs

Punjab Roadways and Others

RESPONDENT

Date of Decision : 08-05-1967

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 7
Motor Vehicles Act, 1939 — Section 110A, 110B, 110F

Citation : (1967) ACJ 297

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : Lalit Mohan Suri and Ravinder Mohan Suri, for the Appellant; K.S. Kawatra, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J.—This order will dispose of First Appeals from Orders Nos. 33, 39, 40, 41, 42, 43, 46, 78, 9 and 80 of 1963. These are cross-appeals, four by the State and six by different claimants.

2. The accident occurred on the 23rd of September, 1960, between a car No. PNF 5370 and bus belonging to the Punjab Roadways No. PNJ 6441, on the crossing of the road from Pathankot to Jullundur and the by-pass connecting the Grand Trunk Road between Ambala and Amritsar. The by-pass has been built recently to divert the Grand Trunk Road from the main city. The car was going from Ludhiana to Amritsar and the bus was coming from Pathankot to Jullundur and there was a head-on collision. The bus hit the car in the middle, overturned the car and pushed it to the ditch where it also over-turned along with the car. As a result of this accident, the driver of the Car, Vijay Singh and out of the occupants. Harpal Singh Thapar, Gaya Parshad, a lawyer's clerk and Mr. Sham Krishna Kohli, Advocate were killed. Sat Pal Singh only got injuries. Claims were made on behalf of these persons as follows:

(1) Shrimati Makhan Devi widow of Vijay Singh claimed a sum of Rs. 20,000

(2) Sat Pal Singh claimed 20,000

(3) (a) Shrimati Inder Kaur

mother of Harpal Singh Thapar and his widow (b) Smt. Phool Kumari claimed Rs. 75,000

(4) Gaya Parshad's widow claimed 20,000

(5) Mr. Sham Krishan's daughter Veena Kohli made a claim for 20,000

The claims were made to the Motor Accidents Claims Tribunal and the Claims Tribunal, after holding that the negligence was equal, of both the drivers of the car as well as of the bus, awarded half the compensation which it settled as payable. The compensation that has been ordered to be paid is as follows:

(1) Vijay Singh's widow Mrs. Makhan Devi and mother Mrs. Darshan Devi KS. 3,600

(2) Sat Pal Singh 6,000

(3) Mrs. Inder Kaur mother of Harpal Singh, Mrs. Phool Kumari's claim was rejected in toto on the ground that she had received Rs. 25,000 on account of the insurance policy of the deceased 3,000

(4) Gaya Parshad's widow, Mrs. Jai Rani was awarded 4,320

and the claim of Veena Kohli was rejected because she got Rs. 92,000/-from the estate of the deceased father. Against this decision, as already stated, there are four appeals by the State and six appeals on behalf of the claimants.

3. The first question that has to be determined, is as to the negligence because the claim of the State is that there was no negligence on the part of the bus driver; whereas the claim on the part of the claimants is that the entire negligence was of the bus driver and the car driver was not negligent. Oral evidence has been led on the question of negligence. There is also a plan of the spot showing the location of both the roads as well as the different distances and the directions from which the two vehicles came. The point where the two vehicles collided and the point where the bus and the car ultimately landed are also shown. A.W. 15, Mohinder Singh, a Head Constable of Police, who was sitting on the first row seat on the left side of the driver, has categorically stated that "the bus was going rather fast; that the bus struck the car and carried it along with it about 15-16 feet where the car was struck against the pole with the force of the bus. The telegraph pole got broken and the car and the bus overturned and fell in the ditch which runs along the Tanda road. The bus driver did not apply his brakes even in the Chowk and continued running at the same speed. The by-pass road is the main road and is twice as wide as that of the Tanda road on which the bus was running. The Tanda road is not wide and the bus had apparently occupied the whole of the pucca road when it was proceeding to Jullundur. The corner at the Chowk is blind one on account of the growth of

Tahli trees. The vehicles coming from a distance are not visible from either side. However, they become visible when they are within the reach of 100 feet from the Chowk. I noticed the presence of the car for the first time from bus when the bus was about 6-7 feet from the Chowk at that time ; and similarly the car was about at the same distance from the bypass road. The speed of the bus was more than 30/35 miles per hour." This- witness has also stated that both the bus driver and the car driver sounded the horns.

4. Mr. K.S. Kawatra, learned Counsel for the Punjab Roadways, has relied on the testimony of R. Ws. 3, 4, 7, 10, and 11 as to exactly what happened before the collision. I have gone through their testimony and I am not at all impressed with their statements. In my opinion, the safest evidence to rely upon is the testimony of the Head Constable, who was traveling in the bus and who saw exactly what happened and he has not tried to favour either the driver of the car or the driver of the bus; and his testimony has a clear ring of truth. His testimony also finds ample corroboration from the plan. What appears is that neither the driver of the bus nor the driver of the car were sure as to the speed of one another and thought that they would clear one another but miscalculated. Therefore, in that respect, both were equally negligent. But what turns the scales of negligence against the driver of the bus more is the fact that he had entered the main highway which was twice the size of the road from which he was entering but he did not slacken his speed and even after seeing the car,, he did not apply his brakes ; and also the fact that the car had practically crossed the bus because the bus hit the car right in the middle. The further fact, that the speed of the bus was tremendous, is borne out by this that the car was pushed by the bus for a distance of about 69 feet where it ultimately turned. So far as the speed of the car is concerned, it had no adverse effect on the bus because the bus did not overturn at the point where both the vehicles collided with one another. As a matter of fact the car did not proceed an inch further after the collision. But the bus was at such a speed that it dragged the car all along the road where both the bus and the car ultimately overturned. Then a telegraph pole could not check the speed of the bus and had to give way to it. If the testimony of the Head Constable and what is disclosed by the plan is kept in view, there can be no manner of doubt that the principal negligent party is the bus driver ; and I am not agreeing with the Tribunal that both were equally negligent. Mr. Kwatra states that both the roads are main roads. That may be so or may not be so. But the fact remains that the road on which the car was proceeding, was definitely the bigger road. The second contention of Mr. Kwatra is that according to Rule 7 of the Tenth Schedule of the Motor Vehicles Act, 1939, the car driver had to give way to the bus. That presupposes that the car driver had sighted the bus much earlier. The possibility of the matter is that the bus had sighted the car earlier than the car had sighted the bus. Therefore, no benefit can be derived from Rule 7. The view, I take of the matter, is that while entering the main road it was the duty of the bus driver to stop ; but he did not stop nor did he slacken the speed. There is a further fact that the driver had

been warned about the inherent dangers of this crossing. That is clear from the testimony of S. Raghbir Singh, R.W. 6, the General Manager of the Punjab Roadways ; whereas there is no evidence that the driver of the car had been on this road previously or was aware of the inherent dangers of this crossing. In this view of the matter the negligence should have been fixed 75 per cent of the bus driver and 25 per cent of the car driver. I accordingly modify the decision of the Tribunal on this count and assess their respective negligence as under:

Bus driver ...75 per cent Car driver ...25 per cent This would automatically enhance the compensation awarded to the various claimants by 25 per cent, of what was fixed and ultimately reduced by half, on the ground that both the drivers were equally negligent.

Now it will be appropriate to take up each claimant's case for purposes of enhancement and also along with it will get settled State's appeals with regard to the reduction of the quantum of compensation.

5. Vijay Singh's mother and widow claimed Rs. 20,000/-. They have been allowed Rs. 3,600/- finally after halving the total quantum of loss suffered by them. The Tribunal has accepted that Vijay Singh was spending Rs. 60/- per mensem on his mother and widow. The age of Vijay Singh was 30 years. The minimum expectancy of his serving care can be taken upto the age of 55 on a very modest estimate because it is well known that most of the drivers continue to function properly upto the age of 60 years. As ultimately the lump-sum quantum fixed has to be reduced in view of the decision of this Court in Dr. Ram Saran v. Shrimati Shakuntla Rai, I have calculated his working period as twenty-five years and not thirty years because that would clearly compensate the State with regard to the capitalized payment of compensation. For a year, the mother and the widow would have got Rs. 720/-. This amount for twenty-five years would come to Rs. 18,000/-. Three-fourths of Rs. 18,000/- comes to Rs. 13,500/-. This is the amount of compensation that these two ladies are entitled as against the sum of Rs. 3,600/- allowed to both of them. The learned Counsel, who represents these ladies, says that this enhancement should be allowed to them in equal shares and he is satisfied with the allocation on that basis. I accordingly hold that the sum of Rs. 13,500/- be given half and half to Mrs. Makhan Devi, the widow and Mrs. Darshna Devi, the mother of Vijay Singh.

6. Next is the case of Sat Pal Singh. He claimed a sum of Rs. 20,000/- and has been allowed Rs. 6,000/-. The contention of Mr. Suri is that Sat Pal Singh spent Rs. 5,319/- on his medical treatment and he has suffered 35 per cent disability ; and according to the learned Counsel, this has affected his earnings by Rs. 353/- per mensem. If the basis on which the contention is raised is correct, Sat Pal Singh would be entitled to enhancement. But I find that there is no basis to make the enhancement, so far as Sat Pal Singh is concerned. The main source of his income is from a garden, rent of property, and a share in partnership in running a garage. There is no satisfactory evidence that his income from these sources has suffered a set-back by reason of his shortening of the leg or the

disability to the extent of 35 per cent. The Tribunal has given him compensation for medical treatment and the suffering undergone, to the extent of Rs. 6,000/-. This figure has to be enhanced because of the change in the measure of deduction. The compensation fixed by the Tribunal was Rs. 12,000/- and it was halved: whereas out of Rs. 12,000/- he was now to get three-fourths. The amount which he will now be entitled to, works out to Rs. 9,000/-. His appeal is allowed to that extent ; and he will get a sum of Rs. 9,000/- instead of Rs. 6,000/-.

7. Mrs. Inder Kaur is the mother of Harpal Singh Thapar. So far as her case is concerned, the learned Counsel has stated that he does not press it. So it need not be considered. He has only asked for the proportionate enhancement as in all the cases. That is from half, it has to be three-fourths of the amount determined. She has been allowed Rs. 3,000/-. The sum, on that proportionate basis will come to Rs. 4,500/-. Her compensation is enhanced accordingly.

8. Next comes the case of Mrs. Jai Rani, the widow of Gaya Parshad. She was awarded Rs. 4,320/- ; and I find that no basis has been made to increase her claim excepting to the extent, to which the claim of all other persons has been enhanced. Her claim will now be enhanced to Rs. 6,480/-.

9. The next two cases left for disposal are those of Mrs. Phool Kumari and Veena Kohli. No compensation has been allowed to them on the short ground that they came into possession of enough property of the deceased by reason of accident. The learned Counsel appearing for these ladies have raised the contention that the mere fact that they have received enough property by reason of the death of their supporters is no ground to negative their right to compensation which should have been assessed according to the provisions of the Fatal Accidents Act. It may be mentioned that no claim was made for compensation under the Fatal Accidents Act before the Tribunal. The application for claim was filed u/s 110-A of the Motor Vehicles Act and the Tribunal has awarded compensation u/s 110-B of the Act. The provisions of Section 110-B read thus:

On receipt of an application for compensation made u/s 110-A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the Claim and may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid ; and in making the award, the Claims Tribunal shall specify the amount which shall be paid by the insurer.

Along with this, it will be proper to set out the provisions of Section 110-F:

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

As no compensation was claimed before the Tribunal under the Fatal Accidents Act, the contention advanced by the learned Counsel cannot be accepted. So far as the quantum of compensation is concerned, gains by reason of the death by accident of the person for whose death compensation is payable to his dependents have to be taken into consideration in order to arrive at the figure of the loss suffered by his dependents. In this connection, reference may be made to the decision of this Court in *Parkash Vati v. The Delhi Dayal Bagh Dairy Limited* 1967 A.C.J. 82 So far as Mrs. Phool Kumari is concerned, it is urged by the learned Counsel that according to the basis adopted by the Tribunal for assessing the loss, the loss suffered by her comes to Rs. -0 000/- and as against this, she has only received a sum of Rs. 25,000/- by reason of the death of her husband. Therefore, a further sum of Rs. 5,000/- should have been allowed to her. This contention loses sight of the fact that Mrs. Phool Kumari did not appear in the witness-box in support of her claim that she did not get any property from her husband besides the cash amount of Rs. 25,000/-. She alone could depose to this fact. In this situation, it cannot be said that Mrs. Phool Kumari has not been fully compensated.

10. The only other argument, that has been advanced on behalf of these ladies is based on the decision of the Supreme Court in *Gobald Motor Service Limited v. R.M.K. Veluswami A.T.R.* 1962 S.C. 1. That decision would have applied only if a claim under Fatal Accidents Act had been made before the Tribunal. No such claim was made. Therefore, it is idle to suggest that the Tribunal has gone wrong in not determining the claim on the principal enunciated by their Lordships of the Supreme Court in *Gobald Motor Service Case*. (1962) MLJ. 184 10. For the reasons recorded above, the appeals filed by the State are rejected and the appeals filed by the claimants are allowed to the extent indicated above, excepting the appeals filed by Mrs. Phool Kumari and Veena Kohli which are rejected. The parties will bear their own costs in this Court.