

(2010) 01 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : FAO No. 164 of 2006 and Cross Objections No. 338 of 2006

Bonn Nutrients Pvt. Ltd.

APPELLANT

Vs

Bachittar Singh and Others

RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Citation : (2010) 01 SHI CK 0037

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—Both these appeals filed by the owner are being disposed of by a common judgment since they arise out of one accident.

2. The admitted facts are that on 1.5.2004 the deceased persons were standing on the katcha portion of the Sujanpur to Hamirpur road when a Tempo bearing No. PB-10-AW-7822 belonging to the Appellant came from the Sujanpur side and struck against the deceased as a result of which both the deceased persons died. An FIR No. 40 of 2004 was registered. The claimants filed the claim petitions claiming compensation. The claim petitions were contested. The accident was not denied but according to the driver the accident occurred due to sudden failure of brakes. The learned Tribunal held that the accident occurred due to the rash and negligent driving of the driver and awarded compensation of Rs. 5,77,000/- in one case and Rs. 13,12,500/- in another case.

3. Sh. Harish Behl, learned Counsel appearing on behalf of the owner submits that the findings given on the issue of negligence are incorrect. This argument cannot be accepted. The factum of the accident has not been denied. According to the driver the accident took place due to the failure of brakes. No evidence has been led to show that the vehicle was being maintained in a proper manner or that such defect was a latent defect which could not be discovered despite due diligence.

4. The next argument of Sh. Behl is that the amount of compensation awarded is

excessive.

5. FAO No. 164 of 2006 and Cross Objections No. 338 of 2006 arise out of the award in MAC Petition No. 41 of 2004 where the claimant is the father of the deceased Sh. Ajay Manhas. The Tribunal has discussed the entire evidence in detail and come to the conclusion that the income of the deceased Ajay Manhas was Rs. 5750/- per month. This finding in my opinion calls for no interference. The Tribunal has deducted 1/3rd for the personal expenses of the deceased and fixed the dependency of the father at Rs. 3833/-. This does not appear to be correct.

6. The Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , in respect of claims where the deceased was a bachelor held as follows:

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father.

7. This Court in Naina Thakur and Ors. v. Punjab Women's Welfare Colleges Board and Ors. FAO No. 437 of 2004 decided on 17.9.2009 considered the judgments of the Apex court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and Sarla Verma's case (supra) and held that the choice of multiplier has to be based on the age of the deceased or the claimants which ever is higher.

8. In this case the claimant is the father. He was aged about 57 years. Therefore, even if his dependency is taken at 50% which appears to be slightly on the higher side because normally a 57 years aged father would not be dependent upon a young son, the dependency works out to Rs. 2875/- per month or Rs. 34,500/- per year. The appropriate multiplier in this case would be 9 and the compensation works out to Rs. 3,10,500/-. In addition to this the claimant is also entitled to Rs. 10,000/- as conventional damages and Rs. 5500/- for funeral expenses. Therefore, he is entitled to total amount of Rs. 3,26,000/-.

9. The learned Tribunal has only awarded interest at 6% p.a. In my view this is on the lower side. The claimant is held entitled to interest @ 9% p.a. from the date of filing of the petition till the deposit of the award. The award of the learned Tribunal is modified accordingly. The appeal is partly allowed and the

cross objections are dismissed.

10. FAO No. 165 of 2006 and Cross Objections No. 355 of 2006: In this case also the question is as to what is the quantum of compensation to which the claimants are entitled to. The deceased was running his own business of cosmetics agency at Bhota Chowk under the name and style of K.K. Traders. According to the claimants the deceased was earning Rs. 15000/- to Rs. 20,000/- per month.

11. PW-3 Smt.Sushila Kumari is the widow of the deceased. She states that earlier her husband used to work in Kavin Kare Pvt. Ltd. as Territory Sales Officer and his total emoluments were about Rs. 18,500/- per month. She has produced on record some certificate purported to have been issued by Kavin Kare Pvt. Ltd. Ext.PW-3/A. Unfortunately no witness from Kavin Kare was examined. This document shows the basic pay of the deceased at Rs. 5209/-, House Rent Allowance Rs. 2084, Conveyance Allowance Rs. 1042/-, Bonus Rs. 4760/-and Exgratia Rs. 6669/-. There is no explanation whether this ex-gratia is a one time payment or was paid every month.

12. Claimants have also placed on record the income tax return filed by the claimant showing a total taxable income of Rs. 72495/- per annum.

13. PW-5 Rajneesh Dogra is a friend of the deceased. He states that the deceased was working in Kavin Kare Co. in the year 2002 and was getting total salary of Rs. 18,000/- per month. The deceased left the job in November, 2003 and thereafter joined business.

14. An element of guess work is involved in this case. The income tax return filed is for the period 1.4.2002 to 31.3.2003 i.e. assessment year 2003-2004. The accident took place on 1.5.2004. It is true that what is the exact income of the deceased has not been proved. It is contended by Sh. Harish Behl that only the income depicted in the income tax return should be taken into consideration and no other income can be taken into account.

15. I find that what has been filed is not the complete return but only the form showing taxable income of Rs. 72,495/-. A person is entitled to lot of deductions while paying income tax. A person gets deductions of the amount on account of savings etc. Even if the income of the deceased is not taken to be Rs. 18,000/- per month as depicted in PW-3/B the fact remains that when the deceased was working at Chandigarh he was earning a substantially good amount. A person does not leave a job to start a business where he is going to earn less. When business is started it does not take off immediately. A business takes time to evolve and profit would have increased over a period of time. The learned Tribunal has assessed the income of the deceased as a shopkeeper at Rs. 10,000/- per month. In my view this assessment appears to be correct and just. In fact over a period of time the income may have increased substantially but there is no concrete evidence in this regard.

16. The Tribunal has thereafter deducted 1/3rd for the personal expenses of the deceased and applied the multiplier of 16. The deceased was aged 36 years and this multiplier is reasonable. It may be true that in Sarla Verma's case the multiplier indicated is 15 but keeping in view the ages of the minor children I am of the opinion that this multiplier calls for no interference.

17. Enhancement claimed by the claimants is also not justified. The claimants led no cogent evidence to prove the income of the deceased. Only two documents have been placed on record and nothing else. Therefore, I feel that there is no merit in this appeal and the cross objections which are dismissed.

18. In view of the above discussion, FAO No. 164 of 2006 is partly allowed and FAO No. 165 of 2006 is dismissed. Cross objections in both the cases are rejected. No costs.