

recruitment to the post of Assistant Employment Officer (V.G.) is made on the recommendations of the Punjab Public Service Commission and the Government in normal circumstances does not regularise the services of the petitioner by relaxing the service rules." In order to regularise the service of the petitioner if relaxation was found necessary to be made by the State Government, the same should have been made instead of terminating the services of the petitioner. It is precisely for such like cases that the provision for the relaxation of the Rules was made in the Punjab Employment (Class I and II) Service Rules, 1963 which regulate the conditions of service of the officers of the Punjab Employment Department.

In view of the aforesaid circumstances, I—

- (i) allow this writ petition;
- (ii) quash the impugned order dated 25th March, 1986 (Annexure P. 5) by which the services of the petitioner were terminated with effect from 31st March, 1986 (A.N.);
- (iii) direct the respondents to regularise the services of the petitioner on the post on which she has served for the last 7 years by relaxing the relevant provisions of the Punjab Employment (Class I and II) Service Rules 1963 and
- (iv) grant to the petitioner all consequential reliefs along with the arrears of salary and allowances, to which she would have been entitled had her services not been terminated in pursuance of the impugned order, along with 12 per cent interest thereon, within one month from today.

The petitioner shall also be entitled to the costs of this petition which are quantified as Rs. 1000.

S.C.K.

*Bfore J. V. Gupta, J.*

BAKHTAWAR SINGH AND ANOTHER,—Appellants.

*versus*

GURBACHAN SINGH AND OTHERS,—Respondents.

*First Appeal from Order No. 487 of 1983*

December 9, 1987.

*Motor Vehicles Act (IV of 1939)—Section 95—Accident between a Car and Bus—Driver of car held negligent—Claim only on*

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*account of negligence of bus driver—No claim in the alternative against the car driver—Insurance company of car—Liability of such insurance company.*

Held, that the claimants never pleaded in the alternative in the claim petition that in case the bus driver was shown to be found to be negligent, then they were entitled to claim compensation from the insurer of the Car. The legal representative of the deceased driver (who is also the owner of the car) was not made parties to the claim petition. The insurance company could not be held liable unless judgment was obtained against the insured person who had taken the policy of insurance. (Para 8)

*First Appeal from the order of the Court of Shri V. M. Jain, Accident Tribunal, Kurukshetra dated 7th February, 1983 dismissing the claim petition.*

R. P. Bali, Advocate, for the Appellants.

L. M. Suri, Advocate and Ravinder Arora, Advocate, for Respondent No. 3.

K. P. Bhandari, A.G. (Pb.) with K. B. Bhandari, Advocate, for Respondent No. 2.

JUDGMENT

J. V. Gupta, J.—

This judgment will also dispose of F.A.Os. Nos. 487, 488, 489 and 491 of 1983, as all these appeals arise out of one award of the Motor Accidents Claims Tribunal, Kurukshetra, (hereinafter called the Tribunal), and one accident.

(2) Jarnail Singh, deceased, was driving car No. MTY 8268 on his way from Bombay to his native village when at about 3 P.M. near village Dantauri on G.T. Road, the accident took place with bus No. PBJ-4413, driven by respondent No. 1 Gurbachan Singh. In the said accident, the said Jarnail Singh, his son Amarjit Singh and two other persons, Amrik Singh and Gurdeep Singh who were also travelling in the car, lost their lives. Five claim petitions were filed. Claims petition, giving rise to F.A.O. No. 487 of 1983, was filed on behalf of the parents of Amrik Singh whereas claim petition giving rise to F.A.O. No. 488 of 1983, was filed on behalf of the parents of Gurdeep Singh. Claim petition giving rise to F.A.O. No. 489 of 1983, was filled by the widow and children

of the deceased Jarnail Singh, whereas claim petition giving rise to F.A.O. No. 491 of 1983, was filed on account of the death of Amarjit Singh son of Jarnail Singh, on behalf of his mother and brother. The fifth claim petition was filed by the widow and children of Jarnail Singh, claiming compensation for the damage to the car. So far as the fifth claim petition is concerned, the F.A.O. arising thereof has already been dismissed because during the pendency of the appeal, the insurers of the car have satisfied the claim. The learned Tribunal dismissed these four claim petitions on the ground that the accident had taken place on account of the negligence of Jarnail Singh, driver of the car.

(3) According to the claimants, the car, in question, driven by Jarnail Singh was going at a normal speed on the G.T. Road and was short of village Dantauri, when a buffalo came on the road unexpectedly and to avoid the collision, Jarnail Singh, deceased, turned his car towards the right side when Bus No. PBJ-4413 driven by respondent No. 1 Gurbachan Singh, came from the opposite direction at a very high speed in a rash and negligent manner and struck against the left side of the car. Since the driver of the bus instead of keeping the bus on the correct side, had brought it towards the left side of the car and since he could not control the bus, it struck against the left side of the car, pushing the car further towards its right side. It was further alleged that after the accident, the bus stopped on the kutchra portion of the road on the wrong side. In the written statement filed on behalf of the driver of the bus, it was denied that the bus was being driven rashly and negligently. It was pleaded that in fact, the car was being driven at a very high speed in a rash and negligent manner and the same could not be controlled after it was turned towards the right side when a buffalo came in front of the said car and as such the car went to its extreme right and came in front of the bus which was coming from the opposite direction. It was alleged that the accident had taken place entirely due to the fault of the car driver. In the claim petitions, the insurers of the car, were also impleaded as a party. In the written statement filed by them, it was alleged that as per the allegations in the claim petitions, the accident, in question, did not take place due to the negligence of the car driver and that being so, the insurance company was not liable to pay any compensation. Thus, in all the claim petitions, the main issue was whether the accident took place due to the rash and negligent driving of bus No. PBJ-4413 by Gurbachan Singh, respondent. The learned Tribunal after discussing the entire evidence came to the conclusion that the

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accident, in question, did not take place due to the rash and negligent driving of bus No. PBJ-4413 by Gurbachan Singh, driver of the bus. It was further found that from the oral testimony given by P.W. 1 Bakhshish Singh and R.W. 1 Gurbachan Singh, it could not be held that the accident, in question, had taken place due to the rash and negligent driving of the bus. According to the learned Tribunal from the evidence it stood proved on the record that the accident had taken place on the extreme end of the metalled road and the kutchra portion of the road towards the right side while going from Pipli to Ambala in which direction the car in question was going. From all this, it was ultimately concluded that on the facts and circumstances of the case, it could not be held that the driver of the bus was driving it rashly and negligently in any manner; rather, the accident had taken place when Jarnail Singh who was driving the car, brought it to its wrong side. In view of that finding, no specific finding was given on other issues by the learned Tribunal and ultimately, the claim petitions were dismissed.

(4) The learned counsel for the claimants vehemently contended that from the evidence, it was amply proved that the accident had taken place due to the rash and negligent driving of the bus. He particularly referred to the statements of Gurcharan Singh, R.W. 1, the driver of the bus and Bakhshish Singh, P.W. 1, in this behalf. He also contended that in any case, it was a case of contributory negligence and, therefore, the claimants were entitled to compensation from the State of Punjab as the offending bus belonged to it. However, in the alternative, it was also contended that the insurers of the car were liable to pay compensation to the claimants on account of the deaths of Amrik Singh, Gurdeep Singh and Amarjit Singh who were travelling in the car and had died because of the accident.

(5) I have heard the learned counsel for the parties and have also gone through the relevant evidence on the record.

(6) From the statement of bus driver, Gurbachan Singh, and the testimony of Bakhshish Singh, it could not be successfully argued that the accident was caused due to the rash and negligent driving of the bus. The learned Tribunal has discussed the entire evidence in detail, P.W. 1, Bakhshish Singh has stated that he was accompanying Jarnail Singh etc. in car No. MTY-8268 and when they reached seven or eight kilometers ahead of Pipli towards Ambala, all of a sudden a buffalo came on the road and on seeing the same,

his brother Jarnail Singh, deceased, who was driving the car at that time, applied the brakes and also turned the car towards right side. In the meanwhile, a bus came at a very high speed rashly and dashed against the said car, as a result of which, the accident in question took place. He also stated that Police reached the spot after about 30 minutes when his statement was recorded. In his cross-examination, he stated that at the time when the buffalo was spotted at a distance of five or six yards from the car, the speed of the car was 45 kilometers per hour. He further stated that the said buffalo had entered the middle portion of the road from their left side. He also stated that the car did not stop after brakes were applied and in fact, Jarnail Singh swerved the car towards the right side to save the collision with the said buffalo. He also stated that a car going at a speed of 45 kilometers per hour would stop at a distance of about two feet if the brakes are applied. The car was swerved towards the right and had come to the middle portion of the road and that the bus had reached the place of occurrence within less than half a minute of the car reaching the middle of the road. He also stated that when the bus approached the car, the bus was running on the extreme right side of the metalled road on its wrong side. Gurbachan Singh, driver of the bus, appeared as R.W. 1 and stated that he was driving the bus on its correct side and it was being driven at a normal speed of 45 or 46 kilometers per hour. According to him, one car came from the opposite direction and a buffalo emerged and came in front of the car and in order to save the said buffalo, the driver of the car, brought the car to the extreme right towards the side from where the bus was coming. According to him Bakshish Singh, P.W. 1 reached there in another car along with three or four women, after about 20 or 25 minutes of the occurrence. He was not travelling in the car as stated by him. In his cross-examination, this witness stated that he had noticed the buffalo in front of the car from a distance of 50 to 60 yards. The distance between the car and the buffalo was ten feet when he saw the two first time. According to him, if brakes are applied to a bus going at a speed of 40/45 kilometers per hour, it would stop within a distance of 6 to 10 yards. Thus, from the said testimony and the other evidence on the record, it was quite clear that the accident, in question had not taken place due to the rash and negligent driving of the bus by Gurbachan Singh, P.W., S. I. Krishan Lal, has also appeared in the witness-box as P.W. 6. In his cross-examination, he stated that when he visited the spot, he found the bus, as also the car standing on the right side of the road if one comes from the side of Pipli towards

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Ambala. He also stated that the major portions of the said two vehicles were on the kutchra portion while some portions of the said vehicles were on the metalled road. Thus, from the testimony of this witness also, it stands proved on the record that the accident took place on the extreme end of the metalled road and the kutchra portion of the road towards the right side while going from Pipli to Ambala in which direction the car in question was going. This would belie the testimony of P.W. 1 Bakshish Singh that the bus in question, came on the wrong side, i.e., the extreme right side of the metalled portion of the road. P.W. 1, Bakhshish Singh is also belied when he stated that the car had been swerved towards the right approximately up to the middle of the road. In view of the above evidence, the learned Tribunal rightly came to the conclusion that the accident did not take place due to the rash and negligent driving of the bus; rather it had taken place when Jarnail Singh, who was driving the car, brought it on the wrong side. Thus, I do not find any infirmity or illegality in the said findings as to be interfered with in this appeal.

7. Faced with this situation, the learned counsel for the claimants submitted that in any case, the legal representatives of the persons who were travelling in the car and had died because of the accident, were entitled to the compensation from the insurers of the car. The learned counsel pointed out that the car was comprehensively insured as was evident from the certificates, Exhibit P.W. 5/K, produced on the record. He also argued that the insurance company failed to produce the original policy in spite of the orders of this Court and, therefore, every presumption would be raised against it. Thus, argued the learned counsel, it would be presumed that the passengers in the car were also insured.

8. After hearing the learned counsel for the parties in this behalf, I find that there is no merit in this contention. Admittedly, the claimants never pleaded in the alternative in the claim petitions that in case the bus driver was not found to be negligent, then they were entitled to claim compensation from the insurers of the car. Moreover, the claimants at least in the two claim petitions, where there was no difficulty, have not made the legal representatives of the deceased driver (who is also the owner) of the car, parties to their claim petitions. That being so, in view of the Full Bench judgment of this Court in *The Oriental Fire and General*

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*Insurance Co. Ltd. Bombay v. Bachan Singh* (1), the insurance company could not be held liable unless judgment was obtained against the insured person who had taken the policy of insurance. Apart from that, there was no issue either, claimed by the claimants, in the alternative, that the accident had taken place on account of the rash and negligent driving of the car by Jarnail Singh. In the absence of any such plea and an issue in this behalf, it could not be successfully argued on behalf of the claimants that they were entitled to any compensation from the insurance company. It is true that every presumption would be raised against the insurance company because it failed to produce a copy of the policy in this Court, in spite of the opportunities being afforded, but the said presumption is not available in the absence of the pleadings by the claimants in their claim petitions that Jarnail Singh, the driver of the car, was rash and negligent in driving and that the accident had taken place due to the rash and negligent driving of the car by the car driver.

9. In these circumstances, all the appeals fail and are dismissed with no order as to costs.

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S.C.K.

Before : M. M. Punchhi, J.

VANEET DHILLON,—Petitioner.

versus

PANJAB UNIVERSITY,—Respondent.

Civil Writ Petition No. 3735 of 1987

December 16, 1987

*Panjab University Calendar Vol. III 1985—Chapter XXX (C) Para 10,—Prospectus Paragraph 5(b)—Petitioner placed under compartment in B.Sc.I (Non-Medical)—Applied for Pre Entrance Test—B.Sc. result of petitioner modified on revaluation—Effect of such revaluation—Petitioner eligible for examination—Cancellation of candidature—Validity of such cancellation.*

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(1) 1982 P.L.R. 280.