

D.T.C. Vs. Mohinder Singh

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Court : Delhi

Decided On : Aug-23-1989

Reported in : 1990ACJ739; AIR1990Delhi66; 1989(17)DRJ337

Judge : Malik Sharieff-Ud-Din, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110B

Appeal No. : F.A.O. No. 48 of 1981

Appellant : D.T.C.

Respondent : Mohinder Singh

Advocate for Pet/Ap. : J.N. Aggarwal and; Ms. Manisha Tyagi, Adv

Judgement :

1. Even though the appeal was on my board the respondent or his counsel failed to appear. The appellant has made a grievance regarding the award dated 26th of Sept. 1980 by which the Motor Accident Claims Tribunal allowed a sum of Rs. 23,500 - with costs and interest at the rate of 6% per annum on the awarded amount from the date of the petition till its final realisation. There is a cross appeal F.A.O. No.71 of 1981 filed by Mohinder Singh against the D.T.C. and others making also a grievance against the quantum of the amount awarded.

2. The impugned award followed a petition under S.110-A of the Motor Vehicles Act of 1939 wherein allegation was made that the respondent herein on 29th of Oct. 1975 got involved in an accident at the hands of offending vehicle D.T.C. bus No. DLP 1038 as a result of which he sustained injuries particularly a fatal injury in the left leg which ultimately rendered him disabled permanently. Stating in a little detail, the facts are that on the date of incident at about 5.40 p.m. the respondent was going on a two-wheeler scooter DHF 4232 at Rani Jhanshi Road, Delhi and he was proceeding towards Subzi Mandi. The offending bus is said to have come from behind and as a result of rash and negligent driving it hit the scooter resulting in the injuries to the person of the respondent.

3. In their written pleas the respondents admitted the fact of the accident and it was also admitted that respondent No. 2 in the claim petition was the driver of the vehicle at the relevant time. They, however, set up a defense that the accident took place because of sudden failure of brakes and that when the driver shouted to inform the pedestrians that his brakes had failed the respondent was confused and collided with the bus. The petitioner in replication controverted this fact.

4. In dealing with the fact as to whether the accident was caused due to rash and negligent driving by the driver of the offending vehicle, the Tribunal discarded the testimony of R. Ws. 1 and 2 as, according to it, they are interested witnesses and they have failed to provide corroboration to their testimony by any passenger of the bus or a passer-by. The Tribunal instead relied on the testimony of P.Ws. 3 and 4 whose presence at the scene of incident is properly explained inasmuch as they are the shop-keepers having their shops near the place of the incident. Both these witnesses had deposed that the driver of the D.T.C. bus caused the accident due to rash and negligent driving of the offending vehicle. As before the Tribunal, the argument was pressed in service to the effect that on the date of the incident when the I.O. had reached the spot their testimony was not recorded. The Explanation given by the I.O. in this case is that when he reached on the spot their shops were closed. The Tribunal further held that these witnesses had actually helped in lifting the victim from the roadside and therefore there is no reason to doubt their presence or their truthfulness, and the mere fact that the I.O. failed to record their statement on that evening is of no consequence.

5. Now in so far as the proposition that this accident occurred due to mechanical failure of the offending vehicle is concerned the Tribunal disbelieved the theory and when I go through the judgment of the Tribunal I find that it was generally for very good reasons. Normally, when an investigation into a case of this nature is done it is the duty of the investigation to get the offending vehicle examined by a traffic officer who is expert in this regard. This was not done in the present case. Though the scooter of the victim was got examined by an independent agency the investigating officer left it to the D.T.C. to examine the bus according to whom the compressor pipe of the brakes on examination was found to, have been removed resulting in the improper functioning of the brakes. The witness, in this regard examined before the Tribunal was R.W.3. The Tribunal felt that the appellant had failed to take proper precautions in ensuring that the compressor pipe of the brakes was properly fixed and no inspection in this regard had been done even though the bus had travelled about 7000 kilometers. Normally, the compressor brake cannot be loose on both ends and if it falls on one end there will be adequate warning to the driver of the bus but in the present case it was totally missing which, in my view, clearly goes to show that it was removed soon after the accident. The story of the driver that when he started the bus the brakes were properly working does not seem to be correct. It seems to be a case that when the bus was started the compressor pipe was missing or when the accident was caused it was removed soon thereafter. For these reasons and for the reasons given by the Tribunal it is difficult to subscribe to the plea raised by the appellant before the Tribunal. That apart, the person who victimised cannot be allowed to be a judge in his own case. Here is the case wherein an investigating officer left this most important aspect of the case to be investigated by the victimiser. It appears from the testimony of the investigating officer that he was not even keen to prosecute the accused. But he did so on the directions of his higher officers. That speaks volumes about the manner in which the case has been investigated and why it was so one is left guessing. I would, therefore, sustain the finding of the Tribunal on this count and hold that this accident was caused due to rash and negligent driving by the driver of the offending vehicle for which the appellant D.T.C. is vicariously liable.

6. The Tribunal while awarding general damages took into consideration the general principles which in such cases are followed in determining the amount of compensation and allowed a sum of Rs. 23,500/- in total with interest with the following break-ups; General damages = Rs. 15,000/- Compensation on account of medicines = Rs. 2,500/- Compensation on account of conveyance = Rs. 5,000/- On account of repairs of the damaged scooter = Rs. 1,000/-

7. The record shows and it is being supported by doctors P.W. 8, P.W. 9, P.W. 10, P.W. 11 and P.W. 12 that the victim in this case has suffered a permanent disability to the extent of 10 to 15%. The disability being that he developed a permanent defect in the left leg in the nature of stiff ankle and numbness in the foot (pricking sensation at all the times), foot-drop, weakness in the left leg. It is also established that this disability has interfered with his working capacity inasmuch as it will be difficult for him to walk on hard surface or run or climb stairs swiftly. There is no other evidence on the record to indicate that this is in any way going to interfere with his earning capacity or he will be incapable of driving a scooter or otherwise enjoying of the marital life. There is further nothing on the record to conclude that this permanent disability could in any way result in shortening his life span. Indeed, the nature of the injuries did result in his prolonged treatment and he must have suffered both mentally and physically and it is for loss of this full enjoyment of life during this period that general damages were allowed to the extent of Rs. 15,000/-. In my view, there is nothing wrong with the assessment made by the Tribunal and the amount of Rs. 15,000 / which was allowed in 1980 is fairly a good amount which. meets the ends of justice. Similarly, the amount of Rs. 2,500/- allowed on account of medicines is based on the evidence tendered by the claimant and Rs. 5,000/- as conveyance allowance is estimated on the basis of the prolonged treatment for which the claimant had to go to hospital very often. Allowance of Rs. 1,000/- on account of repairs of scooter is also based on the bills which are marked P.W. 7/1 to PW 7 / 6 and proved by P. W. 7 and there can be no serious challenge to the amount allowed on this count. There is no evidence to the effect that this disability suffered by the victim has in any way interfered with his future earnings and, in my view, the Tribunal was justified in not considering any claim on that count. Considering the fact that the appellant has paid more than Rs. 30,000/- in March 1981 to the respondent and

considering the fact that purchasing power of money in March 1981 was more than twice it is now, I am of the view that no interference is warranted. The appeal is dismissed. I am told that pursuant to the order of this court the amount was deposited on 6th of March 1981 and the court had directed that this amount the claimant could draw subject to furnishing of security for restitution. In view of the dismissal of the appeal the security given by the' respondent is discharged.

8. Appeal dismissed.

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