
(2006) 08 P&H CK 0387

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 911 of 1986

Vidya Wati and Others

APPELLANT

Vs

Wirsa Singh and Others

RESPONDENT

Date of Decision: Aug. 2, 2006

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A

Hon'ble Judges: Adarsh Kumar Goel, J

Bench: Single Bench

Advocate: D.S. Brar, for the Appellant; P.S. Bajwa, for respondent Nos. 1 and 2 and R.S. Sihota and Mr. Vinod Gupta, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Adarsh Kumar Goel, J.

The appellants filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939, claiming compensation of Rs. 4.5 lacs on account of death of Vijay Kumar alleging that an accident took place on 9.12.1984 by rash and negligent driving of bus No. PNZ-131, belonging to Chandi Ram Verma which was insured with the insurance company and which was being driven rashly and negligently by Wirsa Singh.

2. The claim was contested.

3. The Tribunal declined the claim, holding that death of Vijay Kumar was not proved to have taken place on account of rash and negligent driving. The Tribunal rejected the evidence of eyewitnesses on the only ground that they could not have identified Wirsa Singh as they did not know him previously. It has also been observed that it was dark at the relevant time.

4. Learned Counsel for the appellants submitted that the Tribunal failed to advert to the FIR (Exh.A-2) which was duly proved by Gian Singh, AW-2, evidence of Dr. Iqbal Singh, AW-1, proving death of Vijay Kumar in hospital on account of accident as well as evidence of Dr. Pawan Kumar, AW-3, who performed post-mortem examination on the dead body of Vijay Kumar and who noticed injuries on the skull of the deceased in his report (Exh.A-2/1). It has also been submitted that Yash Paul, AW-5, who was examined as witness, which evidence was corroborated by Jagan Nath, AW-9 has been wrongly set aside. Further reference has been made to the evidence of Ram Prakash, AW-8, who took photographs Ex.AW-8/1 on the basis of negative Ex.AW-8/2. Vidya Wati-AW- 11, mother of the deceased deposed that the deceased was paying her Rs. 1500/- per month after making all expenses.

5. Learned Counsel for the appellants submitted that reasons given by the Tribunal are not sustainable as question was not about identity of the driver, but about the death having been caused by negligent driving of the vehicle. It did not matter whether Wirsu Singh was driving the vehicle or some one else. Merely by doubting the identity of the driver, the owner and insurance company could not be exonerated nor it could be held that negligence was not proved. Learned Counsel for the insurance company and the owner supported the view taken by the Tribunal.

6. I have considered the rival submissions and perused the record. I find merit in the appeal. From the evidence of eyewitnesses and corroborating evidence i.e. FIR which was lodged immediately after the accident and also the nature of injuries found on the deceased, it can be safely inferred that the deceased died on account of rash and negligent driving.

7. In [Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. \(P\) Ltd. and Another](#), it was observed:

6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. Salmond on the Law of Torts (15th Ed.) at p. 306 states: "The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused". In Halsbury's Laws of England, 3rd Ed., Vol.28, at page 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance

on the plaintiff occurs wherever the facts already established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendants negligence, or where the event charged as negligence "tells its own story" of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part. For the application of the principle it must be shown that the car was under the management of the defendant and that the accident is such as in ordinary course of things does not happen if those who had the management used proper care.

8. Present is a fit case where principle of *res ipsa loquitur* can be invoked for the reasons already mentioned. The finding of the Tribunal is, thus, liable to be set aside.

9. Appellant No. 1, mother of the deceased was thus entitled to compensation. The appellant deposed that the deceased was earning Rs. 1500/- per month. Even after giving margin for exaggeration, the dependency of the deceased can be safely worked out at Rs. 10,000/- per year. Taking on overall view of the matter, claimant is entitled for an amount of Rs. 1.50 lacs. The amount will carry an interest @ 9% per annum from the date of application till realization of compensation. The decree will be satisfied by the insurance company. The appeal is allowed accordingly.