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Munish Kumar Vs. State of Himachal Pradesh and ors.

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Court : Himachal Pradesh

Decided On : Sep-01-2000

Reported in : 2001ACJ919

Judge : R.L. Khurana, J.

Appeal No. : Civil Suit No. 117 of 1991

Appellant : Munish Kumar

Respondent : State of Himachal Pradesh and ors.

Advocate for Def. : B.K. Malhotra, Adv.

Advocate for Pet/Ap. : D.D. Sood and; Ankush Sood, Advs.

Disposition : Suit dismissed

Judgement :

R.L. Khurana, J.

1. The plaintiff, Munish Kumar, is a partner of the firm Vijay Bharat Cigarette Stores, Pathankot. In connection with the business, the plaintiff was actively travelling in various parts of the States of Punjab and Himachal Pradesh. On 18.9.1988 at about 5 p.m. the plaintiff accompanied by one Ravinder Kumar, was going from village Badoh to Garoh falling in Tehsil Nurpur of District Kangra on

motor cycle No. PAH 3340. Plaintiff was driving the motor cycle while the above named Ravinder Kumar was the pillion rider. A small bridge of four spans near Bassa Wazira falls on the way from Garoh to Badoh. This bridge is known as Garali Khad Bridge. The bridge was incomplete at the relevant time. The approach to the bridge is at an incline and there is a sharp curve before the bridge. As such the complete length of the bridge was not visible. No indication or sign was displayed to the effect that the bridge was incomplete, nor there were any blockades or danger signs placed. The impression which one got was that the bridge was in a normal condition and it was safe to pass through the same. While the plaintiff was driving through the bridge, his motor cycle fell down 20/30 feet below into the khad which was full of boulders and rocks. The plaintiff and his pillion rider sustained injuries. The injuries sustained by the plaintiff were of a serious nature, including the spinal injury which resulted in paraplegia. The plaintiff has been rendered a cripple. There is 100 per cent permanent disablement and the plaintiff is absolutely bedridden unable to perform even the bare essential physical functions. He cannot even answer the call of nature of his own and has to depend upon the attendants.

2. The plaintiff has accordingly filed the present suit for damages claiming Rs. 12,00,000, alleging that the defendants are liable for such damages in tort.

3. The defendants, while resisting the suit, admitted that they owe a duty to the general public to see that roads, bridges and pathways are properly maintained and that no danger or harm ensues from the lawful use of such roads, bridges and pathways by the general public. It was pleaded that due to heavy rains in the year 1984, the bridge in question was damaged on 7.8.84 as a result, the same was closed for vehicular and other traffic. In order to facilitate traffic, a diversion through the khad was provided from both sides of the bridge. Signboards were affixed indicating that the bridge in question was damaged. The road leading to the bridge was closed by placing boulders and other materials. The work of diversification was started in May, 1985 and was completed within two-three months. The traffic thus started moving through this diversion. The bridge could not be repaired/completed till 1988. All care was taken by the defendants and their functionaries to forewarn the public in general not to make use of the bridge in

question as the same was damaged and a portion thereof had been washed away. The defendants denied the accident as well as the injuries having been sustained by the plaintiff in such accident. They also denied their tortious liability.

4. On the pleadings of the parties, following issues were framed on 7.1.1993:

(1) Whether the plaintiff met with the accident as alleged in para 2 of the plaint? OPP

(2) If issue No. 1 is proved in the affirmative, whether injuries were suffered by the plaintiff due to negligence of the defendants? OPP

(3) To what compensation, the plaintiff is entitled on the basis of averments made by him? OPP

(4) Whether the plaintiff is entitled to interest, if so, on what amount and at what rate? OPP

(5) Relief.

5. Both the parties have led oral as well as documentary evidence in support of their respective contentions. I have heard the learned counsel for the parties and have also gone through the record of the case. My findings on the above issues are as under.

Issue No. 1

6. The plaintiff has averred in paras 2, 3, 5 and 6 as under:

(2) That on 18.9.1988, the plaintiff accompanied by Ravinder Kumar Sheel, son of Om Parkash, resident of Mohalla Khatoli, Pathankot, was travelling from Badoh village to Garoh within Tehsil Nurpur in District Kangra. The plaintiff was travelling on his motor cycle bearing registration No. PAH 3340. The motor cycle was being driven by the plaintiff. At about 5.00 p.m. in the evening, the plaintiff and Ravinder Kumar Sheel approached a small bridge near Bassa Wazira for reaching Garoh from Badoh. The bridge is known as Garali Khad Bridge. The bridge was to be constructed over spanning a length of about 235 feet 1 inch. A rough sketch site

plan is filed separately along with the plaint.

(3) That the approach to the bridge from the motorable road is at an incline and there is a sharp curve before one approaches the bridge. As such, it is not possible to see the complete length of the road or the bridge as one approaches. As submitted, the bridge is constructed at an incline and one has to go uphill to reach the bridge after passing through the curve immediately preceding the bridge.

(5) That at the relevant time, and more especially on 18.9.1988, the bridge over which the plaintiff and Ravinder Kumar Sheel were travelling on the motor cycle as aforesaid, was incomplete inasmuch as only one or two spans had been constructed and there was nothing after that. In other words, the last constructed portion of the bridge was left hanging in mid-air. There is a vertical fall of about 20 to 30 feet from the bridge into the khad, which is full of boulders and rocks. On the date, as aforesaid, as one approached the bridge from the road proceeding from Garoh to Badoh, there was no indication or sign to the effect that the road/bridge was incomplete and that a motor vehicle, pedestrian or animal, etc., should not approach the bridge and proceed any further. There were no roadblocks, danger signs or any other indication to show that it was dangerous and could be fatal to any person to travel on the bridge, no danger or warning light, etc., had been placed there. In fact, the impression which one got was and the opinion, which a reasonable man would form was that the bridge was normal and it was absolutely safe to travel on it. A false sense of security was thus infused into the plaintiff by the defendants and their agents who were in charge of maintaining the road and the bridge. This impression was strengthened from the fact that there was a bridle-path on either side of the road going through the khad. Any motorist who had to travel would have to drive on the metalled road and not on the unmetalled bridle-path.

(6) That the plaintiff was driving on the bridge with the aforesaid Ravinder Kumar Sheel and when he realised that the bridge had been left mid-air, he applied brakes but of no avail. Plaintiff along with his pillion rider fell into the khad below. Both sustained injuries. The plaintiff was seriously injured and was removed for medical treatment to Pathankot. Photographs showing the condition of the bridge

as it existed and certificate from the Gram Panchayat Bassa Wazira are filed separately along with the plaint. The photographs were taken immediately after the accident.

7. It is the admitted case of the defendants that the bridge in question was damaged due to heavy rains and a portion thereof comprising two spans, measuring 17.5 metres each, towards Garoh had been washed away. The two spans towards Badoh were intact.

8. In order to prove the accident, the plaintiff besides himself appearing as PW 23, examined Ravinder Kumar, PW 6, the pillion rider, Kanshi Ram, PW 7, Karam Singh, PW 8 and Raj Kanwar, PW 18.

9. The plaintiff as PW 23 and PW 6, the pillion rider have deposed that the bridge in question was incomplete and that the motor cycle being driven by the plaintiff had fallen down the bridge into the khad on 18.9.1988. As a result, the plaintiff as well as PW 6 had sustained injuries.

10. Kanshi Ram, PW 7, a resident of village Bassa Wazira and the Pradhan of the Gram Panchayat has deposed that on the relevant date at about 4.30 p.m. or 5 p.m., he was present in his field about 500 metres away from the bridge in question when he came to know from one Jarnail Singh of his village about the accident. He went to the spot and found two boys lying injured there along with their motor cycle. He gave instructions and made arrangements for shifting the two boys to the hospital. Later on, he came to know about the name of one of the injured as Munish Kumar. Jarnail Singh, PW 8, has deposed that on the relevant date, he was working in his field about 100 yards away from the bridge when he heard the sound of an accident and on coming to know that two boys along with their motor cycle having fallen from the bridge, he had gone to inform PW 7.

11. Both PW 7 and PW 8 have categorically admitted that they had not seen the accident taking place. However, they had seen two persons lying injured in the khad along with their motor cycle. PW 7 has even given the name of the plaintiff.

12. Raj Kanwar, PW 18, is the surveyor and loss assessor. He was deputed by the insurance company to investigate the accident involving motor cycle No. PAH 3340. He visited the spot on 19.9.1988, that is, the day following the date of accident. The motor cycle was found lying in the khad having fallen from the bridge. He had prepared the necessary damage report in respect of the motor cycle and had submitted the same to the insurance company with which the motor cycle was insured.

13. Nothing has come in rebuttal on behalf of the defendants. S.K. Sharma, DW 3, who at the relevant time was posted as Junior Engineer in the Nurpur Sub-Division of H.P.P.W.D. has simply stated that no information regarding any accident was received during the period he remained posted in the said Sub-Division.

14. During the course of cross-examination of PW 7 and PW 8, as well as PW 6, a case was tried to be set up by the defendants to the effect that the plaintiff as well as his pillion rider, PW 6, were under the influence of liquor and that the accident took place since the motor cycle was being driven under the influence of liquor. Such suggestion coming from the defendants at least goes to prove that an accident involving the plaintiff and PW 6 had in fact taken place at the bridge in question. The issue is as such decided in favour of the plaintiff.

Issue No. 2

15. The evidence coming on record establishes that injuries were sustained by the plaintiff in the accident proved to have taken place under issue No. 1 above. The only question for determination under the present issue is whether the accident and the injuries sustained by the plaintiff are as a result of negligence on the part of the defendants.

16. The plaintiff in paras 4 and 13 of his plaint has averred:

(4) That defendant Nos. 1 to 3 maintain and construct all the public roads, bridges, motor-ways, highways and the paths used by the motorists, motor vehicles and pedestrians. They owed a duty to the general public to see that the roads, bridges, pathways are properly maintained and that no danger or harm ensues from the

lawful user of such roads, etc.

(13) That the defendants in gross violation of the provisions of the Motor Vehicles Act, did not place any traffic signs as envisaged in the Schedule to the Act, as aforesaid, showing that the bridge was closed to vehicular traffic. No attendant or any other person was posted by the defendants at the site who could warn the ongoing traffic about the impending danger ahead. In other words, there was nothing to indicate that the bridge was incomplete and one was in danger of losing his life or limb if he travelled on it. Only half the bridge had been constructed and the other half was not there. This fact has also been testified to by the Pradhan of the Gram Pan-chayat, Bassa Wazira. The plaintiff has suffered permanent and total disability.

17. The defendants in reply to para 4 of the plaint, vide their written statement dated 4.5.1992, have admitted in the following terms:

Contents of para 4 of the plaint being legal need no reply. However, it is admitted that the defendants owe a duty to the general public to see that the roads, bridges and pathways are properly maintained and no danger or harm ensues from the lawful use of such roads, etc., by public in general.

18. While denying the averments made in para 13 of the plaint, the defendants in para 13 of their written statement, have averred as under:

Contents of para 13 of the plaint are wrong and are emphatically denied. The defendants had taken every care in order to let the public in general know that the bridge in question is damaged and should not be used by them and also the public in general was made to know that instead of bridge, they should use the diversion through the khad. The rest of the averments made in this para of the plaint are wrong and are emphatically denied.

19. The present case pertains to the rule of damages in actions for breach of and/or failure to perform statutory duty. In Rajkot Municipal Corporation v. Manjulaben Jayantilal Nakum 1997 ACJ 721 (SC), a roadside tree, which was in still condition, suddenly fell on one Jayanti Lal while he was walking on the

footpath on his way to his office, as a result of which he sustained injuries on his head and other parts of his body. He later died in the hospital due to such injuries. His legal representatives, namely, widow and children filed a suit for damages in the sum of Rs. 1,00,000 against the Rajkot Municipal Corporation. The trial court decreed the suit for a sum of Rs. 45,000 holding that the Corporation had failed in its statutory duties to check the healthy condition of trees and to protect the deceased from the tree falling on him resulting in his death. On appeal, the Division Bench of the Gujarat High Court held that the Corporation had a statutory duty to plant trees on the roadside as also the corresponding duty to maintain the trees in proper condition. The statutory duty gives rise to tortious liability on the State and as its agent the Corporation being a statutory authority was guilty of negligence on its part in not taking care to protect the life of the deceased. The claimants cannot be called upon to prove that the tree had fallen due to the negligence of the Corporation. Statutory obligation to maintain trees being absolute, and since the tree had fallen due to its decay, the Corporation had failed to prove that the occurrence had taken place without negligence on its part. The Corporation failed to make periodical inspection whether the trees were in good and healthy condition subjecting them to seasonal and periodical treatment and examination. Therefore, the Corporation had not taken care to foresee the risk of the trees falling and causing damage to the passers-by. The Division Bench accordingly confirmed the decree of the trial court. The Apex Court while allowing the appeal by special leave preferred by the Corporation, held:

Negligence would include both acts and omissions involving unreasonable risk of having done harm to another. The breach of duty must cause damage. How much of the damage to be compensated by the defendant should be attributed to his wilful conduct and how much to his wilful negligence or careless conduct or remissness in performance of duty, are all relevant facts to be considered in a given act or omission in adjudging duty of care. The element of carelessness or the breach of duty and whether that duty is towards plaintiff or class of persons to which the plaintiff belongs are important components in tort of negligence. Negligence would, therefore, mean careless conduct in the commission or omission of an act, whereby another to whom the defendant owed duty of care has suffered damage. The duty of care is crucial in understanding the nature and

scope of tort of negligence. The question in each case is whether the defendant has been negligent in the performance of duty or omission thereof. Determination of duty of care also involves statutory action which requires detailed examination. Local authority, when it exercises its public law function, generally owes no private law duty of care. Duty of care must be owed to a person or class of persons to which the plaintiff belongs and must be to avoid causing particular type of injury or damage to his person or property. The court requires to examine the scope of duty of care which the local authority owes to the plaintiff. The court is required to consider the object, scope and breach of the Act. Though the statute is of general character, since the Government or local authority is entrusted with the duty to implement the law, though at its discretion, and if damage is done in execution thereof, what requires to be examined is whether the aforestated elements of the tort of negligence stand attracted. The court is further required to consider whether extension of duty of care by the process of interpretation would elongate the public policy or retard its object or frustrate public policy behind the statute and the inevitable effect thereof on the affected plaintiff as well as the general public. No general principle of law is desirable to be laid down as an acid test.

It was further held:

The degree of carelessness in breach of duty would, therefore, vary from case to case and it should not unduly be extended or confined or limited or circumscribed to all situations. The attending circumstances require evaluation and application to a given set of facts in the case on hand. Defendant must be under duty of care not to create latent source of physical danger/damage to the person or property of third party whom he ought to have reasonably foreseen as likely to be affected thereby. Those latent defects cause physical danger to the person or the property giving cause of action and the defendant then is liable to pay damage for tortious liability. It must, therefore, be the essential element to establish that there is positive act or duty and the defendant is under that duty. The court is not to create, by process of interpretation latent source of physical danger to the person or property of third party when the Act does not envisage that the defendant ought to have reasonably foreseen him as likely to be affected thereby. Negligence connotes inadvertence to the consequences of his conduct which can be a

measure of behaviour where one person had been careless in that he did not behave as a prudent man would have done whether by advertence or otherwise. The tort of negligence always requires some form of careless conduct which is usually, although not necessarily, the product of inadvertence. Not every careless conduct which causes damage, however, will give rise to an action in tort. The negligence lies in failure to take such steps as a reasonable, prudent man would have taken in the given circumstances. What constitutes carelessness is the conduct and not the result of inadvertence. Thus, negligence in this sense is a ground for liability in tort.

20. Dealing with the question as to when would breach of statutory duty give rise to tortious liability, it was held:

The statutory duty gives rise to civil action. The statutory negligence is suigeneris and independent of any other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of volenti non fit in juria, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie

in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time co-relative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

21. Pointing out the distinction between failure to exercise a statutory power giving causation for damage by positive act of negligence by another and some accidental occurrence or by omission, the Hon'ble Supreme Court further held:

There is a distinction between failure to exercise a statutory power giving causation for damage by positive act of negligence by another and some accidental occurrence or by omission. When there is a duty to take precaution against damage occurring to others through the acts of third parties or through accident/ omission of duty, it may be regarded as materially causing or materially contributing to the damage should it occur, subject, of course, to the question whether performance of the duty would have averted the harm. Duty of care may also exist in relation to discretionary considerations which stand outside the policy of the statute and operational factors. In the operational factors, though the statute creates discretionary function, its omission or action may also give rise to causation to claim damages. The distinction between policy and operational factors is not easy to formulate but the dividing line between them has been recognised as a distinctive determining factor. Public authority is under a duty of care in relation to decisions which involve or are directed by financial, economic,

social or political factors or constraints. In that behalf, the duty of care stands excluded or any action that is merely the product of administrative direction, etc., may not provide causation for damages but when the performance of the duty, though couched with discretion, is enjoined on the statutory authority, the question whether the power, if exercised with due care, would have minimised, rather prevented or avoided the damage sustained by the plaintiff, requires to be examined.

22. Further, drawing the distinction between misfeasance (positive action) and non-feasance (omission), it was held that the general rule is that public authorities are liable for positive action (misfeasance) but not for omission (non-feasance). Misfeasance is wilful, reckless or heedless conduct in commission of a positive act lawfully done but with improper conduct. Non-feasance means non-performance of some act which ought to be performed or omission to perform required duty or total neglect of duty. In the case of misfeasance, the defendant is the author of the source of danger or cause of damage due to careless conduct to the person/property of the plaintiff. He has the knowledge that the act may give rise to tort. In the case of non-feasance several factors require consideration for giving rise to actionable negligence.

23. In Wilson v. Kingston-Upon-Thames Corporation (1949) 1 All ER 679, the plaintiff, who was thrown from his bicycle and injured owing to the defective condition of the surface of a road, claimed damages from the defendants, the highway authority, on the ground that they had carried out repairs to that part of the highway so negligently that it again became out of repair by the time of accident. It was held that lack of repair of the highway arose from non-feasance and not from misfeasance in repairing the road negligently and, therefore, the defendants were not liable.

24. In Burton v. West Suffolk County Council 1958-65 ACJ 100 (CA, England), the defendants therein, a local authority, had taken over a road, part of which was frequently flooded during heavy rains. In March, 1954, the defendants carried out some drainage work on the road, but, although the work effected some improvement, was properly carried out and constituted no danger, it was

inadequate and the road was still liable to flood after heavy rains. It was the defendant's practice to have warning flags or lamps put on the road when there was likelihood of danger to vehicles due to flooding. On the night of 11.12.1954, as the plaintiff was driving his motor car along the road, the car skidded on a patch of ice, ran off the road into a tree and was damaged, and the plaintiff was injured. At the time of accident there was no flooding; the thin coating of ice which caused the skid was on a part of the road which tended to keep damp owing to the inadequate drainage. The plaintiff claimed damages against the defendants on the grounds (a) that, as the highway authority, the defendants were guilty of misfeasance in that they had attempted to improve the drainage but had not completed the work adequately and the road was still dangerous; and (b) that the defendants were negligent in failing to have the warning lights placed on the road on the night of accident. It was held that the defendants were not liable in damages to the plaintiff for the following reasons:

(i) the fact that the drainage work done by the defendants was inadequate, was not misfeasance on their part. It was a case of non-feasance; and

(ii) there was no duty on the defendants to give warning of ice on the road.

25. In Wilson v. Kingston-Upon-Thames Corporation (1948) 2 All ER 780, also it has been held that lack of repairs of highway arose from non-feasance and not from misfeasance in repairing the road negligently and, therefore, there was no liability.

26. In all cases for damages, it is necessary to consider whether the act complained of amounts to misfeasance or to mere non-feasance. The distinction between non-feasance and misfeasance might be carried too far and in some cases non-feasance would be equivalent to misfeasance.

27. The plaintiff in the present case, while attributing negligence on the part of the defendants, has pleaded:

(a) No warning sign, light, road-block or any indication was placed on or near the bridge to show that it was unusable, unfit for travelling or dangerous to travel on.

The duty and care owed by the defendants was abandoned by them; and

(b) The defendants in gross violation of the provisions of the Motor Vehicles Act, did not place traffic signs as envisaged in the Schedule to the Act showing that the bridge was closed to vehicular traffic. No attendant or any other person was posted by the defendants at the site who could warn the ongoing traffic about the impending danger ahead.

28. At the very outset, it may be stated that there is nothing in the Motor Vehicles Act, 1988 which casts a duty on the State Government to place/affix or erect traffic signs, so as to bring the present case as the one where the defendants can be said to have failed to perform the statutory duties prescribed under the said Act. Section 116, Motor Vehicles Act, 1988, deals with the powers of the State Government or the authority authorised in this behalf to place or erect the traffic signs referred to in the First Schedule for the purpose of bringing to public notice the speed limits imposed, any prohibition or restriction imposed under Section 115 of the Act or generally for the purpose of regulating motor vehicle traffic.

29. Assuming that the defendants were duty bound to set up and erect the necessary signboards, evidence coming on record proves that all necessary care and precautions were taken by the defendants. K.N. Sharma, DW 2, was posted as a Junior Engineer in the concerned Sub-Division of the H.P.P.W.D. He has deposed that two spans of the bridge in question were washed away sometime in the year 1983. Parapets were raised on the road about 100 metres before the bridge on both sides. Signboards were also fixed on both sides of the bridge. A diversion through the khad was provided and the movement of the traffic was through the diversion through the khad. This witness has also proved the entries Exhs. DW 2/A to DW 2/E recorded by him in the relevant Measurement Book pertaining to construction of parapets and fixing of the signboards. To the similar effect is the statement of S.K. Sharma, DW 3, who succeeded DW 2 as Junior Engineer of the concerned Sub-Division.

30. The plaintiff in para 5 of his plaint has admitted that there was a path on either side of the road going through the khad. However, while appearing as PW 23, he has contradicted himself by stating that there was no diversion provided near the

bridge for vehicular traffic. Though, he could not admit or deny that H.R.T.C. buses or other vehicles were plying on that road. Jarnail Singh, PW 8, a local resident of the area, has admitted as under:

There is a tea-shop at the end of the bridge towards Bassa Wazira. It is correct that P.W.D. had provided a kacha road by the side of tea stall...It is correct that very kacha road goes across the khad towards the other end of the bridge towards Jawali.

31. While admitting the existence of the kacha road through the khad, PW 8 has hastened to deny the suggestion that vehicular traffic could move through the said kacha road. Kanshi Ram, PW 7, another local resident and Pradhan of the Gram Panchayat, also admitted the existence of a kacha path by the side of tea-shop though he volunteered to depose that such kacha path is for the movement of cattle and leads up to khad only.

32. The plaintiff as PW 23 has admitted that there was sufficient light at the time when the accident had taken place. Jarnail Singh, PW 8, has admitted that one could see across the bridge.

33. Ravinder Kumar, PW 6, as per the plaintiff's own case, was the pillion rider.

He had also sustained several injuries in the accident. As to the manner in which the accident had taken place, he has deposed:

At a place near Bassa Wazira when we had negotiated a curve, the motor cycle went on the bridge. The plaintiff started applying the brakes but could not stop the motor cycle and as a result of which the motor cycle along with both of us fell into the khad

34. The above statement goes to show that the motor cycle was being driven at a very high speed and while negotiating the curve it happen to go on to the bridge. The plaintiff realising the mistake though tried to stop the vehicle from going further on to the bridge, appears to have failed in his attempt due to high speed and as a result the motor cycle went on to the bridge and fell down. This aspect of the case further shows the negligence on the part of the plaintiff himself.

35. The fact that the accident was as a result of the negligence on the part of the plaintiff himself also finds support from the following two circumstances appearing in the case:

(i) No report of the accident came to be made with the police; and

(ii) Ravinder Kumar, PW 6, in spite of the fact that he had sustained grievous injuries, did not prefer any claim for damages.

36. Nothing has come on the record to show that any attempt was made by or on behalf of the plaintiff to lodge a report as to the accident with the police. It is not the case of the plaintiff that though a report was made, the same was not entertained and registered by the police. It was only somewhere in March, 1990 that a writ petition was filed by the plaintiff, being CWP No. 92 of 1990, seeking a direction to the respondent Nos. 2 and 3 therein, namely, the Senior Superintendent of Police and the Superintendent of Police, Kangra to lodge a first information report against the PWD authorities, who had failed to maintain the road bridge properly and had also failed to put up a board showing that the bridge was not in a good condition. Such writ petition was dismissed in limine on 26.3.90. Though the plaintiff has averred in para 10 of the plaint 'that the police authorities refused to register the first information report on one flimsy ground or the other', there are neither pleadings nor evidence to show as to when and who had gone to make the necessary report.

37. A contention was raised on behalf of the plaintiff that all the members of the family were concerned with the life of the plaintiff, who was seriously injured and fighting for life, therefore, no fault could be found for failure to report the accident to the police. The contention raised on behalf of the plaintiff is without any merit. Exh. PW 18/A is the copy of letter dated 19.9.1988 (the date following the date of accident) whereby the information regarding the accident involving motor cycle No. PAH 3340 was given to the insurance company. If information could be given to the insurance company immediately in spite of the serious condition of the plaintiff, there is no reason why report could not be made to the police about the accident. The reason appears to be obvious, that is, it was in the knowledge of the plaintiff, his pillion rider and other members of the family that the plaintiff himself was to be

blamed for the accident.

38. Ravinder Kumar, PW 6, the pillion rider has stated that in the accident he had sustained multiple injuries. He had also become unconscious and had regained consciousness only in CMC Hospital at Ludhiana. He remained admitted in the hospital for about 12/15 days. PW 6 has admitted that he had neither reported the matter to the police nor had preferred any claim with regard to injuries sustained by him. No reason therefor has been assigned by him. However, it appears that he did not choose to prefer a claim since while doing so, he had to put the blame on the rash and negligent driving by his friend, the plaintiff.

39. The evidence coming on the record unerringly proves that the defendants had taken all the care and precautions. They are not guilty of negligence in any manner. At the most, it can be said to be a case of non-feasance for which the defendants cannot be held liable. The accident was as a result of negligence on the part of the plaintiff himself. The issue is decided against the plaintiff.

Issue No. 3

40. In view of my findings on issue No. 2 above, that the accident was a result of negligence on the part of the plaintiff himself, he is not entitled to any compensation/ damages. The issue is as such decided against the plaintiff.

Issue No. 4

41. Since plaintiff has been held to be not entitled to any amount as compensation/ damages, the question of award of interest does not arise. The issue has, thus, become redundant and is decided accordingly.

Relief

42. As a result, the present suit fails and the same is dismissed, leaving the parties to bear their own costs.

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