

(2006) 08 P&H CK 0233

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 87 of 1994

Yadwinder Sharma

APPELLANT

Vs

Pepsu Road Transport
Corporation and Others

RESPONDENT

Date of Decision: Aug. 11, 2006

Citation: (2008) ACJ 1422 : (2007) 147 PLR 670 : (2007) 1 RCR(Civil) 610

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Advocate: Rajesh Garg, for the Appellant; N.S. Pawar, for respondents No. 1, for the Respondent

Judgement

Surya Kant, J.

This appeal is directed against the order dated October 12, 1993 passed by the Motor Accident Claims Tribunal, Patiala (for short the Tribunal), whereby the appellants' claim petition for the grant of compensation on account of death of their father in a motor vehicle accident, has been dismissed holding that the "occurrence was an act of God having taken place per chance all of a sudden".

2. On September 30, 1983, Pawan Kumar Sharma, aged about 36 years and working as an Assistant in the Punjab Roadways Transport Corporation (for short PRTC) Head Office at Patiala, was travelling in an Ambassador Car No. PUC-193 owned by the PRTC along with Iqbal Singh - Planning Manager of the PRTC. The car was being driven by one Gurdev Singh. Pawan Kumar Sharma and Iqbal Singh had gone to Chandigarh to attend some official meeting and while returning to Patiala when the car was approaching the Ghanda-Kheri bridge of Bhakra canal on Rajpura-Patiala Road, the driver lost control and the car fell into the canal, as a result of which its driver Gurdev Singh as well as Pawan Kumar Sharma died whereas Iqbal Singh was saved by the persons present at the spot by throwing turbans in the canal. The dead body of Pawan Kumar Sharma was recovered from the canal near Jhansa bridge in District Kurukshetra on October 5, 1983. Alleging that the occurrence had taken

place due to carelessness and negligent driving of the car driver and the car itself was defective, two sons of the deceased (i.e. the appellants), out of whom one was a minor at the relevant time, filed the petition claiming compensation of Rs. 5 lacs.

3. The claim petition was resisted by PRTC which took a preliminary objection that the same was hopelessly time barred; was filed in collusion with respondents No. 3 and 4. It was denied that the accident had occurred due to carelessness or negligent driving of the car driver or that the vehicle had any mechanical defect. It was further pleaded that the "cause of accident was not known".

4. From the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the present claim petition is within limitation? OPA

2. Whether Pawan Kumar Sharma died in a road accident caused by rash and negligent driving of Car No. PUC-193 of PRTC by Gurdev Singh on 30.9.1983 on Patiala-Rajpura road? OPA

3. Whether the claimants are entitled to compensation? If so to what extent and from which of the respondents? OPA

4. Whether the present claim petition has been filed in collusion with respondents No. 3 & 4? if so, to what effect? OPR-1

5. Relief.

5. The Tribunal vide its impugned award dated October 12, 1993 decided issue No. 1 in favour of the claimants-appellants and held that their claim petition was within limitation. Under issue No. 2, the Tribunal, however, held that the occurrence had taken place all of a sudden and it was an act of God. In this view of the finding, the Tribunal held that the appellants were not entitled to any compensation and dismissed the claim petition.

6. So far as the findings returned by the Tribunal under issue No. 1, namely, the claim petition filed by appellant No. 1 on 14.8.1992, after attaining majority on June 4, 1992, was well within limitation, has not been assailed by the PRTC either by way of a cross appeal or cross objections. In fact, Learned Counsel for the PRTC did not dispute the aforesaid finding. The bone of contention between the parties is as to whether the accident in question, in which the driver of the car also lost his life, is attributable to the carelessness or negligent driving of the car driver or it was an act of God. Assailing the findings returned by the Tribunal on issue No. 2, Learned Counsel for the appellants vehemently contended that if a sturdy vehicle like Ambassador car is in sound roadworthy condition and is driven with ordinary care, no occasion could have arisen where the driver would have lost control and crossed over the bridge and fell into the canal. Learned Counsel has referred to the documents like Ex.A4, copy of report No. 33 dated October 5, 1983 of Police station Rajpura as well as copy of the DDR to contend that neither it was a case of any

apprehensive head-on collusion with a vehicle coming from the opposite direction nor of a situation like sudden arrival of a stray animal on the road which could cause loss of control of the vehicle by the driver. Similarly, it is argued that no evidence has been led by the respondents to show that either the bridge was damaged or the condition of the road was so much bad that a vehicle going with a normal speed could go out of control. Relying upon the maxim *res ipsa loquitur*, learned Counsel would contend that if all the circumstances were normal, yet the fact that the car went out of control in such a manner that it fell into the canal, speaks at large that the driver of the vehicle acted carelessly or in a gross negligent manner.

7. On the other hand, Learned Counsel for the respondent has also relied upon the police report Ex.A4 to contend that the same was recorded on the statement of Dinesh Kumar - brother of the deceased, in which it is nowhere mentioned that the accident was caused due to negligence of the car driver. He argued that the wife and mother of the deceased would have filed a claim petition for compensation had it been a case of negligent driving by the car driver. Learned Counsel also pointed out that the sole survivor, namely, Iqbal Singh could be the most material witness to throw light as to whether or not the car was being driven by Gurdev Singh in a negligent manner but he has not been produced by the claimants.

8. After hearing Learned Counsel for the parties, I am of the view that the crucial question which requires determination is as to whether in the ordinary course of things, such an accident could take place or not. From the pleadings and evidence on record led by both the parties, it can be safely inferred that when the car was approaching Ghanda-Kheri bridge of Bhakra canal on the Rajpura-Patiala road, no unusual event of sudden impact took place which could result in loss of control by the driver over the vehicle. Sudden crossing of the road by a human being or a child; sudden presence of a stray animal on the road; bursting of tyre due to some alien sharp edged article lying on the road; sudden collapse of the bridge; fall of electric wires; tornado; storm; flush of rain water from cloud burst, etc. are a few illustrative circumstances in which driver of a vehicle can possibly lose control. In any such like sudden events, the driver would try to control the vehicle and may apply sudden brakes, which, instead of stopping the vehicle, may over-turn it or cause slip thereby the vehicle might go out of the driver's control. Such kind of accident, happening of which is beyond the control of a driver, may be termed as an "act of God".

9. However, where the vehicle was in sound roadworthy condition and was driven with an ordinary care, it shall always be expected that it will not go out of control of the driver, yet if any such thing happens, heavy onus shall lie upon either the driver or the owner of the vehicle to divulge that special knowledge of the relevant facts to explain as to why and how the vehicle went out of control of the driver. In the absence of any such explanation, the maxim *res ipsa loquitur* would undoubtedly be attracted, as held by their Lordships of the Supreme Court in [The Krishna Bus Service Ltd. Vs. Smt. Mangli and Others](#), .

10. In the present case, the driver of the vehicle also unfortunately died in the same accident. The only survivor, namely, Iqbal Singh was an Officer of the PRTC. He was the best person to come and depose if at all he had some knowledge as to how the driver of the car lost control over it.

11. The appellants, who were minors at the time when their father died in the accident, might not have been able to trace out Iqbal Singh or persuade him to enter the witness box, but he being an Officer of PRTC, could certainly be produced by the respondents to divulge the special knowledge, if any, pertaining to the cause of the accident. As the manner in which the accident took place, gives rise to a presumption that it must have taken place due to carelessness or negligence of the car driver, the onus stood shifted upon the PRTC to prove otherwise. It, however, failed to lead any evidence to discharge the said onus.

12. The Tribunal unfortunately misdirected itself in relying upon the alleged statement of the brother of the deceased which is incorporated in the police report Ex.A4. The brother of the deceased neither witnessed the accident nor was he travelling in the same car. In the said report, he has mentioned what he must have heard from others. Even in that report also, except the fact regarding occurrence of the accident, no other unforeseen circumstance which might have caused the accident, has been explained. Consequently, I hold that the manner in which the accident took place, the same must have occurred only due to carelessness or negligent driving of the car driver.

13. Learned Counsel for the appellants then contended that even if no negligence on the part of the car driver is proved or assumed, the respondent-PRTC is still liable to pay compensation to the appellants for the sole reason that the appellants' father died in an accident which happened while the car of the PRTC was in use. Relying upon the judgment of the Apex Court in [Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others](#), he argued that the doctrine of "strict liability" propounded in Rylands v. Fletcher (1861) All ER 1 can be successfully pressed into service in the case in hand. In Kaushnuma Begum's case (supra), the victim (Hazi Mohd. Hanif) was walking on the road when the vehicle, namely, a jeep capsized while it was in motion. The cause of capsize was attributed to the bursting of the front tyre and in the process of capsizing, the vehicle hit against the victim - a pedestrian who subsequently succumbed to the injuries sustained in that accident. The Tribunal dismissed the claim petition filed by the widow and children of the victim on the ground that there was no negligence on the part of the jeep driver. The claim appeal was also dismissed by the High Court. On a further appeal, their Lordships of the Supreme Court, after referring to the instances where the rule of "strict liability" eventually gained approval in large number of decisions rendered by the courts in England and abroad, and after holding that the said rule has been approved by the Constitution Bench in [M.C. Mehta and another Vs. Union of India and others](#), held as follows:

19. Like any other common law principle, which is acceptable to our jurisprudence, the rule in *Rylands v. Fletcher* can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the rule in claims for compensation made in respect of motor accidents.

14. The facts of the case in hand are very close to that of in *Kaushnuma Begum's* case (supra). Though I have already held that the accident in question was caused due to carelessness and negligence of the car driver, yet independent of that finding, the appellants are also entitled to be compensated by the PRTC as they lost their father in an accident which happened when the car belonging to the PRTC was in use. The principle of "strict liability" expanded by the Apex Court is, thus, fully attracted to the facts and circumstances of the present case.

15. In view of the above discussions, it is held that the appellants are entitled to compensation for the death of their father (Pawan Kumar Sharma) caused in the accident involving car No. PUC-193 of PRTC and which took place on 30.9.1983.

16. Coming to the question of compensation, it is established on record that the deceased was drawing Rs. 1047.20p as salary. It is also not disputed that deceased Pawan Kumar Sharma was about 36 years of age at the time of the accident. Applying 1/3rd deduction of the salary, which the deceased would have spent on himself, it can be safely held that the dependency of the claimants and their mother and grand-mother would have been Rs. 700/- i.e. Rs. 8400/- per annum. Having regard to the age of the deceased, a multiplier of 15 appears to be just and reasonable.

17. Consequently, the appellants are held entitled to compensation for a sum of Rs. 1,26,000/-. The appellants are also held entitled to claim interest @ 6% per annum with effect from the date of filing of the claim petition till its realization.

18. No order, however, as to costs.