

(1976) 04 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 20 of 1975

State of Punjab and
Another

APPELLANT

Vs

Raunak Singh and
Others

RESPONDENT

Date of Decision: April 5, 1976

Citation: (1977) ACJ 17

Hon'ble Judges: M.R. Sharma, J

Bench: Single Bench

Advocate: J.S. Wasu and S.K. Syal, for the Appellant; Mohinder Singh, Naginder Singh and V.P. Kakaria, for the Respondent

Judgement

M.R. Sharma, J.

This judgment will dispose of Civil Revision Nos. 154 and 155 of 1975, and F.A.O. Nos. 19, 20, 21, 22, 34, 35, 55, 56, 57 and 58 of 1975, as they all arise out of the same occurrence.

2. On June 7, 1972, Rikhi Raj, overseer was driving tipper No. PUL-5436 belonging to the Public Works Department of the State of Punjab on the Ludhiana-Jagraon road, when it met with an accident resulting in the death of 4 workers, namely, Dial Singh, Gurnam Singh and 2 others, and injuries to 18 other workers, namely, Nachhattar Singh, Sohan Singh beldars and others.

3. The next of kin of Dial Singh and Gurnam Singh, filed petitions for damages before the Motor Accident Claims Tribunal, Ludhiana, who awarded a sum of Rs. 3,000/- to the next of kins of the two deceased in 2 separate petitions. Nachhattar Singh and Sohan Singh, the injured workers, were awarded Rs. 1,000/- each for the injuries sustained by them. Apart from burdening the State of Punjab with the liability, the learned Tribunal also held that Nazar Singh driver and Rikhi Raj, overseer, who allegedly happened to be driving the tipper at that time, were jointly

and severally responsible alongwith the State. The State of Punjab and Nazar Singh driver have both filed four first appeals each, Rikhi Raj, overseer has filed two revisions and two first appeals challenging his liability.

4. At the stage of trial, in response to the allegations made in the petition, it was asserted on behalf of the State that Rikhi Raj, overseer was sitting beside the driver and the accident took place suddenly in order to avoid an accident with a car which was coming from the opposite side. It was further averred that the accident did not result out of the rash and negligent driving by the driver. Rikhi Raj, overseer set up the plea that he was not driving the tipper at the time when the accident took place. Out of the pleadings of the parties, the following issues were framed by the learned Tribunal:?

1. Whether the application for compensation is not maintainable against Respondent No. 3 ? If so, its effect ?
2. Whether the death of Dial Singh took place due to rash and negligent act of Respondent No. 2 ?
3. To what amount of compensation the claimants are entitled to ?
4. Whether the claimants are the legal heirs of Dayal Singh deceased ?

Issues Nos. 1 and 2 were decided against the Respondents. On issue No. 3 compensation amounts were determined as indicated above and the claimants were held to be the next of kin of the two deceased persons.

5. Though the learned Tribunal has written separate judgments in each case yet the cases arise out of the same accident and the names of the witnesses are also common. As such I propose to dispose of all these cases by this judgment.

6. Dr. Pritam Singh P. W. 1 has given evidence regarding the injuries sustained by the two deceased persons and the 2 injured workers, namely, Nachhattar Singh and Sohan Singh. Ajmer Singh P. W. 3 and Gulzara Singh P.W. 4 are eye-witnesses of the alleged occurrence. Beni Ram MHC P, W. 2 proved the first information report lodged in the case.

7. On behalf of the Respondents, Jagdev Singh R.W. I, M.S. Paul R.W. 2, Ujagar Singh R.W. 3, Nazar Singh R.W. 4 and Rikhi Raj R.W. 6 appeared as witnesses.

8. Ajmer Singh P.W. 3 is the Sarpanch of village More Kariman. On June 7, 1972, at about 5 p.m. he was present at his farm near the pucca road leading from Ludhiana to Jagraon, when he saw a truck loaded with bajri coming from the side of Jagraon at a high speed. In that truck 20/25 labourers were sitting. A car was also seen by him coming from the opposite side. When the car and the truck approached each other, the truck turned turtle because it was being driven at a high speed. According to him, the truck at that time was being driven by a Hindu gentleman and not by a Sikh. His evidence is corroborated by the statement of Gulzara Singh P.W. 4. In my

considered opinion, the learned Tribunal was correct in coming to the conclusion that the tipper in question was being driven at a high speed and was at the material time being driven by Rikhi Raj, overseer.

9. The evidence produced on behalf of the Respondents does not deserve any serious mention. R.W. 1 Jagdev Singh is a beldar who has stated that the truck was being driven by Nazar Singh when the accident took place. Being a subordinate of Rikhi Raj, he simply tried to shield him. Ujagar Singh R.W. 3 has stated that Nazar Singh driver was on duty on that date. From that statement it is sought to be inferred that Nazar Singh himself was driving the tipper at the material time. Suffice it to mention that Ujagar Singh has given the evidence on the basis of the record and he himself was not sitting in the tipper when the accident took place.

10. On the question of compensation, the learned trial Judge held that Dial Singh was 25 years old at the time of his death and he was drawing Rs. 135/- per month by working as a labourer. The learned trial Judge, however, thought that he would have lived up to the age of 50 years and he calculated the damages payable on that basis. It is needless to point out that life expectancy has increased and in a large number of cases probable life of a healthy labourer has been taken to be 60 years. If the damages were to be calculated on that basis, they would have come to much more than Rs. 8,000/-. Since the heirs of the deceased have not filed any appeal, no benefit can accrue to them on this count. Even otherwise, the learned trial Judge appears to have erred in favour of the State by holding that the deceased would have paid only 1/5th of their income to their dependants. It is a matter of common knowledge that even a casual labourer spends about half of his earnings for his family. I, therefore, hold that the compensation awarded to the next of kin of Dial Singh and Gurnam Singh labourers at the rate of Rs. 8,000/- on account of the death of each one of them is not at all excessive.

11. Nachhattar Singh and Sohan Singh, the injured labourers, have been awarded compensation of Rs. 1,000/- each on account of pain and suffering, which in the circumstances of the case does not appear to be excessive. The award made by the learned Motor Accident Claims Tribunal deserves to be affirmed.

12. Mr. Naginder Singh, the learned Counsel for Rikhi Raj, overseer has submitted that even if Nazar Singh driver allowed Rikhi Raj to drive the tipper, the liability would fall on the shoulders of the State and not on the shoulders of his client. In support of this proposition, he has relied upon K. G. Baskaran v. K.A. Thankamma and Ors. 1973 A.C.J. 539 wherein it was held that the act of a driver in entrusting his brother with the task of driving the vehicle was an improper mode of performance of his own duty as a driver, but he was acting within the scope of his employment in an unauthorised mode. The master of the driver in that case was held to be liable. The case is, however, not an authority for the proposition that a person, who unauthorisedly sits on the driver's seat and actually plies the truck, would not render himself liable. The other judgment cited by the learned Counsel is reported

as Gondara Transport Company (P) Ltd., Faridkot v. Ram Nath 1971 A.C.J. 70 . In that case it was held that where the driver of a vehicle allows a mechanic to drive the vehicle, the master and the driver both are liable for damages. That case is again not an authority for the proposition that the mechanic who was allowed to drive the vehicle was not himself responsible.

13. On a careful consideration of the entire matter, I am of the view that Rikhi Raj, overseer is equally liable to suffer the liability.

14. For the reasons mentioned above, these ten appeals and two revisions are dismissed and the awards made by the learned Motor Accident Claims Tribunal, Ludhiana, in favour of the next of kin of Dial Singh and Gurnam Singh the deceased workers, and Nachhatar Singh and Sohan Singh, the injured workers, are maintained. They shall also be entitled to have costs in each appeal.