
(1993) 04 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 565 of 1985

Chhoti Devi

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-04-1993

Acts Referred:

Citation : (1993) 04 P&H CK 0041

Hon'ble Judges : G.C.Garg, J

Advocate : Mr. O.P. Verma, Distt. Attorney Haryana State., Advocates for appearing Parties

Judgement

G.C. Garg, J.

1. Dissatisfied with the amount of compensation awarded, Chhoti Devi and others have preferred the present appeal against the award of the Motor Accidents Claims Tribunal, Rohtak (for short 'the Tribunal'). Chhoti Devi and her minor children filed a petition under Section 110A of the Motor Vehicles Act (for short 'the Act') claiming compensation in the sum of Rs. 40,000/ on account of death of Pehlad Singh, husband of appellant No. 1, in a motor accident. She pleaded that she is widow and other claimants are minor children of deceased Pehlad Singh who was aged about 50 years at the time of the accident and was earning Rs. 800/ per month by doing the job of weaving. It was alleged that the accident resulting in the death of Pehlad Singh took place due to rash and negligent driving of the bus driver.

2. The petition was contested by the respondents by denying the version of the accident as given by the claimants. Factum of accident was admitted. It was, however, pleaded that the accident did not take place on account of rash and negligent driving of bus by Dharam Pal, its driver. The deceased was coming on a cycle from behind a bullock cart from the opposite side and all of a sudden he emerged by the side of the cart and having lost control of the cycle, hit the bus despite the fact that its driver in order to save the cyclist swerved towards left hand side. Relationship of the widow with the deceased as also his capacity to

earn was also disputed.

3. The Tribunal returned a finding that the accident took place due to rash and negligent driving of the bus by Dharam Pal as also due to negligent driving of the cycle by Pehlad Singh deceased. As a result, both the driver of the bus and Pehlad Singh were held equally negligent for the accident. Liability of the owner of the vehicle was thus put at 50 per cent. The claimants were held to be the heirs of Pehald Singh deceased. The age of the deceased was found to be 50 years and his income was assessed at Rs. 400/ per month and by assessing the dependency of the claimants on the deceased at Rs. 300/ per month and applying a multiplier of 16, the financial loss suffered by the claimants was assessed at Rs. 57,600/. However, having regard to the liability of the respondents, a compensation was awarded in the sum of Rs. 28,800/ and after adjustment of Rs. 15,000/ paid to the claimants on account of 'No Fault Liability' under Section 92A of the Act, an award in the sum of Rs. 13,800/ was made leaving the respondents to be jointly and severally liable. The claimants were further held entitled to interest at the rate of 12% per annum from the date of filing of the petition till the realisation of the amount of Rs. 13,800/.

4. Mr. O.P. Verma, District Attorney, Haryana, appearing on behalf of the respondents tried to dislodge the findings returned by the Tribunal by contending that the accident took place not on account of rash and negligent driving of the bus by its driver but the entire fault lay with the deceased Pehlad Singh whereas the claimants in their appeal tried to shift the entire burden of rash and negligent driving on the driver of the bus. The Tribunal, as already noticed, found both of them to be negligent and, thus, apportioned the liability as 50:50.

5. I have gone through the evidence led in the case with the help of the counsel for the respondents and am of the view that no exception can be taken to the findings recorded. It has come in the evidence that Pehlad Singh who was riding the cycle did not strike against the cart and rather he fell on the heap of stones lying on the kacha berm of the road. If the version as put by the respondents had been correct that the cyclist had come by the side of the cart and having lost control of the cycle and struck against the bus, then the cyclist would have certainly struck against the cart. When the cyclist fell on the heap of stones lying on the road side on kacha berm, it clearly implies that the bus hit the cyclist when the cart was not there, otherwise there would have been a contact between the cyclist and the cart. In the circumstances it cannot be concluded that the cyclist was the only person responsible for the accident in question. The finding about the negligence as returned by the Tribunal is, thus, affirmed.

6. There is no challenge by the respondents to the finding recorded by the Tribunal to the effect that the claimants are the heirs of deceased Pehlad Singh.

7. Coming to the question of quantum of compensation, suffice it to say that the Tribunal accepted the age of Pehlad Singh to be 50 years and that he was earning Rs. 800/ per month but reduced this amount and determined the income

of Pehlad Singh at Rs. 400/ per month having regard to the statement of Smt. Chhoti Devi to the effect that she and her elder son Ramesh used to work along with Pehlad Singh for weaving Khes etc. Dependency was thereafter determined at Rs. 300/ per month and consequently by applying a multiplier of 16, figure of Rs. 57,600/ was arrived at. I have gone through the statement of Smt. Chhoti Devi P5, widow of the deceased. In her cross-examination she only stated that she used to assist her husband in weaving Khes and Khaddi work. She nowhere stated that Ramesh was also helping his father in weaving khes etc. She rather stated that Ramesh did not know how to weave and that Khaddi is lying closed since the date of death of her husband. In the circumstances, I am of the view that the learned Tribunal erred in concluding that the income of Pehlad Singh deceased was only Rs. 400/ per month. The learned Tribunal fell into error while arriving at this figure as it wrongly took into consideration that Ramesh son of the deceased also used to work along with Pehlad Singh for weaving Khes etc. From the statement of Chhoti Devi PW5 it is clear that it was only she who was helping her husband in his work. She obviously being the housewife could also not devote full time in assisting her husband. Thus, it can safely be concluded that Pehlad Singh was earning Rs. 600/ per month after giving rebate of Rs. 200/ towards the assistance provided to him by his wife Smt. Chhoti Devi, the total income of Pehlad Singh being Rs. 800/ per month and there being no evidence to dislodge this figure. Once it is concluded that Pehlad Singh was earning Rs. 600/ per month as a necessary corollary it can be held that he must have been contributing at least a sum of Rs. 400/ to his large family. The claimants' dependency on the deceased would, thus, be of Rs. 400/ per month and applying a multiplier of 16, the amount of compensation payable to the claimants would work out to Rs. 76,800/ i.e. $(400 \times 12 \times 16)$. Pehlad Singh deceased being equally liable for the cause of accident, the liability of the respondents, thus, as already found above, would be to the extent of half of the amount of compensation determined above i.e. Rs. 38,400/. It is, thus, held that the appellants are entitled to this amount.

8. The claimants have already received Rs. 15,000/ under Section 92A of the Act and after deducting this amount, the balance amount to which the appellants are entitled to come to Rs. 23,400/.

9. In the result the award of the Tribunal is modified to the extent indicated above and the appeal stands allowed accordingly. It is made clear that the appellants shall also be entitled to interest at the rate of 12% per annum of the enhanced amount of compensation also, from the date of filing of the claim petition till the realisation. There shall, however, be no order as to costs.