
(2010) 05 P&H CK 0237

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No's. 5833 of 2009 and 33 of 2010 (O and M)

Ashwani Kumar Bhandari

APPELLANT

Vs

Darshna and others

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Citation : (2011) ACJ 2082

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Judgement

K.C. Puri, J.—Vide this judgment, I intend to dispose of two appeals bearing F.A.O. No. 33 of 2010 preferred by the claimants for enhancement and F.A.O. No. 5833 of 2009 preferred by the owner of the offending vehicle for dismissal of the claim petition.

2. Shorn of unnecessary details, Darshna-mother, Hussan Chand-father and Annu-sister of Bharat Bhushan-deceased, have preferred the claim application on account of his death on 14.11.2007, in a motor accident.

3. As per the case of the claimants, on 14.11.2007, at about 8 a.m., Bharat Bhushan was going to Pharmacy Department driving his motor cycle bearing registration No. CH 03-Y 0458. When he reached near the Hostel No. 4, Panjab University, Sector 14, Chandigarh, in the meantime, car No. CH 03-K 5429 being driven by Ashwani Kumar Bhandari, respondent No. 1, came from the side of Hostel No. 7 of Panjab University, Sector 14, Chandigarh, in a rash and negligent manner without blowing any horn and hit Bharat Bhushan. As a result, he received multiple injuries on the vital parts of his body. He was taken to Government Hospital, Sector 16, Chandigarh, from where he was referred to PGI and ultimately he succumbed to his injuries on 30.11.2007. Claimants have claimed an amount of Rs. 15,00,000 along with interest. It is alleged that deceased was aged 19 years on the date of death. He was a student of 3rd year B. Pharmacy, Panjab University, Chandigarh and was enjoying a good health. He was the only son of his parents. He was very intelligent and remained 1st class

throughout his academic career.

4. On put to notice, the respondent No. 1 filed the written statement denying the accident in question.

5. The respondent No. 2 contested the claim application pleading that respondent No. 1 is not the registered owner of the car bearing registration No. CH 03-K 5429, and as such the petition is liable to be dismissed for non-joinder of necessary parties. It is further pleaded that the amount claimed is excessive. It is also alleged that respondent No. 1 was not holding a valid and effective driving licence.

6. From the pleadings of the parties, the following issues were framed:

(1) Whether accident in question took place on account of rash and negligent driving of vehicle bearing No. CH 03-K 5429 by respondent No. 1, if so, whether Bharat Bhushan died due to injuries sustained by him in the accident in question? OPP

(2) If issue No. 1 is decided in favour of the claimants, whether claimants are entitled for any compensation, if so, how much and from whom? OPP

(3) Whether respondent No. 1 was not holding valid and effective driving licence at the time of accident, if so, its effects? OPR 2

(4) Relief.

7. The claimants in order to prove their case, examined Darshna, claimant as PW 1. The claimants also examined Hussan Chand as PW 2. In rebuttal, Ashwani Kumar Bhandari appeared as his own witness.

8. Learned Tribunal, after appreciating evidence on the file, returned the finding on issue No. 1 in favour of the claimants. Issue No. 3 was decided against the insurance company and while determining issue No. 2, income of the deceased was taken as Rs. 10,000 per month. The dependency of the claimants was taken to the extent of 50 per cent. So, after deducting 50 per cent amount on account of personal expenses of the deceased, the monthly dependency was taken as Rs. 5,000 and the yearly dependency was taken as Rs. 60,000 (Rs. 5,000 x 12). Multiplier of 18 was applied and the amount of compensation was calculated as Rs. 10,80,000. An amount of Rs. 5,000 was allowed on account of last rites. An amount of Rs. 20,000 was allowed on account of expenses on the treatment of the deceased and in this manner, the amount was calculated as Rs. 11,05,000.

9. Feeling dissatisfied with the said award, Ashwani Kumar Bhandari has preferred F.A.O. No. 5833 of 2009 for dismissal of claim petition, whereas claimants have preferred F.A.O. No. 33 of 2010, for enhancement of compensation.

10. Since both these appeals arise out of the same award, the same are being disposed of by common judgment.

11. Mr. L.M. Suri, senior counsel for the appellant, has submitted that finding of Tribunal on issue No. 1 cannot be accepted. It is submitted that the claimants have examined only one witness, PW 2. It is submitted that this witness has not stated that deceased was driving at a fast speed. He has stated that Ashwani Kumar Bhandari was driving the vehicle negligently. It is his opinion only. So, it cannot be said that the claimants have been able to prove issue No. 1. In rebuttal Ashwani Kumar Bhandari has appeared as his own witness and has categorically stated that it was on account of rash and negligent driving of the deceased that accident has taken place. So, prayer has been made for returning the finding on issue No. 1.

12. I have considered the said submission, but do not find any force in that submission.

13. It is a civil case and it has to be decided on preponderance of evidence. Ashwani Kumar Bhandari in the written statement has denied the accident altogether. He has nowhere pleaded that the accident has taken place due to rash and negligent driving of the deceased. A party cannot be allowed to travel beyond his pleadings. So, the evidence of Ashwani Kumar Bhandari, wherein he has stated that accident has taken place due to rash and negligent driving of the deceased, cannot be accepted.

14. On the other hand, PW 2 Hussan Chand has categorically stated that accident has taken place due to rash and negligent driving of respondent No. 1, now appellant. He has stated that the vehicle of appellant struck against the motor cycle of the deceased. So, in these circumstances, the finding of learned Tribunal on issue No. 1 stands affirmed.

15. The insurance company has not preferred any appeal and as such the finding of the Tribunal on issue No. 3 also stands affirmed.

16. Now, the moot point for consideration is regarding the quantum of compensation. The case of the appellant Ashwani Kumar Bhandari is that the amount is excessive, whereas the case of the claimants is that it is on lower side.

17. Learned counsel for the appellant has submitted that in this case the deceased was a bachelor. The amount of income of Rs. 10,000 per month taken by the Tribunal is on higher side. It is further contended that multiplier of 18 has been applied. In case of death of a bachelor son, the age of parents is relevant. To support this contention, learned counsel for the appellant has relied upon the authorities reported as *Bijoy Kumar Dugar v. Bidyadhar Dutta*, 2006 ACJ 1058 (SC); *Municipal Corporation of Greater Bombay v. Laxman Iyer*, 2004 ACJ 53 (SC); *New India Assurance Co. Ltd. v. Shanti Pathak*, 2007 ACJ 2188 (SC) and *Parkash v. Jagdish Singh*, (2004-1) 136 PLR 55.

18. On the other hand, learned counsel for the claimants has submitted that the deceased was a young person and would have earned much more than Rs. 10,000 per month. Learned counsel for claimants has relied upon the authority

reported as Deo Patodi v. Devendra Arora, 2008 ACJ 265 (MP), of Madhya Pradesh High Court and on the strength of the same, it is submitted that income of the student of B.B.A. has been taken as Rs. 18,000 per month. It is further contended that according to authority reported as Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC) the multiplier applicable for the age group of 15 to 25 is 18 and the multiplier has been rightly applied by the Tribunal. So, prayer has been made for enhancement of compensation.

19. I have given my thoughtful consideration to the rival submissions made by counsel for both the sides and have also gone through the record of the case.

20. The first point which is required to be determined is, whether the multiplier is to be applied according to the age of the parents or in accordance with the age of the deceased, if deceased is a bachelor. In Bijoy Kumar Dugar's case, 2006 ACJ 1058 (SC), Laxman Iyer's case (supra) and Shanti Pathak's case (supra), it has been held that age of the parents is relevant for determining the multiplier.

21. However, reliance has been placed by counsel for claimants on Sarla Verma's case (supra). I have gone through that authority. In that authority, it has not been specifically discussed anywhere whether the age of the parents is to be considered. In that authority, in order to streamline the multiplier the effect of all the previous authorities was discussed and ultimately, guidelines were issued to decide accident cases in future. So, I am of the considered view that age of the parents is relevant for determining the multiplier, on the facts of the present case. Darshna-claimant while appearing as her own witness has given her age as 41 years. She is the main person who will get the compensation. So, the age of Darshna is relevant. As per Sarla Verma's case. 2009 ACJ 1298 (SC), the multiplier of 14 is applicable for the age group of 41 to 45 years.

22. Now, the other question which is required to be determined is whether the income of Rs. 10,000 assessed by Claims Tribunal requires any interference. In my view, the assessment made by the Claims Tribunal does not call for any interference. The deceased was a young person having good academic record. So, in these circumstances, the amount of Rs. 10,000 taken by the Tribunal as income of the deceased does not call for any interference. So far as the authority in Deo Patodi's case (supra), relied upon by counsel for the appellant is concerned, that cannot be made applicable to the facts of the present case as in said case the deceased was a student of B.B.A. and was pursuing his studies in U.K. So, in those circumstances, his monthly income was assessed as Rs. 18,000. The income of the deceased has rightly been taken as Rs. 10,000 per month. By taking the dependency of the claimants as Rs. 5,000 per month, the yearly dependency has rightly been calculated as Rs. 60,000 (Rs. 5,000 x 12).

By applying multiplier of 14 the amount of compensation comes to Rs. 8,40,000. The Tribunal has allowed an amount of Rs. 20,000 in respect of medical expenses and Rs. 5,000 was allowed on account of last rites. Another sum of Rs. 10,000 stands allowed towards transportation charges and attendant's charges during

the period of hospitalisation. So, in this manner, the claimants are held entitled to Rs. 8,75,000 as compensation along with interest as awarded by the Tribunal.

In view of the above, both the appeals stand disposed of accordingly.