

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2435 of 1994

Date of Decision: 16.11.2016

Jagir Singh

... Appellant

Vs.

Phool Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Pritam Saini, Advocate,
for the appellant.

Mr. Arvinder Arora, Advocate,
for respondent no.1.

Amol Rattan Singh, J.

This is an appeal by the driver-cum-owner of a tractor-trolley that was involved in a motor vehicle accident, resulting in injuries to respondent no.1 herein, due to which he lost his eyesight. There being no insurer of the said vehicle, the compensation of Rs.1,50,000/- awarded by the Tribunal, was held to be recoverable from the present appellant, leading to the filing of this appeal.

2. The facts, as are taken from the impugned Award dated 26.04.1994, are that as per the claim petition filed by the respondents herein, at about 7:30 pm on 24.01.1992, respondent no.1, Phool Singh, was going on his motorcycle, bearing registration no.HRX 6211, from Shahzadpur to Kala Amb, statedly at a very slow speed, with all due care and caution, on the correct side of the road. When he reached near Banondi and Bara Gaon,

the aforesaid tractor-trolley bearing registration no.HRA 6595, driven by the present appellant, came from the opposite side, allegedly driven in a rash and negligent manner, without caring for traffic rules. It was contended that the appellant came to the wrong side of the road and hit his tractor trolley against the motorcycle of respondent no.1, due to which he suffered a severe head injury alongwith other multiple injuries.

He was taken to the Civil Hospital at Naraingarh but was referred to the PGI, Chandigarh, where he remained admitted for about one and half months and thereafter remained under treatment at the All India Institute of Medical Sciences, New Delhi, and at the time of the filing of the claim petition, was still under treatment.

3. It was claimed that he had spent Rs.75,000/- on his treatment and was operated upon twice in the PGI, Chandigarh and ultimately, the doctors had declared that his eye sight was lost forever.

He was stated to be 33 years of age, earning Rs.5000/- per month as a timber merchant, but due to the accident, he had no source of income left.

Consequently, the claim petition was filed by the injured, as well as his wife and four minor children, seeking a compensation of Rs.10,00,000/- from the appellant.

4. Before the Tribunal, other than the appellant, initially one Mehar Chand and his brothers, Dila Ram and Prem Chand, were also impleaded as respondents, again as owners of the tractor trolley involved in the accident. However, on a statement of the counsel for the claimants, the names of the said respondents were deleted, vide an order dated 02.08.1993.

5. The present appellant being the only respondent remaining

before the Tribunal, he filed his written statement denying all the allegations in the claim petition, further stating that actually his trolley had got punctured near village Baragarh after it was loaded with manure, and consequently, it had been parked on the “Kacha” portion of the road, and that he had placed stones and logs of wood towards the road side, as well as at the front and back of the trolley, which was stationary. He had also lit a fire, as an indicator of the parked vehicle.

It was further contended that the appellant was very heavily drunk when he came from the side of Shazadpur and had hit the trolley from behind, with his motorcycle.

Out of sympathy and on humanitarian grounds, the appellant is stated to have taken the injured to the hospital and thereafter to the PGI, Chandigarh, where he himself spent a lot of money on his treatment.

He even bore all the expenses thereafter, as per the stand in the written statement.

It was further stated that the first claimant, his wife and father, even swore affidavits to the effect that there was no fault on the part of the present appellant in causing the accident and that the expenses for the treatment of the injured were also borne by the appellant.

A similar statement is stated to have been made before the police also by the present respondent no.1 (hereinafter to be referred to as the 1st claimant), also admitting that he was in a drunk condition, with no fault on the part of the present appellant.

6. Consequently, it was averred by the appellant, that he was not liable to pay any compensation and that the claim petition was also not maintainable, with the claimants estopped by their own conduct from filing

it.

It was yet further contended that the claim petition had actually been filed by the claimants at the instance of some other persons who were inimical towards the present appellant and further, that the 1st claimant had even no valid driving licence to drive his motorcycle on the date of the accident.

7. A replication having been filed by the claimants controverting the stand of the appellant, the following issues were framed by the learned Motor Accident Claims Tribunal, Ambala:-

- “1. Whether the accident was the result of rash and negligent driving of respondent Jagir Singh-driver? OPP
2. To what amount of compensation if any, the claimants are entitled to and from whom? OPP
3. Whether the claim petition is not maintainable for reasons stated in the additional pleas? OPP
4. Relief.”

8. The first claimant stepped into the witness box himself as PW1 and further examined one Pritam Chand, who he stated was an eye witness to the accident.

The present appellant also examined himself and one Man Singh, who he stated had also seen the accident. He further examined Kishori Lal and Amar Singh (Advocate), who swore their affidavits, Exs.RW3/A and RW3/B, Amarjit Singh, Assistant in the PGI, Chandigarh, Constable Buti Nath, Photographer, Vijay Kumar Sharma, who proved the attendance record of PW2 Pritam Chand, one Ved Pal, (who identified the 1st claimant, his wife Krishna, and one Itwari Lal at the time of the attestation of the affidavits Exs.RW3/A and RW3/B). He also examined HC Babu Ram who proved a copy of the FIR, Ex.PW8/A and Gurcharan Singh, a head

mechanic in the Haryana Roadways, Yamuna Nagar, who proved the mechanical test reports, Exs.RW9/A and RW9/B.

9. On appraising the evidence and the pleadings, the learned Tribunal found that the claimant had testified in terms of his petition, further stating that he did not know the number of the tractor trolley which had struck him and that the police had taken no action on his application.

In cross-examination, he stated that he had a valid driving licence at the time of the accident and further stated that he had noticed the tractor trolley from a distance of about 10 to 15 yards, but did not know whether any person was present at the spot or not, or whether the tractor trolley remained there after the accident or not.

He further stated that he remained conscious for about 5/7 minutes after the accident but could not tell whether Jagir Singh (the present appellant) had taken him to the hospital from the spot. He, in fact, thereafter denied that he was taken by Jagir Singh to the PGI, or that Jagir Singh had spent the entire amount on his treatment and diet.

He further denied that the trolley was standing by the side of the road or that it was punctured, or that there were logs of woods or stones kept on three sides of the standing trolley. As per the version of the injured claimant, the right side of the trolley had struck against his motorcycle and he fell down at a distance of about 4/5 feet on the “kacha” portion of the road. He, of course, denied the allegations that he was heavily drunk on that day and was actually unable to drive the motorcycle properly, or that he had struck the trolley from behind.

He also denied any statement made before the police that he had been drunk and that there was no fault on the part of the present appellant

and that the latter had spent the entire amount on his treatment.

The claimant also denied having sworn any affidavit to the police stating the aforesaid facts, and in fact deposed that he had made no statement to the police, or anywhere, or had moved any application to the S.P. or D.C. or to any other authority.

He however admitted appearing before the SDM but denied moving any application to him also.

10. The person who claimed to be an eye witness, standing for the claimants, PW2 Pritam Chand, testified that on 24.01.1992 he was going on his cycle from Shazadpur to his village towards Naraingarh, and at about 7:30 p.m. when he reached Banaundi, he saw the first claimant going ahead of him in the same direction, alone on his motorcycle, on the left side of the road. He further stated that he saw the tractor trolley coming from the opposite side, driven rashly and negligently, which, by coming onto the wrong side of the road, struck against the motorcycle. The witness also gave the number of the tractor trolley as HRA 6595.

He further testified that as a result of the impact, the first claimant fell down from the motorcycle and became unconscious. 2/3 other persons also reached there and he asked them to help him (the claimant) as otherwise he would have died.

He further submitted that a van having stopped at the spot upon request, this witness took the injured-claimant in the van to the Civil Hospital, Naraingarh, where he was examined.

It has been noticed in the impugned Award that in cross-examination, PW2 stated that he did not enquire after the names of the persons who had come to the spot, nor of the driver of the van. However, he

clarified that he had noted down the number of the tractor trolley on a piece of paper though he had not reported the matter to the police and that the police had also not recorded his statement.

He further stated in cross-examination that the doctor did not record his name (to the effect that he had brought the injured to the hospital).

The witness could not give the exact part of the trolley that struck the motorcycle, because he stated that he reached the spot a little late, though the tractor was standing on the spot.

Yet further, this witness stated that he did not go to work that day because he was informing his relations about the death of his mother. He further maintained that he was not a summoned witness, even though the claimant was not related to him.

He gave the time that he had started from his house to be 12:30 pm, further stating that he had first gone to village Patheri and then to Shahzadpur, from where he was returning at the time of the accident.

He also, of course, denied not having seen the accident and further denied that it was not a result of the rash and negligent driving of the present appellant.

11. Opposed to the aforesaid testimony, the appellant examined RW1, Man Singh, who also claimed to be an eye witness who knew the first claimant and the fact that he belonged to village Tandwal. The witness further stated that his land is situated near the place of the accident and at a distance of about one and half acres from the road.

He testified that on 24.01.1992 he had gone to his fields at about 5:00 pm. and when he was crossing the road towards his fields, he saw a tractor trolley standing on the “kacha portion” of the road, as one of its

tyres was punctured, but with no tractor standing there.

As per RW1, the present appellant was sitting near the trolley, around which he had placed stones and wood. At about 6:30 pm, the witness further deposed, he heard a sound due to which he came to the place of occurrence and saw that a motorcycle had struck the rear side of the trolley and that Phool Chand (the 1st claimant), was lying on the road in an injured condition, smelling badly of liquor. The witness further deposed that he recognized him and went to his house and informed his family members and further, that he and some other persons had put the injured in a van and had sent two persons of the village alongwith him to the hospital.

He further deposed that on the next day the police had come and he had “appeared before the police”.

In cross-examination, RW1 stated that he had not noted the number of the tractor trolley when he had passed it, but the tractor was not attached to it and in fact, there was no tractor standing there at that time.

The witness further deposed that he and Jagir Singh had simply exchanged greetings when he had earlier passed the road, but he had seen that there were manure bags loaded in the trolley, which was facing towards Naraingarh. He further stated that none except Jagir Singh (the appellant) was present at the time but thereafter, when he reached the spot after the accident, two persons were already there and that Jagir Singh had placed 5 to 7 stones around the trolley. He further stated that the electricity motor fitted in the tubewell was functioning at the time of the accident, and that it was dusk at that time.

In cross-examination, the witness also named one of the three persons who went to the hospital with the injured, as Narmail Singh.

He further stated that though the police had “interrogated him”, his signatures had not been taken on any statement, nor had any one else' statement been recorded in his presence.

The witness further deposed that when the police came to the spot, the tractor was not present and that he himself was in his field and had gone to the spot seeing the police there and when he reached there, Pritam Singh, Ram Sarup and Jai Singh were already there with the police.

Towards the end of his cross-examination, RW1 denied the suggestion that he did not own any field near the place of accident, or that he had not been present near the accident or that no obstacles had been placed around the trolley, or that the injured claimant was not smelling of alcohol etc.

12. It may be stated here that the testimonies of the persons stated to be eye witnesses have been noticed in detail by this Court, in view of the fact that the appellant has completely denied that the tractor trolley was being driven at all and had hit the motorcycle, with his stand being that actually the claimant had come and hit the stationary trolley from behind, it being stationary on account of a punctured tyre.

13. RW2, Sarpanch of the village, also testified in favour of the present appellant, stating that on the date of the accident he was going to his village on a bicycle, when he saw a trolley loaded with fertilizer bags standing on the “kacha” portion of the road, with the motorcycle belonging to the claimant having struck it from behind and the injured being removed to a hospital in a van.

In cross-examination, this witness stated that a Panchayat had been convened at village Tandwal, and the appellant had stated before it that

he was ready to compromise with the claimant on the terms finalized by the Panchayat.

The witness also proved the Panchayat proceedings as Ex.D1 but admitted that the signature or thumb impression of the injured claimant or his wife did not appear on the said compromise deed because they did not agree with the compromise proceedings and had left in between.

Other than the above, this witness also testified that on the date of the accident, he had met Phool Chand (claimant no.1) near a hand pump, at about 5:00 pm and that the claimant was carrying a full bottle of liquor that was red in colour, though the claimant did not drink from it in his presence.

14. RW3 was Shri Amar Singh, Advocate of Naraingarh, who testified that he was also an Oath Commissioner and that the original affidavit, a copy of which was Ex.RW3/A, had been brought to him by the 1st claimant and that it was read over to him, after which he (the witness) attested it, with the claimant having thumb marked the affidavit in his presence.

He further stated that he knew the claimant personally but had also got him identified by the Lambardar of village Tandwal, who also signed the affidavit.

Similarly, this witness also proved the copy of the affidavit of the 2nd claimant, i.e. the wife of the 1st claimant, as Ex.RW3/B.

The witness however admitted that he had not brought the register in which he had made the entries relating to the attestation of the affidavit.

Importantly, he admitted that when the affidavits were brought

to him, the claimant had told him that he could not see anything.

15. RW4, an Assistant in the record-room of the PGI, brought the record pertaining to the admission, treatment and discharge of the claimant, stating therein that it was mentioned in the discharge summary, Ex.RW4/C, that Phool Chand was under the influence of alcohol at the time when he was brought to the hospital.

In cross-examination, nothing significant is seen, except the fact that this witness had not brought the record of the follow up treatment of the claimant.

16. RW5, the police photographer who had taken the photographs of the scene of the accident, deposed with regard to having taken the photographs of the trolley and the motorcycle. In cross-examination, he deposed that there was no tractor at the spot when he had taken the pictures.

RW6 was a Junior Engineer working in the Public Works Department at Naraingarh, who brought the summoned record showing that PW2, Pritam Singh, was working as a daily wager with the Department in January 1992 and was present on duty through out that day, from 8:00 am to 5:00 pm, with a lunch break in between.

In cross-examination, he deposed that casual workers were not required to take station leave after working hours.

17. RW7 was the Lambardar of village Tandwal, who deposed that he knew the injured claimant and his wife, as also the father of the claimant, who were all residents of the village.

He further deposed that in February 1992, all three of them had taken him to the Tehsil (office) at Naraingarh, as they wanted to get some affidavits attested from him, for which purpose they purchased stamp papers.

This witness also identified the copy of the affidavit executed by the 1st claimant as Ex.RW3/A, further stating that he had identified the claimant before the Oath Commissioner and that the document was read over to the claimant, after which he had thumb marked it.

Similarly, he testified in respect of the copy of the affidavit of the wife of the 1st claimant.

Yet further, this witness, in cross-examination, stated that though he was not on visiting terms with the claimant, he being from a different caste, but he was his neighbour. He also admitted that the first claimant was blind at the time when the affidavits were executed.

He further stated that the present appellant had not executed any affidavit and that the affidavits attested by the claimants were not taken to the Tehsildar for attestation, though the officer was present in his office on that date.

18. HC Babu Ram testified as RW8, stating that he was posted in Police Station Naraingarh on the date of the accident and that on receipt of a wireless message, he had reached the PGI, Chandigarh, on 25.01.1992, to record the statement of the injured and other eye witnesses, and upon the doctor certifying that the injured was not in a position to make a statement, he had taken the statement of one Mani Ram, outside the room that the injured was admitted in.

On the basis of that statement, the FIR, Ex.RW8/A, was recorded and during the course of the investigation, this witness stated that he had recorded the statements of witnesses and the injured under Section 161 Cr.P.C., who had not shown it to be the fault of the trolley owner and, in fact, had stated that it was the motorcycle that had hit the stationary trolley

from behind. It was on account of this that he (RW8), had directed the first claimant and his companion to bring their affidavits, duly attested, disclosing the manner of the occurrence, after which the affidavits, Exs.RW3/A and RW3/B were produced.

The witness further testified that upon verifying the facts, the SHO thereafter forwarded the case for cancellation of the FIR.

In cross-examination, what is of significance is the fact that this witness deposed that he got the motorcycle and the trolley examined from a Haryana Roadways mechanic, though he could not remember his name.

However, he admitted that before 05.02.1992 no FIR had been registered regarding any rash and negligent driving, against the present appellant, as, in the opinion of this witness, no offence was made out against him.

Lastly, he deposed to the effect that he did not know the outcome of the cancellation report recommended, to the Court.

19. The mechanic of the Roadways, referred to earlier, deposed as RW9, to the effect that he was summoned by the police for mechanical examination of the vehicles and had consequently examined the motorcycle bearing registration no.HRX-5211 on 27.01.1992, as also the tractor trolley. The copies of the report made out by him were proved as Exs.RW9/A and RW9/B.

He further testified that there was no mark of any accident or damage to the trolley, except on its rear side, as stated by him in his report.

In cross-examination, he stated that the trolley was an old one but the handle, brakes and horn were in good working condition. He further deposed that he had not seen any tractor standing at the police station and

significantly, he further deposed that the tyres of the trolley were in good condition and “were full of air”.

The scratch on the back of the trolley was stated by this witness to be a fresh one, with only the paint removed.

20. The present appellant testified as RW10 in terms of his written statement, further stating that after the motorcycle hit the trolley on the rear, Phool Singh fell down and received injuries, with blood and liquid coming out of his mouth and with him badly smelling of liquor. As per the appellant, the first claimant was “dead drunk”.

He further deposed that after sometime other persons collected there and Man Singh (RW1) also came there and identified the 1st claimant.

The rest of the testimony is also in terms of the written statement.

In cross-examination, the appellant stated that he had started from Shahzadpur at about 5:00 pm, reaching the place of occurrence at about 5:30 pm. He admitted that he was driving the tractor himself, though he had not brought his driving licence.

He further deposed that after parking the trolley at the site of the accident, his cousin Surjit had taken the tractor to Shahzadpur and thereafter returned to the spot with Sohan Lal on the tractor, at about 7:00 pm, before which the accident had already occurred.

As per the appellant, upon seeing the accident having taken place, the mechanic refused to repair the punctured tyre and returned on the tractor and thereafter, the tractor was brought back at 8:00 pm.

The appellant further denied having transferred his land in favour of his relations by suffering a decree in their favour, further stating

that it continued to remain in his name.

The other part which is of significance, is that in his cross-examination, the appellant stated that he had not accompanied the injured in the car while taking him to the hospital but had remained at the spot throughout the night and that the tractor had been sent to the village, through Surjit Singh.

He further testified that his brother, Surjit Singh, went to the hospital at about 8:30 pm and came back 10 minutes thereafter. He further deposed that though he (appellant) reported the accident at the Police-Post Shahzadpur, no report had been recorded by the police though two Constables had been sent alongwith him.

He next deposed that though he had gone to lodge the report with one Gurnam to the police station, the police did not record his statement and in fact, one Head Constable came early in the morning at about 6:00 am when he and Surjit were present at the spot, the latter having come after leaving the tractor at the village.

Thereafter, he is stated to have been taken to the police station, his statement recorded and in the evening, his tractor trolley was released on 'superdari' by the Court.

The next part of the cross-examination pertains to the photographs having been taken in his presence, etc. He also admitted that he had not filed any application against the claimant and that the police was taking action on its own.

He obviously denied that the affidavits and statements by witnesses were 'concocted' or that the accident actually took place due to his own rash driving.

21. Having appraised the aforesaid evidence and the pleadings before it, the learned Tribunal firstly found that though it was the specific averment of the present appellant in his written statement, that he had taken the injured claimant to the hospital on the date of the accident and had thereafter, incurred all expenses on his treatment, while testifying on oath, he himself emphatically stated that he had stayed behind at the place of the accident through out the night and other persons had gone to the hospital alongwith the injured and that subsequently, his brother, Surjit, also went to the hospital and returned after spending 10 minutes there.

Further, though the person examined as an eye witness by the claimant, i.e. PW2, was sought to be discredited by the appellant, by examining the Junior Engineer of the Department in which the said witness was working, even the deposition of the J.E. did not prove that PW2 could not have been present at the spot at the time of the accident, i.e. at about 7:30 pm., as admittedly he got off duty at 5:00 pm. Hence, finding that even the appellant had admitted in his cross-examination that there was no enmity between the parties, it was held that there was no reason for PW2 to testify falsely against the present appellant.

22. As regards the cancellation report submitted by the police, in the FIR registered against the present appellant, it was firstly held, in effect, that the possibility of the police not having been entirely fair could not be ruled out, and more importantly, it was held that when the police file was received by the Tribunal, an application was filed by the police, on the orders of the Superintendent of Police, that the matter be reinvestigated. Therefore, holding that the investigation had not concluded and no judgment of the Court seized of criminal proceedings, accepting the cancellation

report, had been placed on record, the cancellation report submitted was held to be of no significance, in the aforesaid circumstances.

Coming to the Panchayat proceedings, it was found that, in fact, the claimants had never compromised the matter, with admittedly there being no signatures of the claimants on the said proceedings.

23. As regards the affidavits executed by the claimants, i.e. the injured and his wife, it was held that since the first claimant had admittedly become blind, seen with the fact that the Oath Commissioner had not brought the register maintained by him, showing that the execution of the affidavits was duly entered in it, and with the Tehsildar also having been present but no attestation having been got done from him, no reliance could be placed upon the affidavits.

In this regard, it needs to be stated at this stage itself, that a copy of the affidavit as has been placed on record by learned counsel for the present respondents, i.e. the claimants, the original case file having been burnt, it is seen that there are three thumb impressions on the affidavit, one of which is shown to be that of the first claimant. As per the contents of the affidavit, the accident took place on account of the said claimant having hit the tractor from behind on account of the fact that a head light of a truck blinded him, due to which he was unable to see the trolley standing on the road. It has been stated that there was no fault of the appellant in causing the accident.

24. Coming to the issue of the medical evidence showing that the injured claimant had consumed alcohol, to which effect a witness for the present appellant also testified, that he had seen the claimant carrying a bottle in his hand, the Tribunal held that the said testimony could not be

believed and as regards the entry in the medical record, simply smelling of alcohol would not by itself prove that the state of intoxication of the claimant was so high that he could not control his motorcycle.

It was further held that there was no medical evidence to show that his pupils were dilated or that his speech was incoherent.

Hence, it was held that the contention that he was dead drunk, could not be held to have been proved.

25. Other than that, it was held by the Tribunal that even if it is accepted that it was the first claimant who had actually struck the trolley from behind, the present appellant could not be absolved of blame, inasmuch as, admittedly the accident took place at a time when it was dark (between 7:00 pm to 7:30 pm in January) and as such, it was the appellants' duty to display sufficient light around a stationary trolley, so as to indicate to traffic on the road that the vehicle was actually standing there.

In this regard, it was noticed that “though in the written statement it was contended that a fire had been lit by the appellant, as an indicator that the vehicle was in a stationary position on the road, neither he, nor the other eye witness examined by him, testified to that effect, with them only stating that stones and wood had been placed around the trolley as an indicator.

Further finding that there was no evidence to show that the motorcycle was being driven without its head light on, it had to be concluded that with the present appellant had not taken proper precautions to warn traffic on the road, that there was a stationary trolley parked there.

26. On the aforesaid reasoning, the issue with regard to negligence of the present appellant in having caused the accident, was decided against

him and in favour of the claimants.

27. Coming to the issue of compensation, it was found that as per medical record, the first claimant had actually gone blind despite undergoing treatment at the PGI, Chandigarh, and the All India Institute of Medical Sciences, New Delhi. Thus, obviously he had been rendered incapable to earn his living through out his life.

However, no evidence having been led to the effect that he was earning Rs.2000/- per month (in 1992), it was held that his income could not be taken to the more than that of a daily wager, which would be Rs.1200/- per month. However, no calculation of actual loss of income was made by the Tribunal and a lump-sum of Rs.20,000/- was awarded by way of loss of earnings.

On the basis of the disability certificate showing that he had become 100% blind, the first claimant was awarded Rs.1,00,000/- as compensation.

As regards the medical expenses, though Rs.70,000/- to Rs.80,000/- had been claimed to have been spent on his treatment, no medical bills etc. were produced and therefore, on conjecture, Rs.30,000/- were awarded under that head.

Thus, a total compensation of Rs.1,50,000/- was awarded to the first claimant, i.e. respondent no.1 herein, by the Tribunal, vide its impugned Award dated 26.04.1994. He was also awarded interest @ 12% per annum, on the aforesaid account, running from the date of the filing of the claim petition, till its realization. Costs of Rs.300/- were also awarded.

Hence, this appeal.

28. At the time when a Division Bench of this Court admitted this

appeal to regular hearing, vide its order dated 30.08.1995, the operation of the impugned Award was stayed, subject to the appellant paying a sum of Rs.25,000/- to the claimants within a period of four weeks. It has not been stated by learned counsel for the respondents that the said amount was not paid.

29. When this case finally came up for arguments, Mr. Pritam Saini, learned counsel for the appellant, first referred to the medical record, i.e. Exs.RW4/A, RW4/B and RW4/C, the first being the admission note of the hospital, the second the note of the neurosurgeon and the last, the discharge summary from the PGI, Chandigarh. He pointed to the fact that it was recorded that the patient was under the influence of alcohol, in the admission note as also in the discharge summary. In the note of the neurosurgeon, recorded on 25.01.1992, it was also recorded to the same effect.

Hence, learned counsel submitted that the Tribunal wholly erred in holding the appellant herein guilty of negligent driving.

He next referred to the decision of the Panchayat, Ex.D1, a copy of which is again on record, on which four people are seen to have signed, including the Sarpanches of two villages, i.e. village Bansa Kalan and Banaudi, other than one Panch of the village of the appellant, and the Numberdar of the village.

The document states to the effect that a Panchayat of the entire area had been convened on the direction of the judge (seemingly the Presiding Officer of the Tribunal).

The document further gives the entire version of the accident as per that given by the appellant in his written statement, including the fact that the first respondent was drunk and as such there was no fault on the part

of the appellant, but since the claimants had refused to compromise the matter, it would be decided by the Tribunal itself.

30. Mr. Saini next referred to the fact that, admittedly, an FIR had been registered, in which the appellant had been exonerated and therefore, the Tribunal wholly erred in holding that no reliance could be placed on that document, as the matter was being reinvestigated and the police version could not be believed.

Learned counsel for the appellant, therefore, prayed that with the medical record also showing respondent no.1-claimant to be under the influence of the liquor and the Panchayat also *en-masse* having stated that it was the claimant himself who was guilty of negligence and a cancellation report also having been filed by the police, the Tribunal wholly erred in holding the appellant negligent and as such, the Award deserves to be set aside and the claim petition filed by the respondents herein, dismissed.

31. *Per contra*, Mr.Arvinnder Arora, learned counsel for the respondents-claimants, first submitted that the Panchayat had actually awarded Rs.1000/- and some Ghee to the respondents-claimants which, as noticed by the Tribunal also, would not have been done if the appellant was not guilty.

He next submitted that the mentioning of alcohol in the medical record is only by way of recording the case history, as given to the doctor and is not recorded as a medical fact. Hence, it cannot be held that respondent no.1 herein was actually found to be under the influence of alcohol by the doctors, especially as no doctor was examined to that effect by the appellant.

Lastly, learned counsel for the respondents submitted that the

appellant actually suffered a decree in favour of his son, qua six kanals of land, only to avoid execution of the Award in favour of the first respondent herein.

32. In rebuttal, Mr. Saini, other than reiterating what he had already submitted, stated as regards the land belonging to the appellant, it is only six kanals, with four brothers as co-sharers thereof. Hence, he submitted that the appellant is not a big land owner by any yardstick.

33. Having considered the arguments of both learned counsel and the Award of the learned Tribunal, as also the reconstructed evidence, obviously an essential issue to be determined, is as to whether the first respondent was under the influence of liquor or not, at the time of the accident.

However, before going on to that, it needs to be stated here that there is no reason to disbelieve that the motorcycle actually hit the trolley from behind, because even as per the report of RW9, i.e. the head mechanic of the Haryana Roadways, as referred to by the Tribunal (the original report not having been reconstructed by learned counsel), it was only the front mudguard and the head light of the motorcycle that was seen to be damaged, alongwith the rear end of the tractor trolley. Hence, the contention of the respondents-claimants, that the tractor trolley actually came from the opposite side and hit the motorcycle by coming on the wrong side of the road, is not found to be believable, especially in view of the fact that no evidence was led, other than the oral testimony of PWs1 and 2, that the tractor-trolley was actually moving on the road when the accident took place. In this regard, it also needs to be noticed that PW2 is a doubtful eyewitness because whereas his stand was that he had taken leave on the day

of the accident, his superior in office, RW6, testified that he was present in office that day, though till 5 p.m. Thus, even though he could have witnessed the accident 2 hours thereafter, however, his statement discredits his testimony. Hence, on that specific aspect, the finding of the Tribunal is reversed. In fact, the report of the mechanic, the photographs (photocopies) and even eventually the inference drawn by the Tribunal, show that it was actually an accident that took place with the motorcycle hitting the trolley from behind.

34. The question then is as to whether the finding of the Tribunal, to the effect that the appellant was guilty of not putting up adequate warning signs with regard to the trolley being stationary on the road, can be sustained or not.

As already noticed, the Tribunal found that though in the written statement of the present appellant, it was stated that he had lit a fire to show that trolley was stationary, that was a statement not repeated by the alleged eye witness he had examined, i.e. RW1. However, from the testimony of the appellant as RW10, it is seen that he did state in his examination-in-chief, that after it became dark, he burnt a fire towards the back of the trolley. RW1, Mann Singh, however, did not state anything with regard to a fire having been lit behind the trolley, though in cross-examination, he did deny the suggestion that no obstacles had been placed around the trolley.

A perusal of the photocopy of the photographs on record, shows that some tree branches have been placed around rear side of the trolley. However, undoubtedly, these photographs are of day time, having taken by RW5 on 25.01.1992 at 9:00 am. Obviously, there was more than ample time

for the appellant to have placed these branches at the spot. Further, no trace of any fire lit is visible in these photocopies.

In any case, the accident admittedly having taken place in the dark, on a winter evening, in the opinion of this Court, the appellant cannot be absolved of blame in not taking adequate precaution of lighting up the spot, by any means and for not putting up illuminated traffic signs to show that there was danger on the road, in the form of a stationary trolley.

No doubt, the accident is of the year 1992, when such precautions were rarely taken (not that they are generally taken even now), but a bad practice does not absolve the owner of a vehicle from his duty to ensure that travellers on a public road are not endangered due to a vehicle standing stationary, for any reason, including a mechanical fault.

In this regard first Section 122 of the Motor Vehicles Act, 1988, needs to be referred to, which reads as follows:-

122. Leaving vehicle in dangerous position.—No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

Other than the above, though the Haryana Motor Vehicle Rules 1993 are more elaborate (Rule 190 thereof), however since the accident in the present case is of the year 1992, no reference is being made to the aforesaid rules and instead Rule 5.2(6) of the Punjab Motor Vehicles Rules 1940 needs to be referred to and is reproduced herein as under :-

“(6) Where a trailer is being drawn by a motor vehicle, other than the drawn part of an articulated vehicle, a

lamp of as nearly as possible the same size and power as the rear lamp and showing a red light to the rear shall be affixed to the trailer vertically above or below the rear lamp at a distance of not less than two feet or more than three feet from the rear lamp.”

The aforesaid Rules of 1940 were repealed only by the 1993 Rules.

Thus, it is very clear from the aforesaid Rules, that at all times, whether in a stationary or a moving state, a trailer being drawn by a motor vehicle, is required to display a lamp showing a red light, to ensure that a vehicle coming from behind is aware of the vehicle moving or standing ahead.

In any case, Section 122 of the Act of 1988 makes it very clear that no person in charge of a motor vehicle shall allow it to remain at rest on any public place, in a position or in such a condition or in such circumstances, as are likely to cause danger to the public.

It needs to be stated here that the subsequently introduced Rule 190 of the 1993 Rules, though it carves out an exception in respect of any vehicle that has stopped on account of a mechanical defect, however, the proviso even to that Rule, specifies that the person in charge of the vehicle would still continue to be liable for contravening Section 122, unless all practicable steps have been taken to dispose of the vehicle in such a way that it would not cause danger or obstruction to other users of the road.

However, as already stated, that Rule is not being reproduced, it not being in force at the time of the accident in question. Yet, Section 122 of the Act of 1988, as also Rule 5.2(6) of the Rules of 1940, were very much in force even on 24.01.1992.

Thus, it is obvious that even if his version of the accident is to be believed as regards the motorcycle hitting from behind, which I do not otherwise doubt, the appellant cannot be held to be not negligent in causing the accident.

35. The next question therefore is, as to whether the entire negligence can be attributed to the appellant alone, or on account of any alcoholic condition of the first respondent herein, he too would be guilty of some negligence in driving in that condition.

Though in terms of the aforesaid regulations, the entire onus on ensuring the safety of other vehicles would fall upon the appellant, however, if respondent no.1 is found to be under the influence of the liquor at the time of the accident, he obviously cannot be absolved of his own negligence either.

In this regard, the oral testimonies of the witnesses on both sides being doubtful, they having simply deposed in terms of the stands taken by the opposing parties in their pleadings, the first document that is to be seen is the admission note, Ex.RW4/A. Though the reconstructed copy of the note does not indicate that it was issued by the PGI, Chandigarh, however, with RW4, a Clerk with the PGI, Chandigarh, having testified that it was a document of that Institute, it is to be accepted as such, with nothing to the contrary in any case pointed out by either learned counsel.

It is first to be noticed that the PGI was undoubtedly the second hospital to which respondent no.1 was taken, after he was first taken to the local Civil Hospital near the place of accident. No documentary evidence having been produced by either side, with regard to the condition of respondent no.1 at the time of his examination in that hospital, the first

document of medical evidence, is Ex.RW4/A.

Though the relevant line on the said document is not fully legible, but what is discernible is as follows:-

“H/O RSA on 24/1/92 at 8 PM while going on a motorcycle Collided to a trolley. Pt. was said (illegible) influence of alcohol at the time. H/O unconsciousness too H/O vomiting (not fully legible). No h/o(illegible)/ENT- -- - -(illegible).”

A perusal of the above would show that possibly it was recorded that the patient was “said to be under the influence of alcohol”.

Thereafter, the following is seen to be recorded:-

“..... diluted.... following.....

Pulse 84/min

BP- 130/70 (Note : possibly recorded as 130/90)

Pupil (R) Local Injury to(R) eye +ve

(L)....Dilated, non reacting.

Vision.... ”

Thus, though the blood pressure of 130 x 70 or 130 x 90 would not necessarily indicate any presence of alcohol, however, the finding of the Tribunal that there was no dilation of the pupils cannot be entirely accepted, with the left pupil found to be dilated.

At the same time, it is not recorded in the admission note that respondent no.1 was actually found to be under the influence of the alcohol.

Yet, the recording by the neurosurgeon, on 25.01.1992, is to the following effect:-

“Alleged H/O RSA on 24.1.92 at 8:00 PM ----- (illegible) was on motor cycle collided with a trolley. He was under influence of alcohol at that time. Unconscious since then. h/o Vomitting present. NoA/O seizure, ENT bleeding.

O/E Pt. is drowsy, disoriented.

Pulse - 90/min

RIR- 20 /min

No cyanosis

....- RT

LT Digited not reacting.

Visioin- >>>

GCS E2 ..4 M9 -6

Chest- Clear

No long bone, No pelvic it.”

Similarly, the discharge summary, in that regard records as follows:-

“H/O complaints: Alleged H/o sustaining injuries on 24-1-92 at 8.00 P.M.Pt. going on his motor cycle collided against a tractor trolley. Pt. was under the influence of alcohol. H/o unconsciousness (+) H/c vomiting(+)”

36. In the opinion of this Court, learned counsel for the respondent is correct to the extent that actually there is no specific finding by the doctors of the PGI that respondent no.1 was actually under the influence of alcohol. There was simply a recording of what was told to them, but at the same time it is not possible to ignore the fact that there is no contrary opinion recorded, to the effect that respondent no.1 was not having any alcohol content in his body, as otherwise, it would normally have been so recorded, that despite the aforesaid reporting, there was no indication of any alcohol present in the body.

As regards the dilation of the left pupil, however, no specific conclusion can be recorded by this Court to the effect that the dilation of the pupil was due to alcohol and not due to the injury suffered, which eventually

led to the blindness of respondent no.1. This is especially so, as the recording is that the left pupil was “dilated not reacting”, and even in the discharge summary, it is eventually recorded that the right eye had a ruptured globe and the left eye had a central retinal artery occlusion.

37. From all the aforesaid, the conclusion to be drawn by this Court is that the primary negligence in not setting up a proper warning sign, that a vehicle was standing stationary on the road, lies upon the appellant even in terms of the Motor Vehicle Act and Rules and as such, at least 80% negligence must be attributable to him, if not more.

Further, with no specific finding recorded on the medical documents that respondent no.1 was actually found to be in an inebriated state, it is difficult to hold that he was in such a completely drunk condition as was projected by the appellant in his pleadings and evidence.

Yet, not ignoring the recording of the history of the case, even as was given to the doctors, this Court would hold that there was at least some alcoholic content present in the blood of respondent no.1. Hence, it is considered appropriate that 10% to 15% negligence, quantified at 12%, is attributable to him also.

38. Coming then to the issue of quantum of compensation awarded by the Tribunal.

As already noticed, for treatment between two hospitals, i.e. the PGI, Chandigarh, and the All India Institute of Medical Sciences, New Delhi, the Tribunal awarded a lump-sum of Rs.30,000/- to respondent no.1 herein, though he had claimed Rs.70,000/- to Rs.80,000/- for such treatment. Though undoubtedly no bills were produced by the claimants, I see no reason to interfere in the Award of the Tribunal on that aspect, in view of the

fact that though both these are government hospitals, a 12 day admission in the PGI and then thereafter travelling to the All India Institute of Medical Sciences, alongwith the money spent on medicines, administered tests etc. that must have been conducted, approximately that sum (Rs.30,000/-) can be expected to have been spent on the treatment.

In any case, when one considers the fact that he has been rendered completely blind, obviously his earning capacity has come down to nil or near nil. Yet, the Tribunal did not award him compensation under the head of loss of earnings, in the manner that it should have been awarded, i.e. by taking his annual income, and thereafter multiplying it by the appropriate multiplier. Instead, it simply awarded him a lump-sum of Rs.20,000/- by way of loss of earnings. Therefore, that would be an important factor in not reducing the compensation awarded towards treatment.

To elaborate, the income of respondent no.1 was taken to be Rs.1200/- per month, as the earnings of a labourer/daily wager. Even if that is considered a little excessive as actually it was about Rs.1000/- as per the minimum wages notified by the Government of Haryana in January 1992, yet considering that no deduction can be made towards personal living expenses of respondent no.1, he obviously being alive and requiring to be maintained, the loss of annual earnings would be Rs.12,000/- and he having been shown even in the hospitals' discharge summary to be 33 years, even though in the claim petition, he was shown to be 22 years, a multiplier of 16 would be applicable, thereby bringing the loss of earnings to be Rs.1,92,000/-. As said, the Tribunal having awarded only Rs.20,000/- and there being no appeal for enhancement by the respondents-claimants, I see no ground to reduce the quantum of compensation payable, including the

amount of Rs.1,00,000/- awarded for his permanent disability of blindness.

39. Hence, the compensation of Rs.1,50,000/- as awarded, requires no interference with, though obviously, in view of the fact that this Court has held respondent no.1-claimant to be guilty of 12% negligence, a commensurate deduction would have to be made.

Thus, making that deduction, the amount of compensation to be actually paid to the respondents would amount to Rs.1,32,000/-.

40. Learned counsel for the appellant had also submitted that the interest awarded upon the compensation amount, @ 12% per annum, is highly excessive because even in the year 1994, normally not more than 9% should have been awarded.

In that respect, I agree with the learned counsel and consequently, the rate of interest, running from the date of the filing of the claim petition, till the date of the filing of this appeal, i.e. 25.07.1994, is reduced to 9% per annum, after which the interest to be awarded on the remaining compensation now payable to the respondents-claimants would be @ 4% per annum.

41. Having held as above, this appeal is partly allowed to the extent aforesaid, because of the reduction of the compensation amount by Rs.18,000/-, due to the contribution of 12% negligence by respondent no.1 in causing the accident, as also due to reduction of the rate of interest, as given herein above.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

November 16, 2016
dinesh

Whether speaking/reasoned	Yes
Whether Reportable	Yes