

(1968) 04 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 91 of 1967

Sohan Devi

APPELLANT

Vs

The Dashmesh Transport

RESPONDENT

Company (P.) Ltd. and Others

Date of Decision: April 9, 1968

Citation: (1969) ACJ 79

Hon'ble Judges: Ranjit Singh Sarkaria, J

Bench: Single Bench

Advocate: R.S. Dhillon, for the Appellant; S.S. Kang, for Nos. 1 and 2, N.N. Goswamy and L.M. Suri for No. 3, for the Respondent

Final Decision: Allowed

Judgement

Ranjit Singh Sarkaria, J.

This is an appeal against the award of the Motor Accidents Claims Tribunal, Punjab at Chandigarh. It arises out of the following facts:

2. On Dussehra day, the 14th October, 1967, Brij Mohan deceased, a student of about 15 or 16 years was proceeding in a bicycle-rickshaw pulled by one Raj Kumar, on G T. Road from village Bhattian to Khanna. When the rickshaw reached near the office of Truck Union, Khanna, it was knocked down by Bus No. PNT-14C0 coming from behind. The deceased fell down on the road and was, according to the allegations of the Applicant, run over by the bus. He was immediately removed to the Hospital, but died before any medical aid could be administered. Besides the rickshaw-puller, who was also thrown down by the impact, the occurrence was witnessed by Kapur Chand, A.W. 2.

3. Gian Chand, father of the deceased, on coming to know about the accident, reached the Hospital alongwith Lekh Raj, Municipal Commissioner. Police A.S.I., Harbhajan Singh also met him there. It is alleged that under duress proceeding from the A.S.I., Gian Chand wrote out his statement, that the driver of the bus was

not to be blamed for the accident, that the death was due to misfortune, and that he did not want to initiate any prosecution or other legal proceedings. He added that the rickshaw had overturned and fallen on the deceased, as a result of which he sustained the fatal injury. Four or five days thereafter, however, Gian Chand complained to the Superintendent of Police that the A.S.I. had not registered any case against the motor driver. For about 11 months, he continued to make complaints to the higher Police authorities. Thereafter, the case was registered by the Police and the driver of the bus was challaned for judicial trial in the Court of a magistrate at Samrala

4. Sohan Devi, mother of the deceased, made an application to the Tribunal for compensation, alleging that the death of her son was due to the rash and negligent driving of the bus driver. Messrs Dashmesh Transport Company, the proprietors of the bus, Bant Singh driver of the bus, and the New India Insurance Company Ltd., the insurers, were impleaded as Respondents.

5. It was common ground that the fatal injuries were received by Brij Mohan deceased in an accident between the bus and the rickshaw. It was, however, denied by the Respondents that the accident was due to any rashness or negligence on the part of the driver of the bus. An objection was also raised that Gian Chand, father of the deceased, had, in his statement to the investigating Police A.S.I., admitted that there was no negligence or rashness on the part of the driver, and that owing to that admission the Applicant was estopped from making the claim. As many as 4 issues were framed. Issue No. 1, which was of a preliminary nature, was as follows:

Is the Applicant estopped from filing this application for the reason given in the written statement?

6. This issue was decided against the Applicant, and in the result, her application was dismissed. No finding was given on the merits of the case.

7. The Learned Counsel for the Applicant vehemently contends that the decision of the Tribunal on the preliminary issue is manifestly erroneous ; that the Tribunal failed to note the fact that the claim has not been made by Gian Chand, father of the deceased, but by the mother, Mrs. Sohan Devi, and that even if it is assumed for the sake of argument that the claim was, in reality, filed by the father, Gian Chand, while the mother was a mere figure head, then also he could not be estopped, because, firstly, the Respondents had not, on the basis of the alleged representation made by Gian Chand changed their position to their detriment, and, secondly, there cannot be any estoppel against a statute. Counsel has pointed out that the ratio of *Dheram Chand v. Shiv Pat and Ors. 1966 A.C.J. 319*, is not applicable to the facts of the instant case.

8. I find a good deal of force in the contentions of the counsel. In the first place, estoppel binds only parties and privies. The alleged admission was made by Gian Chand, father of the deceased, while the claim for compensation has been filed by

the mother, Mrs. Sohan Devi, who was not a party to that statement. Even if it is assumed for a moment that the real claimant before the Tribunal was the father, and the mother was a mere Benamidar for him, then also the alleged admission could not be conclusive against and binding on Gian Chand. It is a fundamental principle of jurisprudence that previous admissions can be shown to be wrong by its maker. In the instant case, only a few days after the making of the alleged admission, Gian Chand started complaining to the higher Police authorities that the statement exculpating the bus driver had been wrung out from him under duress by the Police A.S.L It is also not disputed that Gian Chand was not an eye-witness of the occurrence at all. In the statement, Exhibit R.1. Gian Chand did not say that he was making that statement or admission on the basis of the information derived from the eye-witnesses. The so-called admission was thus founded on mere hearsay. The law is well settled that such gratuitous admission can be withdrawn at any time by its maker, more so if it is made in ignorance of legal rights or true facts, and the situation of the opposite party has not been prejudiced and altered.

9. Dharam Chand's case¹, decided by Kapoor, J., on 14th December, 1965, is quite distinguishable from the one before me. In that case, the F.I.R. was lodged by an eye-witness in the immediate presence and hearing of Dharam Chand claimant, in which it was stated that the deceased Jagdish Chander himself got on the plough of the tractor while it was being driven by Shiv Pat, that on seeing a pit Shiv Pat applied the brakes to the tractor when Jagdish Chander fell off the plough and was run over by the wheel of the tractor. The informant was examined before the Tribunal, as R.W. 4, the only person put forward as an eye-witness at the trial was Mrs. Lajwant, the maternal grandmother of Jagdish Chander deceased. She made a garbled statement, from which the Tribunal concluded that she was, in all probability, not present at the scene of accident. This statement of the grandmother, who was not an eye-witness, was discounted by the statement of Shiv Pat, who himself appeared in the witness-box as R.W. 1. It was in these circumstances that Kapoor, J. observed: On the record as it stands, there was no evidence worth the name to establish that the accident was due to any recklessness or negligence on the part of Shiv Pat.

10. Dharam Chand was not believed because he had made a statement contradictory to the one which he had made to the Police.

11. In the instant case, there was direct ocular testimony of the eye-witnesses of the accident. That evidence has not been considered by the learned Tribunal, because he has disposed of the case not on meritis, but on a preliminary point.

12. In the light of what has been said above, the conclusion is inescapable that neither Mrs. Sohan Devi, the mother, nor the father of the deceased was estopped from maintaining this claim. The finding of the Tribunal on this point being erroneous, is set aside. The petition is allowed and the case is remitted to the Tribunal for decision of the remaining issues on merits.

13. Let the records of the case be returned forthwith. Cost to abide the event.