

(2006) 07 P&H CK 0028
In the Punjab And Haryana At Chandigarh

Gill Sandhu Transport Company and Another	APPELLANT
Vs	
Ram Piari and Others	RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 427

Citation : (2007) 2 ACC 635

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Judgement

Rajesh Bindal, J.—At the very outset Counsel for the appellants states that since a joint appeal on behalf of owner as well as the Insurance

Company is not maintainable, let this appeal be treated on behalf of owner only and the appeal on behalf of appellant No. 2 i.e. Insurance

Company be dismissed as not maintainable. Counsel for the claimants has no objection to this course being adopted. Ordered accordingly.

2. The present appeal is treated only on behalf of the appellant/owner.

3. This is an appeal filed against the award of the Motor Accident Claims Tribunal, Ludhiana arising out of M.A.C.T. case No. 21 of 27th May,

1988, decided on 6th April, 1990, awarding a sum of Rs. 2,40,000 to the claimants on account of death of Hem Raj being widow and minor

daughter of deceased Hem Raj.

4. The facts in brief are that on 28th March, 1988 at about 9.45 p.m. deceased Hem Raj along with Tilak Raj and Sudesh Kumar were going near

Sherpur Chowk on their bicycle when truck bearing registration No. HYG 1410 driven by Hardial Singh struck against the cycle of deceased Hem

Raj from behind. Resultantly, Hem Raj received multiple injuries and ultimately

he expired. An F.I.R. No. 31 dated 28th March, 1988 was

registered under Sections 279/427/304A of the Indian Penal Code at Police Station Focal Point, Ludhiana.

5. The primary contention of learned Counsel for the appellants is that the accident did not occur at all, in the alternative, the driver of the truck

was not negligent and further the multiplier of 20 applied in the present case is quite excessive. It should have been at the most 16. On the other

hand, Counsel for the respondents submitted that this is a case of unfortunate death of young male of 28 years leaving behind widow of 24 years

and minor daughter of two and a half years. According to the Counsel, even though it was a case of enhancement but still at the relevant time due

to illiteracy or non-availability of proper guidance, appeal for enhancement could not be filed. In any case it is not a case for reduction of

compensation and the appeal filed by the appellant deserves to be dismissed.

6. I have heard learned Counsel for the parties.

7. While discussing the issue regarding rash and negligent driving, the Tribunal recorded the following findings:

11. In order to prove this issue, the claimants examined Sudesh Kumar as PW 2 and Tilak Raj as PW 3, both witnesses of occurrence. They have

stated that about a year back at about 9.30 p.m. they were going on their cycles from Sherpur and Hem Raj was ahead of them on a cycle and

when they reached Sherpur crossing at about 9.45 p.m., a truck bearing registration No. HYG 1410 came from behind and struck against the

cycle of Hem Raj as a result of which he fell down on one side of the road and the truck ran over the cycle of the deceased and as a result of fall,

the deceased received multiple injuries. They further stated that the truck driver stopped the truck at some distance. The injured was then removed

to Civil Hospital, Ludhiana by these two persons in a auto rickshaw, where he died. Sudesh Kumar has further stated that when he was going to

lodge report with the police, the A.S.I., of Police Station, Focal Point met them in the Chowk and he made statement before him and consequently

a case was registered against the accused/driver. Only one question was put to both these witnesses that no such accident, during the course of

driving by Hardial Singh had taken place. The statements of both these witnesses of occurrence, therefore, stands unrebutted on record and could

not be shaken during the course of their cross-examination. There is nothing available on the record to show that these witnesses were not present

at the spot at the time of occurrence or they had not witnessed the accident.

12. As against their clear and consistent statements about the accident, the driver of the offending truck, Gurdial Singh appeared as RW 1 and he

simply stated that no accident had taken place on 28th March, 1988 with truck bearing registration No. HYG 1410. In his cross-examination, he

admitted that he was facing trial in a criminal case for an offence punishable u/s 304A, I.P.C. So the solitary statement of Gurdial Singh alias

Hardial Singh RW 1 is not sufficient to rebut the positive statements of Sudesh Kumar and Tilak Raj. The very fact that the truck struck against the

deceased from behind shows the rash and negligent act of the driver in not stopping the truck to avoid the accident. So from the evidence

produced by the claimants, it is established on record that the death of Hem Raj occurred due to the injuries received by him on account of the

rash and negligent driving of the offending truck by Hardial Singh driver. So this issue is proved in favour of the claimants.

8. I have perused the award. Counsel for the appellants though took pain to substantiate his plea to the effect that findings regarding rash and

negligent driving are perverse but could not succeed by referring to any of the evidence on record. The statement of witnesses, who were

accompanying the deceased Hem Raj at the time of accident could not be brushed aside. It is a case where deceased Hem Raj was hit from

behind by the truck. Even the contention of Counsel for the appellants to the effect that though in the statement of Sudesh Kumar and Tilak Raj it

was stated that matter was reported to the police but details regarding F.I.R. were not furnished. According to the Counsel in absence thereof,

even the accident was not proved what to talk of question of negligence on the part of the driver of the offending vehicle. On the other hand,

Counsel for the respondents submitted that the plea of the appellants is belied from the fact that Gurdial Singh, driver of the offending vehicle

appeared as RW 1 and admitted in his cross-examination that he was facing trial in the criminal case for charge u/s 304A of the Indian Penal

Code. Further, even in the award of the Tribunal, number and date of the F.I.R. is clearly recorded as F.I.R. No. 31 dated 28th March, 1988.

Considering these facts, I am of the view that the contention of the Counsel for the appellants is totally misconceived to the effect that in the

absence of the F.I.R., the accident is not proved. Even on the issue of negligence, I do not find any substance in the arguments raised by Counsel

for the appellants and approve the findings recorded by the Tribunal on this issue.

9. As far as the question of quantum is concerned, on that issue as well, I do not find any substance in the arguments raised by Counsel for the

appellants. Admittedly, deceased Hem Raj was 28 years of age, who left behind young widow of 24 years and minor daughter of two and a half

years. In such a situation, award of compensation of Rs. 2,40,000 by applying a multiplier of 20 is not unjustified.

10. Accordingly, the appeal is dismissed.