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Darshan Kumari v. State of Punjab, (P&H) : Law Finder Doc Id # 134701

2008(1) R.C.R.(Civil) 693 : 2009(2) AICJ 116 : 2007(4) PLR 219 : 2008 ACJ 1591 : 2008 (4) TAC 170

PUNJAB* AND *HARYANA HIGH COURT

Before:- Jasbir Singh, J.

First Appeal From Order No. 101 of 1997. D/d. 28.2.2007.

Darshan Kumari and others - Appellants

Versus

State of ***Punjab*** and others - Respondents

For the Appellants :- Mr. Vipin Mahajan, Advocate.

For the Respondent Nos. 1 to 3 :- Ms. Nirmaljit Kaur, Advocate.

A. Motor Vehicles Act, 1988, Section 166 - Accident caused due to bursting of front tyre of jeep resulting in death of driver and passengers - Compensation awarded - In such a case it was necessary for the respondents to prove that the vehicle and the tyres were perfectly in good condition - No evidence has been brought on record in that regard - Tyres do not burst in a routine and regular manner unless these are old or otherwise are not roadworthy - Nothing has been shown to the contrary.

[Para 11]

B. Motor Vehicles Act, 1988, Section 166 - Fatal Motor Accident - Front tyre of a Jeep burst - Jeep caught fire resulting in death of driver and a passenger - Two witnesses stated that driver was driving Jeep at the speed of 35/40 Kms. and driver was not driving the jeep negligently and rashly - These witness not believed - Facts of the accident showed that driver was driving at high speed - After bursting of tyre of the jeep, it covered some distance, went to the unmetalled portion of the road and struck against a tree - Therefore, it caught fire - If the jeep was being driven at the speed of 35-40 Kms, as stated by the witness, after bursting of the tyre, it could have been so high, as to causing fire in the vehicle. AIR 1977 Supreme Court 1735 relied.

[Para 8]

Cases Referred :-

Pushpabai Parshottam Udeshi v. Ranjit Ginning & Pressing Co. Pvt. Ltd., AIR 1977 Supreme Court 1735.

State of M.P. v. Ashadevi, AIR 1989 Madhya Pradesh 93.

Kaushnuma Begum v. New India Assurance Co. Ltd., 2001(1) RCR (Civil) 559 : AIR 2001 Supreme Court 485.

Rylands v. Fletcher, 1861-1873 All England Reports 1.

JUDGMENT

Jasbir Singh, J. (Oral) - Appellants-claimants have filed this appeal against the award dated August 13, 1996 passed by the Motor Accidents Claims Tribunal, Hoshiarpur, granting an amount of Rs. 25,000/- only to them, on account of death of Shri Tirath Singh, husband of appellant No. 1 and father of appellant Nos. 2 and 3.

2. It is an admitted fact that at the time of accident/death, Shri Tirath Singh was

employed with the respondent-State as a Deputy Director, Animal Husbandry Department, and was posted at Hoshiarpur. On October 11, 1994, he was returning from Chandigarh in a Government jeep bearing No. PNH 7944, that vehicle with an accident and caught fire. Deceased received injuries, due to which he died thereafter. It was allegation of the appellants that the accident had occurred on account of rash and negligent driving of the said jeep by its driver.

3. In the reply, factum of accident was admitted. It was, however, averred that the Driver had been driving the jeep only at a speed of 35 to 40 Kms per hour. He was neither negligent nor rash, as alleged. The accident had occurred, when front wheel tyre suddenly burst. It was further averred that the tyres of the jeep were in good condition. It was prayed that application for compensation, filed by the appellants, be dismissed.

4. On pleadings of the parties, following issues were framed by the Tribunal :

> "(1) Whether the death of Tirath Singh deceased was caused in the accident due to the rash and negligent driving of Jeep No. PNH 7944 by its Driver Tilak Raj, now deceased ? OPA
>
> (2) To what amount, if any, the claimants are entitled to recover as compensation for the death of the deceased ? OPA
>
> (3) Relief.

5. Thereafter the parties were provided opportunity to lead their evidence. On conclusion thereof and after hearing arguments, the award under challenge was passed. Factum of employment of the deceased with the respondent State, accident and his death therein are not in dispute. It is only to be seen as to whether the accident had occurred on account of rash and negligent driving of the jeep by its Driver Tilak Raj, who also died in the said accident, or whether the same has occurred on account of bursting of the tyre, which was in good condition? Regarding negligence of the Driver and as to how the accident had occurred, the Tribunal below has observed thus :

> "11. After hearing the counsel for the parties, I find that in the claim petition, the claimants have nowhere stated that the accident took place on account of the worn out tyres of the jeep. It has only been pleaded that it took place due to the rash and negligent driving of the driver of the jeep. As far as rash and negligent driving, there are two eye witnesses, one from the side of the claimants and the other on the side of the respondents. AW2 Hukam Singh was an occupant of the jeep and he has stated that the jeep was coming at a speed of 35-40 kilometers per hour. To the similar effect is the statement of Kartar Singh RW1, who was also one of the occupants and he has also stated that the speed of the jeep was 35-40 kilometers per hour. Therefore, there is no escape from the fact that the jeep was running at a speed of 35-40 kilometers per hour and this speed cannot be said to be in any manner rash. No other negligence has been attributed to the driver of the jeep, except the speed. It cannot, therefore, be said that the jeep was being driven rashly or negligently.
>
> 12. Now coming to the tyres of the jeep, although the respondent has tried to prove that the tyres were purchased through Ext. R1 on 26.12.1991, but there is no cogent evidence that these tyres were put in the jeep in question. There are other jeeps also of the department and it may be just possible that the five tyres were purchased and were put in different jeeps, unless there is specific evidence to that effect. No record has been produced to prove that these very tyres were put in the jeep in question. Moreover, the tyres were purchased in 1991 and the accident had taken place in 1994. Therefore, it cannot be said that even if these tyres were put in this jeep, they were still in good condition. However, it was for the claimants to prove that the accident had taken place due to the negligence of the respondents in not maintaining the jeep in good condition, especially its tyres. It has been stated by AW2 that the tyres were in good condition. To the same effect is the statement of RW1 that the jeep was occasionally used and the tyres were in good condition. From the possible available evidence, it has been proved that the tyres of the jeep were in good condition. Therefore, the ratio of the cases relied upon by the claimants is not applicable in the present case. In Janula Begam's case (supra), there was evidence that the tyres were old and worn out and that the bus was travelling at an excessive speed. Therefore, in those circumstances, it was held that it was a case of negligence and the owner was under liability to use serviceable tyres, while plying the bus. In Harnam Singh's case (supra), there was evidence to the effect that the tyres were worn out and in bad condition and further that the car was travelling at a speed. It was held that the accident was not inevitable and the owner was liable to pay compensation. In the present case, as discussed earlier, there is no evidence on the file that either the tyres were worn out or the driver of the jeep was negligent. In these circumstances, the only irresistible conclusion is that it was an inevitable accident and no negligence can be attributed

> to the driver of the jeep. Therefore, the issue No. 1 is decided against the claimants."

6. Counsel for the appellants has vehemently contended that the finding, given above, is not correct. By referring to the sequence of events, which occurred at the time of accident, counsel contended that it was a case of rash and negligent driving and in the alternative, it is a case where for the accident, 'strict liability' is required to be fastened upon the respondents, as they have miserably failed to prove that the vehicle was being kept in a good condition. He prayed that by reversing the finding, referred to above, the claim application, filed by the appellants, be accepted in toto.

7. Prayer of counsel for the appellants has vehemently been opposed by Miss Nirmaljit Kaur, Additional Advocate General, Punjab. She, by referring to the statements made by witnesses produced by the claimants and also of the respondents, contends that the Driver was not negligent in causing the accident and that the tyres of the jeep were in good condition and further that accident can be termed as an act of the God, for which nobody can be blamed. She prayed that the appeal be dismissed.

8. This Court feels that the Tribunal below has erred in appreciating the evidence on record. It is a case where facts speak for themselves. As per admitted facts even if defence put up by the respondent is accepted (that the accident had occurred on account of the bursting of the front wheel tyre of the jeep), even then it can be said that the jeep was being driven in a rash and negligent manner. Admittedly, after bursting of tyre of the jeep, it covered some distance, went to the unmetalled portion of the road and struck against a tree. Thereafter, it caught fire. Driver Tilak Raj died at the spot and could not be taken out from the jeep. Occupant of the jeep, Tirath Singh, succumbed to the injuries after the accident. If the jeep was being driven at the speed of 35-40 Kms, as stated by the witnesses, after bursting of the tyre, it could have been stopped immediately or otherwise the result, after striking the tree, would not have been so high, as to causing fire in the vehicle. In this case, the witnesses, produced by the claimants and also by the respondents are officials of the department. May be with a view to save the department from being burdened with compensation, they have made the statement that the jeep was going at a very slow speed. When facts are clear and tells the story, then causing of accident by driving the vehicle in a negligent manner can be presumed.

9. The Hon'ble Supreme Court, while dealing with a case of motor accident in similar circumstances in ***Pushpabai Parshottam Udeshi and others v. M/s Ranjit Ginning & Pressing Co. Pvt. Ltd. and another, AIR 1977 Supreme Court 1735***, has observed thus :

> "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."

10. In the present case, no evidence in the shape of mechanical report has been placed on record to show that the accident had occurred due to bursting of the tyre. RW1 has specifically stated that he had not seen the burst tyre. He only heard a sound. Perusal of the evidence on record further indicates that an attempt appears to have been made by the witnesses, who are officials of the respondent-State, to conceal material facts. In the testimony before the Tribunal, it was said by the witnesses that the accident had occurred around 7.30 PM, whereas in the DDR, recorded by the police, Ex.A3, it has been said that the witnesses along with the deceased and the Driver reached Balachaur at about 8 PM. They took meal and then started for Hoshiarpur and accident had occurred in between 8.30 to 8.45 PM. None of the witnesses has made an attempt to clarify as to what was speed of the jeep when they started from Balachaur. It was night time, naturally, with a view to reach Hoshiarpur, which as per information supplied is at a distance of 80 Kms from the place of accident, the Driver might be driving the vehicle at a high speed. Log book was not produced. No attempt was made to show that the vehicle was being checked up regularly. AW1, who was a summoned witness, has specifically stated that he had not brought any record regarding servicing/maintenance of the jeep. Once the trial Court has discarded defence of the respondents that the tyres, which were alleged to have been purchased on December 26, 1991, were put in the jeep, in dispute, then it was incumbent for the respondents to prove on record that the tyres were in good condition and the vehicle was being checked up periodically. Except mentioning that there was no mechanical fault in the jeep, no further averment was made in the written-statement, filed by the official respondents. Under these circumstances, the case is

squarely covered by the ratio of the judgment of the Hon'ble Supreme Court in ***State of M.P. and others v. Ashadevi and others, AIR 1989 Madhya Pradesh 93***, In that case also, the Hon'ble Supreme Court dealt with a similar situation, wherein, in a motor accident, a defence was taken that the same had occurred on account of some mechanical defect in the vehicle. By taking note of the facts of that case, it was observed thus:

> "Even, assuming for the sake of argument that the driver was not negligent, in the present facts and circumstances of the case we can safely apply the doctrine of *res ipsa loquitur*, which is a rule of evidence departing from the normal rule that it is for the plaintiff to prove negligence but 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. This hardship is to be avoided by applying the said 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. The present case is like that where the accident speaks for itself."

11. The facts of the present case are such that the defence, put up by the State, cannot be accepted. The finding of the Tribunal, that the tyres, which were alleged to have been purchased on December 26, 1991, vide Ex.R1, were not proved to have been put in this jeep, was not challenged by the State by filing any cross-objection in the present appeal. Once it is so, in view of facts of this case, it was necessary for the respondents to prove that the vehicle and the tyres were perfectly in good condition. No evidence has been brought on record in that regard. Tyres do not burst in a routine and regular manner unless these are old or otherwise are not roadworthy. Nothing has been shown to the contrary.

12. In view of the facts, mentioned above, ratio of the judgment of the Hon'ble Supreme Court in ***Smt. Kaushnuma Begum and others v. New India Assurance Co. Ltd. and others, 2001(1) RCR (Civil) 559 : AIR 2001 Supreme Court 485***, can also be applied to the facts of the present case. In the that case, following were the facts :

> "3. The accident which gave rise to the claim occurred at about 7.00 p.m. On 20.3.1986. The vehicle involved in the accident was a jeep. It capsized while it was in motion. The cause of the capsize was attributed to bursting of the front tyre of the jeep. In the process of capsizing the vehicle hit against one Haji Mohammed Hanif who was walking on the road at that illfated moment and consequently succumbed to the injuries sustained in that accident."

13. In the abovesaid case, the Tribunal dismissed the claim application. The order was affirmed by the High Court by stating that the driver of the offending vehicle was not rash and negligent in driving the same. Their lordships of the Supreme Court laid down the following proposition for consideration :-

> "8. We have to proceed on two premises based on the finding of the Tribunal. The first is that there was no negligence or rashness on the part of the driver of the jeep. Second is that the deceased was knocked down by the jeep when its front tyre burst and consequently the vehicle became disbalanced and turned turtle. Should there necessarily be negligence of the person who drove the vehicle if a claim for compensation (due to the accident involved that vehicle) is to be sustained ?"

14. By applying ratio of the rule in ***Rylands v. Fletcher, 1861-1873 All England Reports 1***, their lordships of the Supreme Court held that the owner of the vehicle is liable to make payment of compensation. While awarding compensation in that case, it was observed thus :

> "20. No Fault Liability" envisaged in Section 140 of the Motor Vehicles Act is distinguishable from the rule of strict liability. In the former the compensation amount is fixed and is payable even if any one of the exceptions to the Rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the Motor Vehicles Act permit that compensation paid under 'No fault liability' can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the Motor Vehicles Act a victim in an accident which occurred while using a motor vehicles, is entitled to get compensation from a Tribunal unless any one of the exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them."

15. This Court is of the view that the present case is squarely covered by ratio of the judgments, referred in earlier part of this order. The Tribunal has already assessed the compensation in this case at Rs. 10,09,500/-, which is perfectly justified. After deducting the amount paid earlier, the amount of compensation, assessed by the Tribunal, the claimants are entitled to get the same along with interest at the rate of 8% (simple) per annum. Half of the amount of compensation along with interest be paid to the appellant No. 1 and the remaining half to both the appellant Nos. 2 and 3 in equal shares. If appellant No. 1 is not alive, entire amount of compensation shall be paid to appellant Nos. 2 and 3 in equal shares.

With above mentioned modification, this appeal stands allowed.

Appeal allowed.