

provisions of the East Punjab Urban Rent Restriction Act it must be held that it cannot earn or cannot be reasonably expected to earn more rent than what that Act permits. Therefore, fixing the annual rent in disregard of the restrictions on enhancement of rent by the East Punjab Urban Rent Restriction Act would be a violation of clauses (e) and (f) of Rule 4. Thus, it was incumbent on the assessing authority to determine the annual rental value for purposes of the assessment of the tax, with reference to the provisions of the East Punjab Urban Rent Restriction Act. This has not been done in this case and, therefore, it must be held that the order of the assessing authority and the consequential orders in appeal and in revision are wholly without jurisdiction. That being, so, this petition is allowed and the orders of the assessing and other authorities are quashed and they are directed to proceed to assess the annual rental value in accordance with law. The petitioner will have his costs of this petition, which I assess at Rs. 100.

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others
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APPELLATE CIVIL

Before Prem Chand Pandit, J.

NAND SINGH VIRDI,—Appellant.

versus

PUNJAB ROADWAYS AND OTHERS,—Respondents.

First Appeal from Order No. 63 of 1961.

*Motor Vehicles Act (IV of 1939)—Sections 94 and 95—
Scope of —Accident occurring without any rash or negli-
gent act of the driver—Insurer—Whether liable to pay
compensation to passenger travelling in the vehicle and
getting injured as a consequence of the accident.*

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Held, that sub-sections (1) and (2) of section 95 of the Motor Vehicles Act, 1939 lay down that the Government-owned vehicle has to be insured to cover liability in respect of third party risk and the policy of insurance shall cover any liability incurred in respect of any accident

up to the limits prescribed in sub-section (2) of section 95. If the liability of the State Government is determined, then the amount of compensation payable to a third party on that basis will be paid out of the fund created by the State Government under the proviso to sub-section (3) of section 94. These sections do not lay down under what circumstances the liability of the State Government will be fixed. The insurer only incurs the liability of the assured and that also to the extent for which the vehicle is insured. Therefore, the third party has first of all to establish the liability of the assured and it is only then that it can recover the amount of compensation awarded against the assured from the insurer. If he is unable to prove his claim against the assured, then he cannot get any compensation from the insurer. The provisions of the Motor Vehicles Act have not, in any way, changed the general law, under which compensation is claimed by one person from another. Under the Law of Torts, in order to get compensation from another person, it is necessary to prove that death or bodily injury was caused to the claimant by the rash or negligent act of the driver of the vehicle. If that is not proved, the claimant cannot get any compensation either from the driver or the owner of the vehicle and if no decree for compensation can be passed against the driver or the owner of the vehicle, then the insurer with whom the vehicle is insured, is under no liability to pay any compensation to the claimant, because under section 96 of the Motor Vehicles Act, the decree has to be obtained against the assured and it is only then that the same can be executed against the insurer.

First Appeal from the order of Shri G. S. Gyani, Motor Accidents Claims Tribunal (Under the Motor Vehicles Act as amended by Act 100 of 1956), Punjab, Chandigarh, dated 18th January, 1961, dismissing the application.

Application for grant of compensation in respect of injuries sustained by Nand Singh on account of an accident, when he was travelling in a bus belonging to the Punjab Roadways.

H. R. AGGARWAL, ADVOCATE, for the Appellant.

T. S. MUNJRAL, ADVOCATE, for the Respondents.

JUDGMENT

PANDIT, J.—This is an appeal filed under section 110-D of the Motor Vehicles Act, 1939, against the order of the Motor Accidents Claims Tribunal, dismissing the application of Nand Singh for the grant of compensation in respect of injuries sustained by him on account of an accident, when he was travelling in a bus belonging to the Punjab Roadways.

Pandit, J.

It appears that on 5th December, 1959 Nand Singh got into this bus for going to Chandigarh, when it started from Amritsar at 5.30 A.M. At about 7-00 A.M., when this bus reached near the Military Camp at Sura Nassi, which is about 4 or 5 miles from Jullundur, a bullock-cart was coming from the opposite direction. A cyclist was following this bullock-cart and when he tried to overtake it, he came in front of the bus. Buta Singh, the driver of the bus, immediately applied the brakes in order to save the cyclist and since it was drizzling and the road was wet, the bus slipped and turned turtle with its face towards Amritsar side instead of Jullundur. As a result of this accident, the appellant's collar-bone was fractured and his right arm was injured. Nand Singh was taken to the Civil Hospital at Jullundur and, on his request, was brought to the General Hospital, Chandigarh, and was admitted there as an indoor patient. He remained there till 10th December, 1959. On 19th January, 1960, he filed an application for compensation for Rs. 5,000 before the Motor Accidents Claims Tribunal, who framed the following issues:—

- (1) Whether the accident was due to rash and negligent act of the driver of the Punjab Roadways?
- (2) What is the quantum of compensation due and from whom?
- (3) Relief.

After examining the evidence produced by the parties, the Tribunal came to the conclusion that Buta Singh, the driver of the bus, was not to be

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blamed and the accident was not due to his rash or negligent driving. On issue No. 2, it was found that since the driver was not at fault, no compensation could be granted to the appellant. Consequently, the Tribunal dismissed the application for compensation.

The first question for decision in this case is whether the accident in the present case had occurred due to any rash or negligent act of the driver.

Both sides had produced a number of witnesses including a few passengers, who were actually travelling in the bus on that day. I was taken through the entire evidence and am of the view that the finding given by the Tribunal on issue No. 1 is correct. It is clear from the evidence of Ram Gopal (R.W. 1), Jaswant Singh (R.W.2), and Ram Singh (R.W. 3), who all travelled in this bus along with the appellant, that the driver was going at a speed of 20 to 25 miles per hour. A bullock-cart was coming from the opposite direction, followed by a cyclist, who in order to overtake the bullock-cart, came in front of the bus. The driver immediately applied the brakes and turned the bus to the left side in order to save the cyclist. The road was wet due to drizzling and, consequently, the bus slipped and got overturned. A.W. 1, Dhruv Deva, also stated that the bus was neither going at an extraordinary high speed nor at a low speed. He could not, however, say as to how the accident took place. He further stated that he presumed that the driver lost control over the vehicle because the bus overturned. He admitted, however, that there was slight drizzling at that time. Similarly, Balwant Singh, A.W. 2, has also stated that the bus was coming at a normal speed and there had been drizzling before the accident and the road was wet. He further deposed that a cyclist came on the metalled road from a *pugdandi* and a bullock-cart was also coming from the Jullundur side. According to him, the bus suddenly swerved to its left to save the cyclist and there was a creaking noise of the brakes, with the result that the bus came to the kutchra portion of the road and overturned. The appellant himself admits in his claim application that he did not

really know the cause of the accident. He was occupying a seat far behind the driver and the road ahead was not visible to him. According to him, the accident had taken place when the driver of the bus had failed in his attempt to save someone going on a bicycle. Buta Singh, Driver, as R.W. 4, stated that it started drizzling from Kartarpur and when he reached Sura Nassi, he noticed a bullock-cart coming from the opposite direction at a distance of about 100 yards, being followed by a cyclist. When the cyclist overtook the bullock-cart, he came in front of the bus. He was about 5 or 6 yards away from the bus. The witness applied the brakes immediately and within 10 yards from the place, where he applied the brakes, the bus slipped and its wheel came down to the low gradient portion adjoining the road and it turned turtle with its face towards Amritsar. The bus was going at a speed of 20 to 22 miles per hour. He reported the matter at the Saddar Police-Station, Jullundur, and also to his office at Jullundur. He was not challenged by the police. To similar effect are the statements of Dev Raj, Conductor of the Bus, R. W. 5, and Gurdit Singh, R.W. 7. Shri Mahadev Budhiraja, Motor Vehicles Inspector, was also examined as R.W. 6. He inspected this bus on 6th December, 1959, at 11-40 a.m., after the accident. He found that the foot-brake, the steering controls and the gear were in working order. The hand-brake, however, was not in working condition, but he admitted that the hand-brake could become defective on account of the accident. He further stated that if the metalled road was wet and it was raining, then the bus could slip even if it was going at the speed of 25 miles per hour. If the vehicle skids, it gets unbalanced and if its wheel goes to the low gradient portion of the road, it would result in the toppling over of the bus. From the above evidence, I have no manner of doubt that the driver was not at fault. He was not going at a high speed. In order to save the cyclist, who was overtaking the bullock-cart, which was coming from the opposite direction, the driver applied the brakes and turned the bus to the left side of the road. Since it was drizzling and the road had become wet, the bus slipped and got unbalanced. Its wheel came down to the low gradient portion adjoining the road and the

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 bus turned turtle. This was an unfortunate accident, but it was not due to any rash or negligent act of the driver.

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The next question for decision is whether, under these circumstances, the appellant, who was admittedly, travelling in the bus and got injured due to this accident, is entitled in law to claim compensation for the injuries received by him and from whom. Learned counsel for the appellant submitted that even if this accident was not due to any rash or negligent act of the driver, the appellant could recover compensation for the injuries sustained by him from the Insurance Company, with which this vehicle was insured against third party risk. But since this bus belonged to the Punjab Roadways, which is owned by the Punjab State, and was, therefore, not insured, the appellant was entitled to get compensation out of the fund created by the Punjab State in accordance with the provisions of section 94(3) of the Motor Vehicles Act. For this submission, he placed his reliance, only on the provisions of sections 94 and 95 of the Motor Vehicles Act.

I have gone through the provisions of sections 94 and 95 of the Motor Vehicles Act, 1939. In my opinion, they are of no assistance to the appellant. Section 94 makes insurance against third party risk compulsory, but in the case of vehicles, which are owned by the State Government, the appropriate Government is authorised to exempt them from this provision, if a fund is established and maintained by that Government in accordance with the rules made in that behalf under the Motor Vehicles Act for meeting any liability arising out of the use of any vehicle of that Government, which that Government or any person in its employment may incur to third parties. Section 95 lays down the requirements of policies and the limits of liability, which a policy of insurance must comply with. In para (ii) of the proviso to sub-section (1) of section 95 it is laid down that where the vehicle is a vehicle, in which passengers are carried for hire or reward or by reason of or in

pursuance of a contract of employment, the policy of insurance is required to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event, out of which a claim arises. In sub-section (2) of section 95 it is provided that subject to the proviso to sub-section (1), the policy of insurance shall cover any liability incurred in respect of any one accident up to the limits mentioned in that sub-section. All that these two sub-sections lay down is that the Government-owned vehicle has to be insured to cover liability in respect of third party risk and the policy of insurance shall cover any liability incurred in respect of any accident up to the limits prescribed in sub-section (2) of section 95. If the liability of the State Government is determined, then the amount of compensation payable to a third party on that basis will be paid out of the fund created by the State Government under the proviso to sub-section (3) of section 94. These sections do not lay down under what circumstances the liability of the State Government will be fixed. The insurer only incurs the liability of the assured and that also to the extent for which the vehicle is insured. Therefore, the third party has first of all to establish the liability of the assured and it is only then that it can recover the amount of compensation awarded against the assured from the insurer. If he is unable to prove his claim against the assured, then he cannot get any compensation from the insurer. The provisions of the Motor Vehicles Act have not, in any way, changed the general law under which compensation is claimed by one person from another. Under the Law of Torts, in order to get compensation from another person, it is necessary to prove that death or bodily injury was caused to the claimant by the rash or negligent act of the driver of the vehicle. If that is not proved, the claimant cannot get any compensation either from the driver or the owner of the vehicle and if no decree for compensation can be passed against the driver or the owner of the vehicle, then the insurer with whom the vehicle is insured, is under no liability to pay any compensation to the claimant, because under section 96 of the Motor

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A similar case came up for decision before Dua, J., in *Ram Partap v. General Manager, The Punjab Roadways* (1), wherein the learned Judge observed thus—

“Held, that section 110-B of the Motor Vehicles Act does not in terms lay down, that it is only when negligence on the part of the driver of the vehicle concerned is established that compensation can be awarded, but then it should be borne in mind that this bunch of sections (110 to 110-F) merely deal with the subject of the substitution of the Motor Accidents Claims Tribunal in place of civil courts for the purpose of adjudicating on claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles. They do not deal with the question as to who is to be held liable and in what circumstances, if any injury results from an accident.

Held also, that in order to discover the criterion or tests for fixing liability, the courts have, in the absence of any statutory provision fixing liability irrespective of negligence, to turn to the Law of Torts, according to which indisputably negligence in causing the accident in question is generally speaking essential to hold the negligent person liable. The cardinal principle of liability in Torts when death or injury has been caused to a person, is negligence or failure to take the requisite amount of care required by law.

Held further, that the bunch of sections 100 to 110-F of the Motor Vehicles Act do not in any way override the Law of Torts.”

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Learned counsel for the appellant submitted that in this authority, the learned Judge had not discussed the provisions of sections 94 and 95 of the Motor Vehicles Act and if the same had been considered, the decision might have been otherwise. I have already referred to these two provisions in detail and am of the view that they do not, in any way, support the contention of the appellant.

Pandit, J.

In the present case, since I have already held that this accident was not due to any rash or negligent act of the driver, therefore, the appellant is not entitled to claim any compensation for the injuries received by him.

In the result, this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court as well.

B.R.T.

CIVIL MISCELLANEOUS

Before Tek Chand, J.

DHANNA,—Petitioner.

versus

SIRI PARKASH AND OTHERS,—Respondents.

Civil Miscellaneous No. 3744 of 1961.

Punjab Security of Land Tenures Act (XI of 1953)—
Section 14A(ii)—Time fixed for depositing arrears of
rent by tenant—Whether can be extended by Revenue
Court—Code of Civil Procedure (Act V of 1908)—Sec-
tion 148—Whether applicable.

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Held, that a landowner desiring to recover arrears of rent from the tenant has to apply under section 14A(ii) of