

(2000) 07 P&H CK 0032

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal From the Order No. 56 of 1985

Bimla Devi and others

APPELLANT

Vs

Punjab State and others

RESPONDENT

Date of Decision: July 27, 2000

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2001) 1 ACC 720 : (2001) ACJ 1287 : (2001) 1 RCR(Civil) 596

Hon'ble Judges: R.C. Kathuria, J

Bench: Single Bench

Advocate: Mr. Baldev Parshad, for the Appellant; Mr. K.K. Behniwal, Deputy, General and Mr. C.P. Sapra, for the Respondent

Judgement

R.C. Kathuria, J.

Dissatisfied with the compensation awarded by the Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as the Tribunal) vide its award dated 15.6.1994 the appellants-claimants have filed this appeal.

2. The accident took place on 24.4.1981 at 7.20 p.m. Kewat Ram (deceased) was going on a bicycle from the side of Jalandhar towards Bhogpur. While he was driving his bicycle on the kacha portion of the road, a bus bearing Registration No. PUS-7613 being driven by Kirpal (respondent No. 3) came from behind. The driver lost control over the bus and dashed it into bicycle of Kewal Ram as a result of which he suffered multiple injuries and died on the spot. On the date of death, Kewal Ram was aged about 45 years and was earning about Rs. 800/- per month by selling fruits and vegetables as a hawker. On these premises, the claimant-appellants filed the claim petition seeking compensation of Rs. 1,50,000/-.

3. The claim was contested by respondent Nos. 1 to 3. In his written statement, it was pleaded by respondent No. 3, that the deceased was carrying a heavy toad of fruits and vegetables on his bicycle and that the bicycle was not in proper control of

the deceased. He further stated that there appeared to be a "Gadda" (pit) on the road. He (respondent No. 3) slowed down the bus and blew horn. As the deceased was not in control of his bicycle, he fell down on the road and the accident occurred. Thus, respondent No. 3 attributed the accident entirely to the fault committed by the deceased. Additionally, he averred that the matter was compromised with him by the legal heirs of the deceased after they received a sum of Rs. 2,000/- from him (respondent No. 3) and that they are now estopped from filing the claim petition.

4. Respondent Nos. 1 and 2, in their separate written statement, supported the version of respondent No. 3 and denied their liability to pay the compensation amount.

5. The Tribunal settled the issues on the pleadings of the parties and thereafter allowed the parties to lead evidence. In respect of issue No. 4 relating to the plea of negligence, the Tribunal returned a finding that the accident was caused due to the rash and negligent driving of the deceased and in the ultimate analysis the said issue was decided against the respondents. The stand of the respondent No. 3 that the matter had been compromised by the widow of the deceased, was upheld qua her but that compromise was not accepted with regard to the rights of the other claimants, who were minors at that time. The claim of Swaran Kaur widow of Kewal Ram (deceased) was, thus, rejected by the Tribunal. Nirmal Kaur, claimant No. 7 before the Tribunal, was not held to be dependent upon the deceased. The said Nirmal Kaur has not challenged, the award in this Court. The remaining claimants i.e. Bimla Devi, Kulwinder Kaur, Gurbax Kaur and Mohan Lal, daughters and son of Kewal Ram (deceased), respectively, were granted a compensation of Rs. 5,000/- each along with interest at the rate of 6 per cent per annum from the date of application till its realisation, by the Tribunal.

6. I have heard the learned counsel for the parties and have gone through the records of the case.

7. At the first instance, I would advert to the stand taken from the side of respondent Nos. 1 and 2 as they have challenged the finding of the Tribunal with regard to the accident caused on account of the negligence of the driver of the bus i.e. Kirpal (respondent No. 3). Mr. K.K. Behniwal, learned Deputy Advocate General, Punjab urged before me that in this case the negligence of Kirpal (respondent No. 3), driver of the bus, is not established on record and that the Tribunal totally overlooked the first version of the accident recorded vide Daily Diary Report No. 22 dated 24.4.1981 (Exhibit R.t). The Daily Diary Report (Exhibit R.1) was got recorded by Gurmel Singh at Police Station Bhogpur at 8.45 P.M. It is stated in this report by Gurmel Singh that on 24.4.1981 at about 7.30 P.M. he was going to Bhogpur from Jalandhar on his motorcycle; that when he reached near the crossing of Village Sadda Chade which was about furlong towards Bhogpur, he noticed a cyclist coming towards the side of Bhogpur from the opposite direction; that the bicycle was loaded with vegetables and fruits; that at that time, the bus in question came from

the side of Jalandhar and overtook him; that a bullock-cart was coming from opposite direction; that the bus driver slowed down the bus and blew the horn; and that the cyclist (Kewal Rani deceased) lost his balance and struck against the bus, as a result of which he fell down and was run over by the left front tyre of the bus being driven by Kirpal (respondent No. 3).

8. To support the above version recorded by Gurmel Singh, he has not been examined in the case. It is also mentioned in the report (Exhibit R-1) that Bawa Singh, Sarpanch, resident of Sikanderpur, was also riding on the pillion of the motor-cycle. He too has not been examined from the side of the respondents. Kirpal (respondent No. 3), driver of the bus, who appeared as R.W.I, stated that on 24.8.1981, when he was going from Jalandhar to Gardiwala, he noticed a cart on the road when he reached near Sada Chak. A cyclist, who was having enough load of fruits and vegetables on the bicycle, was also noticed by him on the left side of the road. He (R.W.I) had not only used dipper but had blown the horn and slowed down the speed of the bus. However, the cyclist could not control the bicycle and fell down on the road and was struck with the bus. Kirpal (R. W. 1) maintained that there was no fault on his part in causing the accident as at that time he was driving the bus at a speed of 20 to 25 kilometres per hour. This stand of Kirpal (R.W.1) is not in consonance with the stand taken by him in his written statement because he has nowhere pleaded therein that any cart was coming on the road at the time of accident. Rather, in his cross-examination he admitted that the deceased was riding his bicycle on the "kacha" portion of the road. If he (respondent No. 3) had slowed down the speed of the bus to 20 to 25 kilometres per hour, as stated by him, then he would have immediately applied the brakes and could have avoided the accident. The stand taken by respondent No. 3, as such cannot be accepted. Under the circumstances, I find no reason or justification to discard the statements of Thakur Dass (A.W.2) and Daulat Ram (A.W.3), who have given a vivid description of the manner in which the accident had been caused by Kirpal (respondent No. 3). Thakur Dass (A.W.2) stated that he was travelling in the bus which was going from Jalandhar to Bhogpur. He further stated that at the time of accident Kewal Ram (deceased) was going on his bicycle towards Bhogpur on the "kacha" portion of the road. According to him, the bus was being driven at a very high speed by the driver of the bus and he had dashed the bus into the bicycle of Kewal Ram as a result of which the bicycle got entangled with the bus and was dragged to some extent. Thereafter, the bus stopped at a distance of 5/6 Karams from the place of the accident. Hardly anything could be elicited in his cross-examination to dislodge his version of the accident given him. Daulat Ram (A.W.3), in no uncertain terms, testified that he was returning from Village Gorewahi Muchorowal and was at a distance of one furlong from Village Sadda when he had noticed Kewal Ram (deceased) going on his bicycle carrying vegetables on it. He also stated that the bus was coming behind of Kirpal Ram and was being driven at a very high speed and struck against Kirpal Ram, as a result of which he died. Simply because he did not report the matter to the police, is

no ground to discard his statement. No doubt, no criminal case was registered against Kirpal (respondent No. 3) on the version recorded in Exhibit R-I, but the respondents cannot take benefit of this fact because they have not chosen to examine either the author of the report (Exhibit R-I) i.e. Gurmel Singh or Bawa Singh, who was riding on the pillion of the motor-cycle being driven by Gurmel Singh aforesaid. Taking into account the evidence produced, it stands proved that the accident had been caused by rash and negligent driving of Kirpal (respondent No. 3) which had resulted in the death of Kewal Ram.

9. Mr. Behniwal, learned Deputy Advocate General, Punjab, also highlighted that Swaran Kaur widow of the deceased had compromised the matter with Kirpal (respondent No. 3) and had received about R.s. 2000/-, therefore she has desentitled herself to claim the compensation. The stand of the respondents in this regard cannot be accepted because Kirpal (respondent No. 3) had, in the first instance, attributed the negligence in causing the accident to Kewal Ram, who was driving the bicycle. If that was so, then there is no occasion for him (respondent No. 3) to compromise the matter with the widow of the deceased. Even otherwise, the paltry sum of Rs. 2,000/- cannot be taken to be an amount which could have been agreed to by the legal heirs of the deceased for the loss suffered by the family on account of the death of Kewal Ram. As per the stand of Kirpal (respondent No. 3), the compromise was effected in the Police Station, which fact further shows that police influence was sought to be exercised. Under the circumstances, the plea of compromise raised by respondent No. 3 has to be ignored and the finding of the Tribunal accepting the said plea has to be set aside. It is ordered accordingly.

10. As regards the quantum of compensation to be awarded to the claimant-appellant, the learned counsel representing the appellants stated that the Tribunal failed to take into account that deceased Kewal Ram was earning about Rs. 800/- per month, as is proved on record by the evidence led from the side of the claimants. He further stated that the Tribunal has gravely erred in determining the amount of compensation awarded to the claimants. On the other hand, the learned Deputy Advocate General justified the finding recorded by the Tribunal with regard to the grant of compensation as the claimants have failed to bring on record any acceptable evidence to establish the income of the deceased.

11. Ram Murti Bansal (A.W.I) has stated that Kewal Ram, who was his elder brother, used to sell vegetables as a hawker, which vocation provided him monthly income of Rs. 800/- to Rs. 900/-. Daulat Ram (A.W.3) has supported the testimony of Ram Murti Bansal (A.W.1) in this regard. He stated that Kewal Ram (deceased) who was a resident of his village, used to sell vegetables as a hawker and earned Rs. 1200/- to Rs. 1300/- per month. The statements of these witnesses have not been challenged from the side of the respondents because no evidence was led by them to destroy the force of the testimony of the above-mentioned witnesses with regard to the monthly income of the deceased. Under the circumstances, there was no

justification for the Tribunal to ignore the above evidence and, thus, it gave an erroneous finding in this regard.

12. Taking into account the monthly income of the deceased as Rs. 800/- per month and after deducting 1/3rd of this amount which the deceased must have been spending on maintaining himself, the balance amount comes to Rs. 535/- per month, which has to be taken as the dependency of the claimants. Keeping in view the age of the deceased, who was 45 years old at the time of accident, a multiplier of 13 has to be applied. So, the compensation amount works out to be Rs. 83,460/-.

13. For the aforesaid reasons, this appeal is accepted and the awarded of the Tribunal is modified. The claimants i.e. wife and children of deceased Kewal Ram, namely. Swaran Kaur (wife) and Bimal Devi, Kulwinder Kaur, Gurbax Kaur and Mohan Lal (children) are awarded compensation of Rs. 83,460/- along with interest at the rate of 6 per cent per annum from the date of claim application till realisation. Respondent Nos. 1 to 3 shall be jointly and severally liable to pay the compensation amount. The claimants Swaran Kaur, Bimal Devi, Kulwinder Kaur, Gurbax Kaur and Mohan Lal shall be paid the amount of compensation in equal shares.

14. Appeal allowed.