
(1993) 04 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 1067 of 1987

Devkinangan Bangur and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 23-04-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Motor Vehicles Act, 1939 — Section 110A, 110B, 110C

Citation : (1993) 2 ACC 605 : (1995) ACJ 1288 : (1993) 104 PLR 523

Hon'ble Judges : K.P. Bhandari, J

Bench : Single Bench

Advocate : Rohit Tandon and P.C. Goyal, for the Appellant; H.L. Sibal, A.G. and Meena Nadan, A.A.G., for the Respondent

Judgement

K.P. Bhandari, J.—This is an appeal against the award of the Motor Accident Claims Tribunal, Faridabad, dated 12.8.1987 whereby claim of the appellant was dismissed.

2. In the present case, Haryana Roadways Bus struck against the car of the claimants. Driver of car died on the spot. There were five occupants in the car who received serious injuries. Kama Devi was declared dead on arrival at the hospital. On arrival in the hospital, Radha Devi was also declared dead. P. L. Dhanuka, claimant, and D. N Bangur, appellant also received serious injuries. They remained confined in the hospital in Delhi and Calcutta. The Tribunal framed the following issues :-

"1. Whether the impugned accident was caused by rash and negligent driving of Bus No. HRW 4535 by respondent No. 3? OPP.

2. Whether the accident was caused due to rash and negligent driving of Car No. DIA 5296 by deceased Driver Deep Chand ? OPR.

3. If issue No. 1 is proved whether the petitioners are entitled to any compensation ? If so, how much and from whom ? OPP.

4. Whether the petition is time barred ? OPR 1 to 3.

5. Relief."

My findings on the issues are as under :-

Issue Nos. 1 & 2.

3. In this case the learned counsel for the appellants has brought my attention to the evidence of PW 4 Prem Chand. PW-5 Devki Nandan had deposed that on 4.6.1984, he alongwith other persons were coming from Brindaban to Delhi. He has stated that Kanta Devi, Radha Devi, Pursotam Lal, he himself and the driver were the occupants of the car. He has stated that at about 4 15 p.m they were near Palwal and at that time a Haryana Roadways Bus No. 4535 was coming from the opposite direction at a fast speed. The driver of the bus was driving the bus on the wrong side of the road, i.e. right hand side of the road. The bus dashed into the vehicle. All the five occupants of the car received various injuries. He pointed out that the accident was so serious that Radha Devi and Purshotam Lal were thrown out the vehicle Purshotam Lal received head injuries and one of his eye was thrown out of the socket. He also received injuries on his waist. The Driver of the car died on the spot. Kanta Devi was declared dead on arrival at the hospital. The remaining three were referred to Safdarjung Hospital, Delhi where Radha Devi was declared dead. The accident was so serious that the Driver and two ladies who were travelling in the car died Devki Nandan also received very serious injuries.

PW-10 Purshotam Lal has also supported the statement of Devki Nandan. He has stated that he alongwith others were coming from Bindraban to Delhi. At about 4.15 p.m. when they were little short of Palwal, a Haryana Roadways Bus coming from the opposite direction hit the car. He also received extensive injuries.

PW 4 Prem Chand has deposed that he was present at the site of the accident. He has stated that neither the bus driver nor the car driver could avoid the accident. According to him, the bus driver could be more blamed for the accident.

The respondents have examined Prithvi Singh RW1, Conductor, and Ami Chand RW2, Driver, to support their stand that the bus was not driven rashly and negligently. On consideration of the evidence on record, I find that Devki Nandan PW9 was travelling in the car and was sitting on the front seat He has clearly stated that the Haryana Roadways bus was coming from the opposite direction at a very high speed The bus struck against the car. To the same effect is the statement of Purshotam Lal PW10. Even Prera Chand PW4 has deposed that the bus driver was more to blame for the accident.

FIR Ex. PB regarding incident was lodged. A perusal of the FIR shows that the incident was reported to the police by Prem Singh, Sarpanch of Bamani Khera. It has been proved by Dharampal Singh, ASI. According to the FIR, the accident has been caused due to the rash and negligent driving of the bus The statement in the FIR corroborates the other evidence on record that the accident took place

due to rash and negligent driving by the bus driver. This material evidence was completely overlooked by the Motoi Accident Claims Tribunal while deciding the case. In my opinion, it is clear from the statement of PWs that the bus driver was driving the bus rashly and negligently. The driver of the bus is interested person. He was facing criminal trial Naturally, he had to save his skin and has thrown the blame on the car driver. Prithvi Singh, Conductor, has also tried to support the driver who is his colleague.

4. In view of the evidence discussed above, it is clear that the driver of the bus was driving the bus rashly and negligently and on that account the accident had taken place. The magnitude of the accident which resulted into the death of three persons also shows that the bus was being driven at a high speed and due to the impact of the accident, serious injuries were caused to all the occupants of the car and had resulted into the death of three persons. This shows that the bus driver was driving the bus rashly and negligently. I think the learned tribunal did not correctly appreciate the evidence of the witnesses in coming to the adverse decision. In view of the above discussion, I hold that the bus was driven rashly and negligently. Thus this finding of the tribunal is reversed.

Issue Nos. 3 and 5.

5. As the driver of the bus belonging to the Haryana Roadways was driving the bus rashly and negligently which resulted into the accident, the claimants are entitled to the compensation from the respondents. As regards the quantum of compensation, the claims of the claimants are as follows :-

(a) On account of death of Smt. Radha : Rs. 1,00,000/- Devi aged 53 years, wife of Sh. Purshottam Lal Dhanuka (injured) (b) On account of death of Smt. Kanta : Rs. 1,00,000/- Devi aged 51 years, wife of Sh. Devkinandan Bangur (injured) (c) On account of injuries and disable- : Rs. 50,000/- ment of Sh. P. L. Dhanuka (claimant No. 4) On account of medical expenses-incurred. : Rs. 58,000/- (d) On account of injuries and disable- : Rs. 50,000/- ment sustained by Sh. D. N. Bangur (Claimant No. 1) On account of medical expenses incurred. : Rs. 15,000/-

Total Claimed Amount : Rs. 3.73 lacs alongwith interest from the date of petition to the date of realisation.

6. P. L. Dhanuka, FW-10 was one of the persons who was injured. After the accident, he was admitted to Sir Ganga Ram Hospital New Delhi. Dr. S K. Sogani, PW 7 has appeared in the witness box and has deposed that P.L. Dhanuka was brought to the hospital in a serious condition He was admitted in the Intensive Care Unit. According to the Doctor, claimant No. 4 suffered head injury which resulted into damage of brain. He also suffered multiple fracture. According to him at the time of discharge on 1.7.1984, he was bed ridden. He opined that he would require long term modification for brain damage. After discharged from the hospital, he was shifted to Calcutta where he remained under the treatment of Dr. N. A. Saha and Dr. S. C. Jain. Both these doctors were examined through interrogatories. PW-9 D. N. Bangur is claimant No. 1, he remained under the

treatment of Dr. J. S. Arora in Mool Chand Hospital Dr. J. S. Arora appeared in the witness box and deposed that the claimant No. I had suffered following injuries : -

- "1. Fracture of right TIBIA.
2. Crushed fracture of right PATELLA
3. Deep facerated wound on right shoulder
4. Multiple deep abrasions and cuts.
5. Operated on 11.6 84 for bony injury to right lower limb.
6. Follow up period-full one year. When wires inserted to stabilise fractured bones were removed.
7. Suffers permanent disability.

7. After discharge from the hospital, D. N. Bangur remained under the treatment of Dr A. K. Sen Gupta in Calcutta. Dr A. K. Sen Gupta was examined through interrogatories. The medical expenses incurred on the treatment of P L. Dhanuka have been proved by the evidence of Dr., Sogani, PW-7. The documents Ex. PW7/B Ex. PW7/C and Ex. PW7/D show that Rs. 58,000/- was spent on the medical treatment of P.L. Dhanuka in Sir Ganga Ram Hospital in addition to the expenses incurred on medical treatment in Calcutta. The petitioner was disabled and he could not attend to his work for considerable time.

8. The expenses incurred on the medical treatment of D. N, Bangur are proved by Ex. PX/2 to PX/7. These receipts show that the expenses of Rs. 15000/- were incurred. D. N. Bangur also incurred expenses on medical treatment in Calcutta as well. He also suffered mental shock. He too could not attend to his work for a considerable time. P.L. Dhansika had claimed Rs. 50,000/- on account of injuries and disablement and Rs. 58,000/- on account of medical expenses incurred in Delhi and Calcutta. D. N. Bangur had claimed Rs. 50,000/- on account of the injuries and disablement and Rs. 15,000/- on account of medical expenses incurred. In my opinion the claim for compensation made by P.L. Dhanuka and D. N. Bangur is very reasonable. It is more on the lower side because of the fact that they have prolonged ailment and they must have arranged regular attendants, to look after them. They have not claimed any compensation of attendant's salary and for the loss of work the period they remained to bed and in the hospital. I consider the claim made by P. L. Dhanuka and D. N. Bangur reasonable and allow the same. It is established by the evidence of PW 10 P. L. Dhanuka that Radha Devi was 53 years of age. She was income tax payee. Her annual income was Rs. 50,000/-. By applying one third cut to the income which the deceased must be spending on herself loss to deceased claimant comes to Rs. 33,000/- per year due to the death of the deceased. Now, it is well settled by the decision of the Supreme Court that normally a multiplier of 16 should be applied.

By applying multiplier of 16. the claimants would be entitled to compensation of Rs. 5,28,000/-on account of loss due to the death of Radha Devi. D N. Bangur has proved that annual income of Kanta Devi was Rs. 35,000/-. She was also income tax payee. Her annual dependency will be 84,000/-. By application in multiplier of 16, the claimant would be entitled to the compensation of Rs. 3,84,000/-.

9. The accident took place on 4.6.1984. The claim petition was filed on 11.3.1985. The claimants are entitled to 15 per cent interest on the amount of compensation from the date of application, in view of the judgment of Supreme Court in Rukmani Devi v. Om Parkash. 1990 A. C. J. 687. Issue No. 4.

10. It has been discussed above that as a result of accident, Radha Devi wife of Purshottam Lal Dhanuka and Kanta Devi wife of Devki Nandan Bangur died. P.L. Dhanuka and D. N. Bangur were seriously injured and were remained indoor patients for treatment in Hospital at Delhi as well as in Calcutta. The accident was so serious that they lost their wives. The Tribunal did not appreciate that due to the seriousness of the accident, these two claimants remained in hospital for a considerable time. So on the facts of the present case, there are sufficient grounds in not filing the claim petition within time. The Tribunal was clearly in error is not condoning the delay in filing the claim petition It has been laid down by the Supreme Court in The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another, . that State should not try to defeat a claim on merits by raising technical plea such as "narrow" limitation. State Transport Corporation should desist from raising such pleas at least in cases where the delay is not inordinate.

11. In state of Himachal Pradesh and Ors. v. Jagdip Singh Pathanian 1970 A. C. J. 216. it was held that where the injured person was prevented by personal disability it should be a sufficient cause for condoning the delay.

12. In the light of the above discussion, I am of the opinion that in this case there are sufficient grounds for condoning the delay in filing the application for claim before the Tribunal. The Tribunal has not correctly appreciated the facts of the case and the legal position. From the facts of the present case, it is clear that the claimants were prevented from presenting the claim petition due to the fact that they remained in hospitals in Calcutta and Delhi for a considerable time They were shocked due to the death of their wives fn this view of the matter, the Tribunal was in error in not condoning the delay. I decide Issue No. 4 accordingly. The delay in filing the claim application before the Tribunal is condoned

13. I find from the claim petition that the amount of compensation claimed by the appellant is lower than the amount of compensation which they have been found entitled to under the law. According to Section 110B of the Motor Vehicles Act, 1939, the Tribunal is to allow the compensation which is just and fair. It is statutory obligation of the Tribunal In the matter of grant of compensation, this court cannot stand on technicalities. It is the statutory obligation cast on the

Tribunal to allow just and fair compensation. The provisions of the Act regarding payment of compensation to the deceased family are in the nature of social piece of legislation. These provisions have to be given beneficial interpretation. Claimants were not aware of the exact amount of compensation which they are entitled to. The claim regarding compensation can be allowed to be amended by the Court on appeal. The Supreme Court allowed the claim of compensation in Land Acquisition cases to be amended. See *Harcharan v. State of Haryana* 1982 U. J. 832, and *K. Kamalajammanniavar (Dead) by Lrs. Vs. Special Land Acquisition Officer*, . In *Ramesh Chander v. Randhir Singh* (1991) 100 P. L. R. 563 the Supreme Court has laid down that even if the claimant has not made a prayer for grant of interest, the grant of interest is a statutory duty of the Court and it can be allowed even on oral request. Similarly, the grant of just and fair compensation is statutory responsibility of the Court. If on the facts, the Court finds that the claimant is entitled to higher compensation, the Court should allow the claimant to amend his prayer and allow proper compensation. On oral request of the counsel for the appellant, I allow the appellant to amend the claim for payment of compensation within three months and to make up the deficiency in Court fee, if any. The claimants will be entitled to the compensation determined by this Court in the appeal.

14. In view of the above discussion, the appeal is accepted, judgment and order of the Tribunal is set aside. The claimants will be entitled to the compensation determined by this Court in the appeal. In *Ramesh Chandra Vs. Randhir Singh and Others*, the Supreme Court allowed interest on the compensation amount at the rate of 15 per cent. I also followed this judgment in *Mala Aggarwal v. Jogdish Kumar* (1991) 100 P. L. R. 563. In view of the above, I allow interest at the rate of 15 per cent in this case to the claimant on the compensation amount from the date of application.