
(1997) 03 P&H CK 0118

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1177 of 1991

Amrik Singh Sadhana and Others

APPELLANT

Vs

Rajinder Kaur Pal and Others

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1998) ACJ 785 : (1997) 117 PLR 174 : (1997) 3 RCR(Civil) 234

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Rajinder Goel, for the Appellant; M.B. Singh and G.S. Bhatia, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Bedi, J.—This petition will dispose of FAO No. 1177 of 1991, FAO No. 255 of 1992 and Cross Objection No. 841 of 1992 as they arise out of the following facts.

2. On the night intervening 13/14th January, 1988 Harnek Singh Pal (Since deceased) and Mohan Lal PW 4 were travelling in Maruti Car No. PCN 9136 driven by Chemkar Singh from Adampur to Delhi. When the car reached near Madhuban in district Karnal at about 5.30 a.m. on 14th January, 1988, a truck No. OBX 7295 driven by Purshotam Singh came from the opposite side. As the drivers of both the vehicles were driving rashly and negligently and were about to cross each other, there was a head on collision between them, as a result of which Harnek Singh Pal who was sitting on the rear seat received injuries and later on died in the hospital whereas Mohan Lal PW 4 escaped with minor injuries to lodge an FIR at the Police Station, Karnal. On these facts the claim petition was filed by the heirs of Harnek Singh Pal.

3. Respondent Nos. 1 and 2 who are owner and driver of the car in the claim petition filed their joint written statement denying all the allegations and took the plea that the incident had taken place due to the negligence of the truck driver

as the car was being driven at a moderate speed on its left side. Respondent No. 3, the insurance company which had insured the car accepted the pleas raised by respondent Nos. 1 and 2; respondent No. 4 the owner-cum-driver of the truck and respondent No. 5 its insurer however sought to fasten the liability on the car driver and respondent No. 3 and stated that the accident had taken place as the car was being driven in a rash and negligent manner and was on the wrong side of the road as the driver had attempted to over-take a bullock-cart which was going ahead of it.

4. On the pleadings of the parties, the Tribunal framed the following issues:

1. Whether the accident in question took place due to rash and negligent driving of respondent Amrik Singh owner of Car No. PCN 9136 and respondent No. 4 Purshotam Singh owner and driver of Truck No. OBX 7295 or of both? OPP.

2. To what amount of compensation the claimant is entitled to and from whom? OPP.

3. Relief.

5. The Tribunal came to the conclusion that the accident had taken place on account of the rash and negligent driving of both, the car as also of the truck and accordingly apportioned 40% as liability on the owner and the driver of the car and its insurer and 60 per cent on the owner-cum-driver of the truck and its insurer. The Tribunal also found that the monthly dependency of the claimants could be assessed at Rs. 6700/- and the annual dependency would come to Rs. 80,000/- and as 16 would be a suitable multiplier the claimants were entitled to Rs. 12,80,000/- on account of the compensation due to them and that this amount was to be shared to the extent of 40 per cent along with interest between respondent Nos. 1 to 3 jointly and severally, whereas the remaining 60 per cent was to be borne jointly and severally by respondent Nos. 4 and 5 with interest. The Tribunal also apportioned the amount and held that Rajinder Kaur would be entitled to Rs. 4 lacs whereas claimants Nos. 2 to 5 were entitled to Rs. 2 lacs each whereas claimant No. 5 was held entitled to a sum of Rs. 80,000/-, all the amounts to be payable with interest at the rate of 12 per cent per annum from the date of filing of the petition i.e. 30.5.1988 till payment. Aggrieved by the award of the Tribunal two appeals have been filed - one by Amrik Singh Sadhana owner of the car, its driver Chemkar Singh and its insurer i.e. Oriental Insurance Company Limited, Ludhiana, whereas another appeal has been filed by the United India Insurance Co. which had insured the truck in question. The claimants have also filed cross-objections for enhancement of compensation.

6. Mr. Ashok Aggarwal, the learned Senior Advocate appearing in support of F.A.O. No. 1177 of 1991 has urged that the finding of the Tribunal that 40 per cent liability was to be fastened on the car driver as it could be presumed that he was tired after having driven from Adampur to Madhuban in a span of four hours so as to make him liable for rash and negligent driving was without any evidence. I have gone through this aspect of the matter and find that it lacks

merit. It is the admitted case that the car journey had commenced at about 1 a.m. from Adampur which is near Jalandhar and the accident had taken place near Karnal. It is, therefore, clear that as the car driver had been driving for almost the entire night he must have been tired and that in that manner he could have been a contributing factor to the incident.

Mr. Aggarwal has then urged that the finding of the Tribunal on the question of quantum was also wrong as it has wrongly determined the annual dependency and the multiplier is on the higher side.

7. I have heard the learned counsel for the parties on this aspect. Admittedly, the deceased was a highly qualified engineer and was drawing a monthly salary of Rs. 11,600/- and was also an Income Tax payee before his death. In this view of the matter, the dependency has been rightly assessed. I am further of the view that as the deceased being about 39 years of age at the time when the accident had taken place and was well qualified to progress substantially in life, the multiplier of 16 is the adequate one.

8. This appeal is dismissed and while accepting the finding of the Tribunal on issue No. 1, direct that the annual dependency of the family members of the deceased would be Rs. 80,000/- and applying the multiplier of 16 on that amount the compensation to be paid comes to Rs. 12,80,000/-. The finding of the Tribunal with regard to interest payable arc however maintained as the amount in question cannot be reduced, it is directed that out of Rs. 12,80,000/ a sum of Rs. 4 lacs would be paid to the widow Rajinder Kaur along with interest and a sum of Rs. 80,000/- to be paid to Angrej Kaur mother of the deceased whereas the balance amount will be apportioned between the four children. All the aforesaid amount should be paid with interest as held by the Tribunal. The deposit be made within four months, failing which the claimants/respondents would be entitled to recover the said amount with interest at the rate of 18 percent from the date of this order till the date of payment. The cross objections filed by the claimants are also dismissed order. Dasti order.