Punjab-Haryana High Court
Dr. Prem Chand vs Raj Roop on 21 November, 2000
Equivalent citations: II (2002) ACC 638, 2001 ACJ 1899
Author: V Aggarwal
Bench: V Aggarwal
JUDGMENT V.S. Aggarwal, J.

1. By this judgment, three F.A.Os. No. 85, 154 and 155 of 1986 can conveniently be disposed of together. These three appeals are directed against the common award of the Motor Accident Claims Tribunal, Jind, dated 12.9.1985. By virtue of the impugned award, the learned Tribunal awarded a compensation of Rs. 13,500/- to the appellant Dr. Prem Chand (for short "the claimant"). It was held that he is entitled to recover the same from Raj Roop and Mai Ram appellants jointly and severally. In addition to the compensation, the appellants were also held liable to pay the interest at the rate of 12% from the date of the award till the date of realization.

2. The relevant facts alleged by the claimant are that on 18.10.1983 at about 3.00 p.m. he was proceeding from Safidon to Jind on his scooter No. HRH No. 8652 with one Brij Bhushan who was on the pillion. When they reached near village Budha Khera, Raj Roop minor aged about 12 years was driving tractor No. HRV-375 in rash and negligent manner. It dashed against the scooter of the claimant causing injuries to the claimant. The claimant was removed to Civil Hospital, Jind. He was medically examined and thereafter referred to Medical College. Rohtak. A case FIR No. 269 dated 19.10.1983 was registered against the Raj Roop. The claimant laid a claim of Rs. 40,000/-.

3. Earlier United India Insurance Company Limited was impleaded as a party, but on 19.12.1984 the name of the said insurance company was struck off as the vehicle was not insured at that time.

4. The respondents (appellant in FAO No. 154 and 155 of 1986) had filed a joint written statement and had taken up the plea that Raj Roop respondent who was a minor was not driving the said tractor. The contention offered was that the claimant was going from Jind to Safidon under the influence of liquor. He struck his scooter against the standing tractor and suffered injuries because of his own fault. As regards the case registered against Raj Roop for the offence punishable under Sections 279 and 337 and 338 of the Indian Penal Code, it was contended that it was a false case that had been registered.

5. The learned Tribunal had framed the issues and recorded the evidence. It was held that the accident took place because of rash and negligent driving of Raj Roop who was a minor. The learned Tribunal further recorded that both Raj Roop and Mai Ram were jointly and severally liable to pay the compensation. The compensation, keeping in view the evidence, was assessed at Rs. 13,500/- out of which Rs. 10,000/- were given as general damages. Aggrieved by the same, three appeals have been filed, one by the claimant and two appeals by the driver as well as by the owner of the tractor.

6. During the course of arguments, there was little argument raised about the findings of the learned Tribunal to the fact that it was Raj Roop who was driving the tractor in a rash and negligent manner. Therefore, the Court deems it unnecessary to re-go into this controversy.

7. It was urged that Raj Roop was a minor and, therefore, he was not liable. This contention, though advanced half-heartedly, as stated has simply to be rejected. The reasons are not far to fetch. There is no provision to which the attention of the Court has been drawn that the minor is not liable for rash and negligent driving for the purposes of compensation to be awarded under the Motor Vehicles Act. In the absence of any such provision, indeed, the liability of the minor Raj Roop cannot be avoided.

8. On behalf of the owner, namely, grandfather of Raj Roop Minor, it was urged that he had not permitted Raj Roop to drive the vehicle and, therefore, he was not liable. Once again, the said contention is totally without any merit. Being the owner, it was his duty to ensure that the vehicle is not taken. Therefore, vicarious liability cannot be avoided by merely stating that he has not permitted Raj Roop to drive the vehicle. In this connection, reference can well be made to the decision of this Court in the case of Smt. Lajwanti and others v. Haryana State and others, AIR 1985 Punjab and Haryana 71, In the cited case, identical argument had been advanced that if a stranger was driving the vehicle whether the owner would be vicariously liable or not ? The answer was provided in the affirmative and this Court held as under :-

"Applying this test here, the negligence of the bus-driver is inherent in his leaving it unattended at a crowded place like a bus stand. As a reasonable man, he should have anticipated someone from the crowd there getting into the bus and trying to drive it. The effective and approximate cause of the accident was thus clearly this negligence of the bus-driver rendering thereby the State of Haryana-its-onwer vacariously liable."

9. The Court is in respectful agreement with the earlier view and, therefore, the plea must fail.

10. On behalf of the claimant Doctor Prem Chand, it was urged that the compensation awarded is inadequate. The stress was with respect to the general damages that had been awarded. As per evidence, his leg has been shortened by half an inch. The appellant is stated to be a doctor by profession. It must be conceded that certain amount of conjecture can always flow while assessing the general damages. The same had been awarded at Rs. 10,000/-. In the peculiar facts, the same requires to be enhanced and, therefore, it is enhanced, keeping in view the status of the claimant, to Rs. 12,000/-.

11. No other argument has been advanced.

12. For these reasons, the appeals filed by Raj Roop and Mai Ram appellants are dismissed while that of the claimant Dr. Prem Chand is allowed in part. The compensation is enhanced to Rs. 15,500/- with no other interference with respect to the liability and interest.

13. Appeal dismissed.