(1999) 05 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from the Order No. 1502 of 1995

Amarjit Kaur and Others — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (1999) 2 ACC 526 : (2001) ACJ 211 : (1999) 123 PLR 27 : (1999) 4 RCR(Civil) 92

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Gurcharan Singh, for the Appellant; Sushant Maini, D.A.G. for Respondent Nos. 1 to 3 and Harbhajan Singh, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—This is an appeal filed by the claimants for enhancement of the claim granted by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the Tribunal). Appellants are wife and minor children of deceased Darshan Singh who died in an accident which took place on 1.10.1991 at about 9.30 p.m. on the Patiala-Pehowa Road. The deceased was going on a motor cycle which struck against the stationary tractor trolley, as a result of which he died on the spot.

2. The deceased was earning Rs. 2,564/- as per his salary certificate and this proof of salary was accepted by the Tribunal. However, the Tribunal also considered the fact that the deceased was a Constable in Police Department and after his death, appellant No. 1 got a job as Lady Constable. She is getting Rs. 2,100/- per month as salary in addition to the family pension of Rs. 900/- per month. Appellant No. 1 also received Rs. 40,000/- by way of gratuity and Rs. 20,000/- as welfare fund and Rs. 22,000/-/23,000/- was lying to the credit of her husband in the G.P.F. account. The Tribunal of course observed that:

"redeeming feature in this case is that job has been given to Smt. Amarjit Kaur-Claimant No. 1. However, that aspect cannot be taken into consideration while assessing just compensation though job factor cannot be ignored completely."

3. Therefore, the annual dependency of the claimants-appellants was reduced to Rs. 18,000/- and applying a multiplier of 16 years, the figure of Rs. 2,88,800/- was arrived at (the amount should have been Rs. 2,88,000/- as per the calculation). Again, considering the job of appellant No. 1, it was held by the Tribunal that respondents 1 to 4 are liable to pay Rs. 2,25,000/- to the claimants.

4. I have heard the learned counsel for the parties. The first question that arises for my consideration is whether any amount can be deducted on account of employment given to appellant No. 1 and the pensionary benefits received by her on the death of her husband. The answer thereon has to be in the negative. It is true that appellant No. 1 has been given service on compassionate grounds. However, she has to work during service and earn the money and she cannot be said to be working for the benefit of tort feasors. She would have worked at any other place also or even she could have been working and earning during the life time of her husband. It is not known how her earning would reduce the liability of respondents 1 to 4. When a person earns money, the amount after deducting his own expenses, will have to be broadly divided into two parts (1) the amount that he would spend for the dependents; and (2) the amount which he would save. The amount which has been lost because of the death of the husband of appellant No. 1 is, therefore, loss to dependency and loss to the estate, respectively. If a spouse of a bread earner is also earning then either the bread earner has to spend less for dependency and he can add to his estate or the spouse would save the money and add to her estate. The death of the bread earner caused a loss of dependency and loss to the estate.

5. Regarding pensionary benefits of the deceased also, these were his own earnings and he would have got these benefits on retirement. Regarding family pension also it can be said that tort feasors cannot get benefit of the pensionary benefits. To some extent, the case can be considered with the insurance amount the heirs of the deceased get and it is recognised principle that the premium paid by the deceased cannot be used for the benefit of tort feasors.

6. In view of the above reasons, I hold that the deductions made by the learned Tribunal were not proper.

7. The learned counsel for the appellants has argued that amount of Rs. 15,000/- be awarded for loss of consortium and Rs. 5,000/- for funeral expenses. In cases of death, either an amount is paid for loss of expectation of life which is a non-pecuniary amount or for loss of consortium. The amount suggested by the learned counsel is quite reasonable looking to the respective ages of the deceased and the appellant No. 1. The same, therefore, can be awarded. The amount of Rs. 5,000/- for the funeral expenses also appears to be quite reasonable which can be awarded to the claimants. No further ground has been

argued before me. Therefore, the total amount which can be awarded to the appellants can be summarised as below:

Rs. 3,28,320/- loss of dependency, Rs. 15,000/- loss of consortium, Rs. 5,000/- funeral expenses ----------------- Total: Rs. 3,48,320/- -------------------

8. The learned counsel for the respondents has argued that Tribunal has not considered the question of negligence. He has stated that position of the tractor trolley was such that it was on the half portion of the road. It is not shown that the tractor trolley had warning lights, red lights or reflectors so that it could warn the driver of the other vehicle. In such cases, if a parked vehicle has no lights or reflectors then a dazzled person will not be able to see or locate it. This aspect has been dealt with in various cases earlier also. In the case of Chan Loo Khee v. Lai Siew San and Ors. 1971 A.C.J 408, the facts were that the defendant parked his car on a highway and he put on the park lights as it was dark. A car which came speeding from behind suddenly swerved towards the right on noticing the stationary car and collided with another car coming from the opposite direction. The Federal Court of Malaysia held that the driver of the stationary car was not guilty because by putting on the park lights he had taken reasonable precaution.

9. In the case of British India Insurance Co. Ltd., v. Minor Khagesh Devendraprasad Jani and Ors. 1977 A.C.J. 416, a truck was parked on tar road and the driver had put on the park lights. A car came from behind and the driver of the car on seeing the on coming traffic with dazzling light swerved to its left and struck against the stationary truck. As a result, the occupants of the car died. In that case the liability was apportioned between the truck driver and the car driver in the ratio of 1:3 respectively. It has been held in it that the relevant statutory provision in Section 81 of the Motor Vehicles Act, 1939 which deals with leaving the vehicle in a dangerous position enacts that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road. It was further held therein that merely because the back lights were oh, the truck driver cannot be exonerated from the liability for such obstruction on such dark night creating such dangerous obstruction to the other highway users by occupying such substantial portion of the tar road itself.

10. In the case of Premlata Nilamchand Sharma and Others Vs. Hirabhai Ranchhodbhai Patel and Others, , a truck and trailer was parked in middle of the road without any light on dark night and it was held that it was the duty of the driver to park his vehicle entirely off the asphlalt road and keep road open and unobstructed. The driver was, therefore, liable for his rash and negligent act. The case of Minor Khagesh Devendraprasad Jani (supra) was also considered and it was held that although the tractor-cum-trailer was parked on the left side of the asphalt road, it would still not exonerate its driver from the negligence as it was his duty under the circumstances of the case to park his tractor and trailer

absolutely off the asphalt road and on the Kuchha strip. It was also found in that case that the tractor and trailer were without efficient back lights and reflectors. Section 81 of the Motor Vehicles Act was also considered in that case. The provisions of the Bombay Motor Vehicles Rules, 1959 regarding lamps and rear lamps were considered and the Division Bench came to the conclusion that the scooter driver who dashed against the tractor trailer was not guilty of negligence.

11. In the present case also the tractor was not completely off the road. Nothing has been shown to me from which I can hold that the tractor driver had taken precautions of having red lights and reflectors which are required so that the other vehicle driver could locate the parked vehicle in the night time. The present case is, therefore, directly covered by the principles laid down in the case of Premlata Nilamchand Sharma (supra). Therefore, I do not hold that there was contributory negligence.

12. In view of the above reasons, this appeal deserves to be allowed. The amount of compensation calculated as above is Rs. 3,48,320/-. Out of that, the amount already awarded is Rs. 2,25,000/-. Therefore, the award has to be increased by awarding further amount of Rs. 1,23,320/- (Rupees One lac twenty three thousand three hundred twenty only).

13. As a result, this appeal is allowed. Appellant No. 1 shall recover Rs. 75,320/- appellants No. 2 and 3 shall recover an amount of Rs. 24,000/- each from respondents 1 to 4 jointly and severally with an interest at the rate of 12 per cent per annum from the date of the application for compensation till the realisation of the amount.

14. Out of the amount awarded as above, the amount of Rs. 50,000/- awarded to appellant No. 1 shall be invested by the Tribunal in any nationalised Bank in a fixed deposit situated in the town/city/village of the appellants for a period of seven years. The amount awarded to appellant No. 2 and 3 shall be invested in any nationalised bank as above for a period of 10 years or till they attain majority, whichever is later. The Tribunal shall also invest 50% of the interest amount as above, for a period of five years.

15. The bank shall pay the appellants the periodic interest but shall not part with the principal amount before the aforesaid investment period is over without the specific permission of the Tribunal.

