

IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

RSA No.2664 of 1989 (O&M)

Date of Decision: 18.05.2016

Sohan Singh

.....Appellant

Versus

Union of India

....Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr.O.P. Hoshiarpuri, Advocate for the appellant.

Mr. G.S. Bal, Sr. Advocate with Mr. ADS Bal, Advocate for the respondent.

Mr. R.S. Sihota, Sr. Advocate with Mr.B.R. Rana, Advocate for the Insurance Company.

Darshan Singh, J.

The present appeal has been preferred by the defendant-appellant against the judgment and decree dated 24.8.1988 passed by the learned Additional District Judge, Jalandhar vide which the appeal filed by the appellant against the judgment and decree dated 22.12.1986 passed by the learned Sub Judge, 1st Class, Jalandhar was partly allowed and the decree was modified for recovery of ₹14946.57 P with proportionate costs.

2. Respondent-Union of India has filed the suit for recovery of ₹ 23433.16 P as damages against the defendant-appellant on the ground inter alia that the plaintiff-respondent is the absolute owner of truck

No.JKN-4710 and defendant-appellant is the owner of truck No.PNP-6169. On 21.10.1972 at about 7.45 P.M, the driver of the truck abovesaid caused the accident with the plaintiff's truck due to his rash and negligent driving. Due to the said accident, the truck of the plaintiff was completely damaged. The tiles and chokes loaded therein were also damaged. A case FIR No.248 dated 21.10.1972 was registered at Police Station Kartarpur under Sections 279/337 of the Indian Penal Code against the driver of truck No.PNP-6169. During the police investigation, it has been found that the said driver was under the influence of intoxication. The plaintiff had to spent ₹15,374/- on the repair. The plaintiff also suffered the loss of ₹4059.16 P on account of the damage of the tiles and chokes loaded therein. The truck of the plaintiff was remained out of road for which the plaintiff suffered the loss of ₹ 4,000/- @ ₹1,000/- per month. Hence, the suit.

3. The defendant-appellant contested the suit on the grounds inter alia that the driver of truck No.PNP-6169 was not at fault. In fact the accident has been caused by another truck. The owner of said truck has not been impleaded as a party to the suit. The accident was in fact caused by the negligence of the driver of the truck of the plaintiff which resulted into the death of the driver of the defendant. So, the plaintiff himself is liable for the accident. All other pleas raised in the plaint were controverted.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court:

- “1. Whether the plaintiff is entitled to recover any amount? If so, how much? OPP*
- 2. Whether the suit of the plaintiff has been filed within a period of limitation?OPP*

3. *Whether the suit is not maintainable? OPD*
4. *Whether the suit is bad for non-joinder of necessary parties? OPD*
5. *Relief.”*

5. On appreciating the evidence on record, the learned trial Court decreed the suit filed by the plaintiff-respondent for recovery of ₹22,275.12 with proportionate costs vide impugned judgment and decree dated 22.12.1986.

6. The defendant-appellant preferred the appeal against the aforesaid judgment and decree which was partly allowed and the amount of recovery was reduced to ₹14,946.57 P.

7. Learned counsel for the appellant contended that the driver of the truck owned by the defendant-appellant was not negligent for causing the accident rather the driver of the truck of the plaintiff-respondent was at fault. Thus, he contended that the plaintiff-respondent was not entitled to recover any amount of damages from the defendant-appellant. Therefore, the impugned judgments and decrees are not legally sustainable.

8. At the asking of the Court, Mr. G.S. Bal, learned Sr. Advocate with Mr. ADS Bal, Advocate accepts notice on behalf of Union of India.

9. Learned counsel for the respondent-Union of India contended that legal heirs of deceased Sarwan Singh, the driver of truck No.PNP-6169, has filed the claim petition under the provisions of Motor Vehicles Act for grant of compensation but in that case no negligence was found on the part of the driver of the truck owned by the plaintiff. That judgment is binding on the rights of the parties. So, the driver of the truck of the appellant was proved to be negligent and appellant is liable to pay damages.

10. I have duly considered the aforesaid contentions.

11. The plaintiff-respondent has examined PW2-Puran Chand, the driver of the truck No.JKN-4710 wherein he has categorically deposed that the truck of the defendant was being driven in a zig zag manner and was being driven at the speed of about 60 miles per hour and that truck hit his truck. Due to which their truck suffered damages. He was taken to the hospital.

12. The defendant-appellant has also examined DW-1 Onkar Singh, the conductor of truck No.PNP-6169, wherein he deposed that he was accompanying Sarwan Singh, driver. The said truck was being driven at the speed of 30 kilometers per hour. Truck No.JNK-4710 came from the front side which was being driven at the speed of 70 kilometer and hit their truck. He further deposed that another truck was following their truck bearing Registration No.HRA-4745. The said truck was crossing them which was also at fast speed. That truck could not cross them and hit their truck and as a consequential, the truck of railways coming at fast speed hit their truck. The appellant has not produced any documentary evidence to show that DW-1 Onkar Singh was employed with him as a conductor on his truck. So, the presence of DW-1 Onkar Singh with truck No.PNP-6169 is not established. There can be no doubt about the presence of PW-2 Puran Chand as he was the driver of truck No. JNK-4710 which was damaged in this accident. Said Puran Chand had also suffered the injuries in this very accident.

13. The testimony of PW-2 Puran Chand is further corroborated from the fact that the legal representatives of Sarwan Singh, deceased, the driver of truck of the appellant, have filed a claim petition under the provisions of Motor Vehicles Act for grant of compensation. A copy of that judgment is exhibited D2. Defendant-appellant Sohan Singh was also a

party to the said claim petition. In that judgment, the findings with respect to the negligence has been recorded between the parties. Therefore, findings recorded by the Motor Accidents Claims Tribunal, Jalandhar vide judgment Ex.D2 will be binding on the parties. In that judgment, the driver of the truck of respondent was not held negligent. Thus, the plea raised by the learned counsel for the appellant that the driver of the truck owned by the respondent-Union of India was negligent for causing this accident carries no substance.

15. No other point was raised before me at the time of arguments.

16. Therefore, the appellant has been rightly held liable to pay compensation to the respondent-Union of India for causing damage to its truck and this Court has no reason to differ with the concurrent findings recorded by both the learned Courts below.

17. Thus, keeping in view my aforesaid discussion, the present appeal is hereby dismissed.

May 18, 2016
ps

(DARSHAN SINGH)
JUDGE