
Harjinder Kaur Vs Shahni Devi and Others

F.A.O. No. 609 of 1984

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 11, 1989

Citation: (1991) ACJ 845

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

Bench: Single Bench

Advocate: H.S. Gill, for the Appellant; Mahesh Grover and S.K. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Sodhi, J.

The challenge in appeal here is to the award of Rs. 20,000/- as compensation to Shahni Devi, who sustained injuries when

while walking on the roadside, she was knocked down by the scooter HPS 3916. This happened at about 8.30 a.m. on March 29, 1981 near the

milk booth in Sector 15, Chandigarh.

2. According to the Tribunal, this was a case of contributory negligence with the injured claimant being as much to blame for it as respondent

Bhola, the driver of the scooter. After making an allowance, for her share of the negligence, a sum of Rs. 20,000/- was awarded to her as

compensation.

3. Considering the manner in which the accident occurred, no occasion was provided thereby to hold the claimant to bear any part of the blame for

it. According to the claimant, who is a 60 years old lady, she was walking along the road when the scooter came from the opposite direction and

hit into her. The version of the driver of the scooter, Bhola, on the other hand, was that the accident occurred when, coming from the side of the

market in Sector 15, he took a turn towards his house and the claimant suddenly appeared before him walking on the left side of the road. Even if

it be taken this was how the accident took place, there is no suggestion that the injured claimant was walking anywhere other than on the side of

the road, nor that she had suddenly placed herself in such a position that the scooter driver could not avoid hitting into her.

4. The case of the claimant is founded upon the testimony of PW 1, Shahni who deposed that she was walking along the road when the scooter

came from the opposite direction and hit into her. A reading of her testimony would show that no suggestion or explanation was even made to or

sought from her to the effect that she had created a situation where the scooter could not avoid hitting into her. Similar is the position with the

testimony of the other eye-witness, namely, her son PW 2, Devinder Kumar. The driver of the scooter RW 1, Bhola, no doubt deposed that the

accident occurred when the claimant got puzzled and started moving in different directions, but it is pertinent to note that no such suggestion was

put to the claimant.

5. Seen, therefore, in the context of the circumstances in which the accident occurred, there is clearly no warrant for recording a finding of

contributory negligence against the claimant. The accident must thus be held to have been caused entirely due to the rash and negligent driving of

Bhola, the driver of the scooter.

6. The quantum of compensation awarded to the claimant also calls for no interference in appeal. A reading of the testimony of PW 3, Dr. Jaswant

Rai, the Orthopaedic Surgeon at the Post-Graduate Medical Institute, Chandigarh, would show that the claimant Shahni suffered a fracture of the

right thigh bone near the knee-joint. The claimant was operated upon under general anaesthesia and the fracture was reduced with a pin being

passed in the right leg. She remained admitted in the hospital from March 29, 1981 to May 14, 1981. During her hospitalization, she was kept on

skeletal traction and later she was kept under plaster for three months. What is significant to note is that, according to Dr. Jaswant Rai, the fracture

had not united even till the day he gave evidence, that is, October 1983. What is more, this injury has led to shortening of the right leg and the

claimant now limps.

7. Considering the nature and extent of the injuries suffered, the permanent disability that she is now left with, as also the long period of

hospitalization and medical and other expenses, the award of a sum of Rs. 20,000/-as compensation can, by no means, be termed as excessive or

unreasonable. The amount awarded must thus be upheld and affirmed.

8. The main contest in this appeal is with regard to liability for payment of the compensation awarded. It has come on record that the offending

scooter was originally owned by RW 2, Kalyan Chand Sood. It was his testimony that in December, 1980, he had sold it to the appellant

Harjinder Kaur. RW 3, Jaspal Singh, a clerk, deposed that in December 1980, Harjinder Kaur had been given a loan for the purchase of this very

scooter HPS 3916. There is then the testimony of RW 1 Bhola, who deposed that the scooter had been given to him for repairs by the husband of

Harjinder Kaur. Such being the evidence, there can be no manner of doubt that on the date of the accident, the owner of the scooter was

Harjinder Kaur even though she was not its registered owner on that day and Harjinder Kaur was thus rightly held by the Tribunal to be liable for

payment of the compensation awarded along with Bhola, driver of the scooter.

9. Faced with this situation, counsel for the appellant sought to contend that Kalyan Chand Sood must be deemed to continue to have been the

owner of the scooter on the day of the accident by virtue of the provisions of the Scooter (Distribution and Sale) Order, published in the

notification of October 6, 1981, whereby the sale of scooters was banned for two years of their purchase. It will be seen that no such plea was

raised either in the return filed by the appellant or before the Tribunal. It cannot be permitted to be raised for the first time in appeal here.

10. There is thus no substance in this appeal which is accordingly hereby dismissed with costs. Counsel's fee Rs. 500/-.