Pushpinder Kaur Sekhon Vs Corporal Sharma and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 31, 1984

Acts Referred: Motor Vehicles Act, 1988 â€" Section 81

Citation: (1986) ACJ 591 : AIR 1985 P&H 81

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

Bench: Single Bench

Judgement

1.Amilitary vehicle, a missile carrier, while on movement broke down and was parked and dashed into it. Captain H. S. Shekhon the driver of the

car and his wife Mrs. Pushpinder Kaur Sekhon, who was sitting besides him were both injured; while their only son Ibadet, a year and half old,

who was with his mother died as a result of the injuries sustained. This happened on March 5, 1972 at about 5. 30 A.M. a little beyond Nilokheri

on the Grand Trunk Road between Ambala and Karnal.

2. There were four separate claims for compensation put in, in respect of this accident, one being by the parents for the death of their child, the

other two by Captain H. S. Sekhon and his wife Mrs. Pushpinder Kaur for the injuries suffered by them and the fourth was for the damage to the

car involved in the accident.

3. All the claims failed were negatived by the Tribunal, holding that the accident had been caused by the negligence of the car driver, Captain H. S.

Sekhon with the further specific finding that there was no negligence involved in the military vehicle being parked on the road. The Tribunal also

upheld the claim of the Union of India for immunity from liability on the plea that the accident had occurred in the exercise of the sovereign

functions of the State.

4. It is the common case of the parties that the military vehicle was parked on the metalled road covering almost half of it. This half being the left

side of the road for traffic proceeding towards Delhi, as the claimants here were, and further that the accident occurred when the car came and hit

into this parked vehicle from behind.

5. This being the situation violation of the mandate contained in S. 81 of the Motor Vehicles Act is writ large. This provision reads as under :-

81. Leaving vehicle in dangerous position. No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest

on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue

inconvenience to other users of the road"".

6. There can be no manner of doubt that the military vehicle covering almost half the metalled portion of the road, was certainly an obstruction and

inconvenience to road users. It also being a hazard or danger on the road, raises the question whether proper safeguards were taken to indicate its

presence there to the traffic on the road? It was the case of the claimants that this military vehicle had been left parked on the road without any

parking lights or other indication of its being there. The respondents has sought to controvert this by pleading that the parking lights were on and

this vehicle had also had four reflectors.

7. The claimants Captain H. S. Sekhon and his wife Mrs. Pushpinder Kaur were categoric in their testimony that there were no parking lights nor

was there any other indication of this military vehicle when the accident occurred. Similar was the testimony of their orderly A. W. 1 Som Prakash,

who was also travelling in the ill-fated car at the time of the accident. Support to the claimants, on this point is afforded by AW. 3 Corporal

Krishna Murti, who was on duty with the military convoy, a day earlier when this military vehicle had broken down. According to him, it had no

parking lights, but he said there were two reflectors. A similar statement was made by R. W. 1 Wing Commander A. Goswami,. the Officer

Incharge who deposed that no lighting device had, to his knowledge, been put at the back of the military vehicle. Next to consider is the testimony

of the photographer AW. 5. Wazir Chand Sharma who took the photographs of the place of accident. According to him too there were no tail

lights or reflectors behind this military vehicle. Indeed no such light or reflector is visible in any of the photographs on record.

8. The witness who deposed to parking lights and reflectors was R. W. 3. Flying Officer Anand Prakash Bhatia who mentioned their existence, not

on the basis of what he had actually seen, but from the specifications of such vehicles. This evidence is clearly not entitled to any weight. The only

other wintess was R. W. 2 Corporal Jatinder Mohan Sharma, the driver of the military vehicle concerned. His statement cannot be itself warrant

acceptance over the testimony of the other witnesses discussed earlier. It must be taken, therefore, that the military vehicle had been parked on the

road without parking lights or any other indication to warn road users of its being there. In other words, it was clearly a potential source of danger

to traffic on the road.

9. Faced with this situation the Advocate General Haryana, appearing for the Union of India, sought to contend that the accident had taken place

after day break at about 6 A.M. and there was thus ample light for the car driver to have noticed the military vehicle from a considerable distance.

In dealing with this contention, it would be pertinent to note that witnesses examined on both sides were unanimous in stating that the head light of

the car as also that of the truck coming from the opposite direction were on when the accident occurred. This fact is by itself indicative of it being

dark at that time. It means, therefore, that the military vehicle could have been seen by the car driver only when the head lights of the car happened

to fall upon it. The head lights of the oncoming truck must indeed have considerably curtailed the range of visibility provided to the car driver by his

head lights. In the situation, that arose the car driver rightly did the only thing open to him namely to take the car on to his left and apply the breaks.

The site plan shows skid marks to a distance of 60 feet. The car driver cannot be faulted here.

10. The main reliance of the Advocate-General with regard to the time of the accident was the First Information Report, where it had been stated

that the accident had occurred at 6 A. M. This is not a matter of any significance when regard is had to the fact that this report was lodged on the

statement of A. W. 3 Corporal Krishna Murti, who was admittedly not an eye witness to the occurrence. He had come to the scene much later

and, therefore, his saying that the accident had occurred at 6 A. M. cannot be taken to establish this as a fact. It must be taken, therefore, that the

accident took place when it was still dark, and therefore, there was no opportunity for the car driver to have seen the military vehicle except when

he came near it and it was at that time too late to avert the accident.

11. The Advocate-General, then, argued that the car was being driven at a very fast speed and the accident took place on account thereof. The

car must indeed have been travelling at a fast speed as is evident from the length of the skid marks, but it must at the same time be realised that it

was travelling on a highway. Persons travelling on a highway are entitled to proceed at a fast speed unless there is some traffic or other obstruction

on the road to warrant it going at a slow speed. There was no such reason known to the car driver to have required him to proceed at a speed

slower than what he had been travelling at. Indeed if the military vehicle had not been so parked on the road, or indication of its being there had

been given as required by law and considerations of safety, this accident would in all likelihood not have occurred.

12. Considered in the totality the circumstances of the case and the evidence on record, the irresistible conclusion is that the accident here must be

attributed wholly to the negligence of the driver of the military vehicle, leaving it parked on the main highway without taking any proper precautions

for the safety of road users as required by law. The finding of the Tribunal to the contrary cannot, therefore, be sustained and is accordingly hereby

reversed.

13. Further, the Tribunal, in the absence of any plea or issue to this effect, clearly fell in error in absolving the Union of India from liability, on the

plea that the accident had occurred in the discharge of the sovereign functions of the State. It is a mixed question of law and fact whether the

accident had been caused in the exercise of the sovereign functions of the State and is not thus a matter that can be decided in the absence of

pleadings and proof. The Full Bench in Baxi Amrik Singh v. Union of India 1973 75 PLR 1 in laying down the guidelines for determining what

constitutes sovereign functions, observed that though the maintenance of the army was a sovereign functions of the Union of India, it did not follow

that the Union was immune from all liability for any tortious act committed by army personnel. The fact that the vehicle involved in the accident was

owned by the Government and driven by its servant does not by itself absolve the Government from liability for its rash and negligent driving. It

was held that it must further be proved that at the time the accident occurred the person driving the vehicle was acting in the discharge of the

sovereign functions of the State. These considerations obviously raise question of fact to be established in each case. It is apparent, therefore, that

in the absence of pleadings and proof, it is not open to the State to raise a plea of immunity at the stage of arguments and nor would the Court be

justified in giving such a finding on a plea raised at this stage. There is judicial precedent to support this view, as it was so held in, Chinnappa

Eshwarappa v. State of Mysore AIR 1960 Mys 242 and Rattan Devi Jamwal v. Union of India 1977 ACJ 503 : AIR 1977 NOC 336 (J & K).

The Union of India could not, therefore, escape liability in the present case on the plea that the accident had occurred in the discharge of the

sovereign functions of the State.

14. Next arises the matter relating to the compensation claimed. There is in the first instance a claim for Rs. 10,000/- as compensation by the

parents of the child Ibadet, deceased. As was observed by the Supreme Court in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and

Others, , ""as a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In

addition, they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority"". How this minor

child Ibadet would have turned out in later life is at best a guess only but considering that his parents were well placed in life, they could certainly

afford him a good education help in him thereby to further his prospects in life, which in turn would have enabled him to provide them financial

assistance when the need arose. The other factor which deserves mention here is that Ibadet, deceased, was the only son of his parents. It has also

come on record that Mrs. Pushpinder Kaur Sekhon had undergone tubectomy and section evacuation of the uterus and could not, therefore, have

any more children.

15. In the circumstances, there can be no manner of doubt that the claimants are indeed entitled to Rs. 10,000/- as compensation as claimed.

16. There is then a claim for compensation by Mrs. Pushpinder Kaur Sekhon for the injuries suffered by her Mrs. Pushpinder Kaur was 34 years

of age at the time of the accident. She suffered a multiple fractures of the left femur, right fore-arm, and thumb besides other injuries. She remained

hospitalised from March 5, 1972 to June 15, 1972. According to P.W. 8 Wing Commander K. B. Goyal Surgical Specialist, the fracture of her

femur was likely to cause permanent weakness of the leg. She also had a head injury which is likely to cause her periodic headache or lack of

concentration.

17. Besides hospitalisation for over three months, it has also come on record that for about five months thereafter, the claimant Mrs. Pushpinder

Kaur required crutches for walking. Taking an overall view of the pain and sufferings and the loss of amenities of life caused to the claimant on

account of the injuries suffered, it would be fair and just to award her a sum of Rs. 30,000/- as compensation under these heads.

18. There is an additional claim for the amount spent on the treatment of the claimant. This includes the hospital stoppage charges at the rate of Rs.

4/- per day, cost of an attendant at Rs. 8/- per day, special diet, medicines, the cost of which was not reimbursable and also an attendant for the

children during the period she herself remained unable to look after them. Considering the circumstances of the claimant and the evidence on

record, the claimant deserves to be awarded a round sum of Rs. 10,000/- under these heads.

19. Turning to Captain H. S. Sekhon the claim by him was for Rs. 10,000/- for the injuries suffered by him. There were as many as nine ribs that

were fractured in this accident. He spent over a month and a half as an indoor patient in the hospital. He too had to pay stoppage charges at the

rate of Rs. 4/- per day besides costs of an attendant at Rs. 8/- per day. It was also stated that some amount had been spent by him on special diet.

In these circumstances the amount claimed cannot be held to be excessive or unreasonable and the claimant thus clearly deserves to be awarded

Rs. 10,000/- as compensation.

20. Finally, there is a claim for the loss suffered on account of the damage to the car in this accident.

21. It was the unrebutted testimony of Captain Sekhon that he had purchased this car in 1965 for Rs. 15,000/- and it was completely damaged in

this accident. He sold it after the accident for Rs. 2,500/- Amongest the assessories fitted in this car was an imported radio worth of Rs. 2000/-.

The sale of this car for Rs. 2,500/- is corroborated by the testimony of P.W. 11 Des Raj., who got this car sold. This evidence amply justifies a

sum of Rs. 10,000/- being awarded to the claimant on account of damage to the car.

22. The claimants Captain H. S. Sekhon and Mrs. Pusphinder Kaur are accordingly hereby awarded a sum of Rs. 10,000/- as compensation for

the loss suffered by them on account of the death of their son Ibadet. Mrs. Pushpinder Kaur is further awarded a sum of Rs. 40,000/- as

compensation for the injuries suffered by her in this accident; while her husband Captain H. S. Sekhon is awarded a sum of Rs. 10,000/- as

compensation for his injuries and a further sum of Rs. 10,000/- for damage to the car involved in the accident. The claimants shall be entitled to the

amounts awarded along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the

amounts awarded. The respondents shall be jointly and severally liable for the payment of the amounts awarded.

23. In the result, the appeals of the claimants are accepted with costs. Counsel"s fee Rs. 500/- (one set only).

24. Appeal allowed.