

FAO-2138-1998 (O&M)

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R-560

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2138-1998 (O&M)
Reserved on 19.04.2023
Date of decision : 29.04.2023

Dhanpati and Another ... Appellant(s)

Versus

Jai Ram and Others ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Chanderhas Yadav, Advocate for the appellants.

Ms. Harshita, Advocate for
Ms. Mehak Sawhney, Advocate for respondent No.1.

Mr. Shubham Buania, Advocate for
Mr. Bhuwan Vats, Advocate for respondent No.5.

Mr. Shubham Gupta, Advocate for
Mr. D.P. Gupta, Advocate for respondent No.6.

ALKA SARIN, J.

1. The present appeal has been preferred by the claimant-appellants aggrieved by the award dated 28.07.1998 passed by the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as ‘Tribunal’) dismissing the claim petition filed by them on the ground that the deceased himself was at fault.
2. The brief facts relevant to the present *lis* are that on 02.02.1996 Radhey Shyam-deceased was driving jeep bearing Registration No.DL-1CE-1521 from Rohtak to Pilani carrying newspapers. When the jeep reached near minor of village Biealwas at about 08.00 a.m., Haryana Roadways Bus

bearing Registration No.HR-36-6540 came from the opposite side at a high speed being driven by its driver - Jai Ram (respondent No.1) rashly and negligently and struck against the jeep and as a result of which Radhey Shyam sustained grievous and fatal injuries. FIR No.33 dated 02.02.1996 was registered at Police Station Loharu under Sections 279, 337, 304-A, 427 of the Indian Penal Code, 1860. A claim petition was filed by the mother and minor sister of the deceased alleging therein that Radhey Shyam was 23 years of age at the time of the accident and he was a licensed driver and was earning Rs.3,000/- per month besides daily allowance. The petition was contested by respondent No.1 by averring in the written statement that the accident had taken place on account of the negligence of the deceased Radhey Shyam. It was further alleged that the bus driven by respondent No.1 was parked on the correct left side of the road as it had stopped to pick up some school children. It was further alleged that it was a foggy morning and visibility was poor and that the deceased lost control of the jeep on account of fog and his fast driving. The owners of the bus i.e. respondent Nos.2 and 3 filed their separate written statement raising similar pleas. The written statement was also filed by the insurance company of the jeep (respondent No.6) in question.

3. On the basis of the pleadings, the following issues were framed:

1. Whether the accident in question had taken place on account of Haryana Roadways Bus No.HR-36/6540 by its driver Jai Ram respondent ? OPP
2. Whether the accident in question had taken place on account of rash and negligent driving of jeep No.DL-ICE/1521 by its driver ? OPP

3. To what amount of compensation if any, the petitioners are entitled to and if so, from whom ?

OPP

4. Whether the respondents are not liable to pay any compensation in view of the various preliminary objections raised by them, in their respective written statement ? OPR

5. Relief.

4. On issue Nos.1 and 2, the Tribunal came to a conclusion that the accident took place as the deceased who was carrying newspapers was getting late and was driving the jeep at a high speed in order to cover the delay and on account of a foggy day, struck against the bus standing on the left side of the road and hence held that the accident took place due to rash and negligent driving of the jeep by the deceased - Radhey Shyam. The claim petition was accordingly dismissed. Hence, the present appeal.

5. Learned counsel for the claimant-appellants would contend that admittedly it was a foggy morning. It has come in the statement of the driver of the bus, Jai Ram who appeared as RW-1, that he had stopped the bus in order to allow the passengers to board the bus. It has also come in the statement of RW2, Jai Narain who was the conductor of the bus, that the bus had stopped only because the stoppage was sanctioned on the request of the inhabitants of the area. Hence, it could not be held that the deceased was responsible for the accident.

6. *Per contra*, learned counsel for respondent Nos.1, 5 and 6 have contended that it was the fault of the deceased as has rightly been held by the Tribunal. It is further the contention that the stoppage where the bus had

stopped to allow the passengers to board was a sanctioned stoppage.

7. I have heard learned counsel for the parties and with their able assistance have gone through the record.

8. In the present case it is come in the evidence that on the day of the accident it was a foggy morning and the bus had stopped on the left side of the road to permit the boarding of the passengers. A pointed query was put to learned counsel for the respondents as to whether the stoppage was a sanctioned stoppage. In response, learned counsel for the respondents have stated that the stoppage was sanctioned by the inhabitants of the area and candidly admitted that there is no other document to show that there was any sanctioned stoppage where the bus was parked.

9. Hon'ble Supreme Court in the case of **Smt. K. Anusha & Ors. Vs. Regional Manager, Shriram General Insurance Co. Ltd. [2021 (4) RCR (Civil) 569]** while dealing with the similar facts, has held as under :

“11. The first grievance of the appellants about the finding of contributory negligence is liable to be sustained for three reasons namely, (i) that even according to the Tribunal and the High Court, the spot where the lorry was parked, as indicated in Exhibits P-1 to P-6 (FIR, complaint, spot magazar etc.) and Exhibit P-22 (spot sketch), was not a parking place; (ii) that according to the High court, the driver of the lorry ought to have parked the vehicle on the left side of the road by giving proper indication/signal, but it was not done; and (iii) that as per the finding of the High court, the accident occurred at about 4.30 A.M. when the lighting should have been poor.

12. The view expressed by the High Court to effect that

if the driver of the car had been vigilant and driving the vehicle carefully following the traffic rules, the accident would not have happened, is presumptuous and not based on any evidence. There was nothing on record to indicate that the driver of the car was not driving at moderate speed nor that he did not follow traffic rules. On the contrary, the High Court holds that if the lorry had not been parked on the highway, the accident would not have happened even if the car was driven at a high speed.

13. Therefore, the entire reasoning of the High Court on Issue No.1 is riddled with inherent contradictions. To establish contributory negligence, some act or omission, which materially contributed to the accident or the damage, should be attributed to the person against whom it is alleged. In Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak and Others, (2002) 6 SCC 455 this Court quoted a decision of the High Court of Australia in Astley v. Austrust Ltd., (1999) 73 ALJR 403, to hold that "...where, by his negligence, one party places another in a situation of danger; which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty". In fact, the statement of law in Swadling v. Cooper, 1931 AC 1, that "...the mere failure to avoid the

collision by taking some extraordinary precaution, does not in itself constitute negligence...", was also quoted with approval by this Court. Therefore, we are compelled to reverse the finding of the Tribunal and the High Court on the question of contributory negligence."

10. In the present case, admittedly it was a foggy morning. The bus had stopped at an unsanctioned stoppage inasmuch as the only evidence on the record is that it had been sanctioned by the inhabitants of the area. The counsel for the respondents have not been able to point out to any evidence to show that the bus had switched on any indicators to show it had stopped. The photographs which had been relied upon by the Tribunal to hold the deceased Radhey Shyam entirely responsible for the accident cannot be seen in isolation. The photographs have to be seen in conjunction with the evidence on the record. The evidence on the record reveals that it was a foggy morning and visibility was affected. The bus was stationed at an unsanctioned stoppage and hence it cannot be said that the entire fault for causing the accident lay with the jeep. The photographs also appear to be taken at a later point of time inasmuch as the photographs are clear photographs showing both the vehicles involved in the accident. Considering the fact that it was a foggy morning and the bus had stopped at an unsanctioned stoppage, no fault can be found with the deceased driver, Radhey Shyam.

11. In view of the above, the present appeal is allowed. The matter is remanded to the Tribunal for assessment of compensation in accordance with law. The Tribunal is requested to expedite the hearing as the accident in the present case pertains to the year 1996.

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12. Disposed off accordingly. Pending applications, if any, also stand disposed off.

29.04.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO