
(2006) 04 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 3469 of 1999

Gurmeet Kaur and Others

APPELLANT

Vs

Punjab Roadways and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2006) 144 PLR 858 : (2006) 4 RCR(Civil) 63

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : S.K. Arora, for the Appellant; Deepak Arora, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—This appeal has been filed by the claimants against the award of the Motor Accident Claims Tribunal, Faridkot, dated 6.10.1999, vide which only claimant No. 1 was granted compensation to the tune of Rs. 50,000/- u/s 140 of the Motor Vehicles Act as no fault liability and the said amount was directed to be paid to the mother of the deceased being his legal heir.

2. The facts of the case, as borne out from the record, are that on 20.1.1997 deceased Gurtej Singh boarded the bus of Punjab Roadways Ferozepur Depot from Muktsar Bus Stand and when it reached near Mission Hospital, Muktsar, the driver of the bus, who was driving it rashly and negligently and also being overloaded by the conductor, respondent No. 3, applied the sudden brakes and due to fast speed, a heavy jolt was caused as a result of which window of the bus was opened and the deceased Gurtej Singh fell down on the road and suffered multiple injuries which resulted in his death. It was also claimed that besides studying, the deceased Gurtej Singh was also doing the work of dyeing the clothes in the evening and used to earn about Rs. 3,000/- per month and it was on account of the loss suffered, the claimants claimed that they were entitled to compensation to the tune of Rs. 6 lacs.

3. Respondent Nos. 1 and 4 filed the separate written statement in which it was alleged that no accident had taken place with Bus No. PB-12-A-9943. On merits averments made in the claim petition have been denied for want of knowledge. Hence it was pleaded that the claimants were not entitled to any compensation. Respondent Nos. 2 and 3 filed a separate written statement in which an objection was raised that the claimants were not dependent on the deceased. Therefore, they were not entitled to file the claim petition. Even on merits, the factum of accident was denied by them and it was alleged that a false DDR was lodged by the claimants. It was further pleaded that the deceased was not doing any work and he was in fact dependent on the claimants. It was further pleaded that the deceased was not doing any work and he was in fact dependent on the claimants. It was denied that he used to earn Rs. 3,000/- per month. It was also the case of the respondents that the reason for death of Gurtej Singh was an act of the God and no fault can be attributed to the respondent.

4. On the pleadings of the parties, the following issues were framed:

1. Whether Gurtej Singh deceased died on 20.1.1997 in the area of Muktsar near Mission Hospital, in the accident caused by respondent No. 2 Mohar Singh driver and respondent No. 3 Sukhdev Singh conductor by driving bus No. PB-12-A-9943 belonging to Punjab Roadways, Ferozepur rashly and negligently? OPP

2. Whether the claimants are the legal heirs/dependents of the deceased Gurtej Singh? OPP

3. To what amount of compensation the claimants are entitled to and from whom? OPP

4. Relief.

5. The learned Motor Accident Claims Tribunal on issue No. 1 held that though it is proved on record that the death of Gurtej Singh occurred due to his falling from the bus when its front door got opened, but it was held to be an act of chance and the same could not be attributed to the rashness and negligence of respondent Nos. 2 and 3.

6. On Issue No. 2 the learned Tribunal came to the conclusion that it was only the mother of the deceased claimant No. 1, who was a legal heir of Gurtej Singh. On issue No. 3 the learned Motor Accident Claims Tribunal did not agree with the evidence brought on record by the claimants to prove that the deceased was doing the dyeing work in the evening after the college hours and accordingly it was held that he was not earning anything. Accordingly, a sum of Rs. 50,000/- was granted under the "no fault liability".

7. Mr. S.K. Arora, learned Counsel appearing for the appellant has argued vehemently that the findings of the learned Motor Accident Claims Tribunal on issue Nos. 1 and 2 cannot be sustained. The argument of the learned Counsel is that on the basis of the evidence on record, the learned Tribunal has come to the conclusion that the death of Gurtej Singh had occurred due to his falling from the

bus as the door had suddenly opened. The submission of Mr. Arora is that this finding is itself sufficient to hold that the death of Gurtej Singh had occurred due to rashness and negligence of respondent No. 2 and 3, as they admittedly failed to bolt the bus from inside even though it was overloaded and passengers were standing near the door. It is also the argument of the learned Counsel that the Tribunal rejected the evidence brought on record by placing reliance on the statement made to the Police by registering a DDR. According to him, this could not be the basis to reject the evidence as the Civil Court is not bound by the contents of the DDR for the purpose of rejecting the claim petition, though it could be the basis to form an opinion if a compensation has to be given. According to him, in any case, the contents of DDR could not be the basis to reject the positive evidence brought on record before the Motor Accident Claim Tribunal. In support of his contentions, learned Counsel for the appellants has relied upon the judgment of this Court in *State of Haryana v. Banti Devi* 1999 (2) R.C.R. 698 to contend that in case a person dies due to falling, on account of the bus being overloaded, no negligence can be attributed to him. The Motor Accident Claims Tribunal in that case held contributory negligence on account of the fact that the deceased was standing near the window when the bus struck against a tree on account of which the deceased had fallen down and resultantly died. However, this Hon'ble Court in appeal reversed the findings recorded by the Motor Accident Claims Tribunal and held that no negligence could be attributed to the person standing near the window because the bus was overloaded and, therefore, it was not by choice that the passenger was standing near the window and could not be said to be negligent. The relevant portion of the judgment is reproduced below:

It is not the case of the appellant State that the deceased passenger had not brought a ticket. It is also clear from the evidence that the bus was overloaded. That being so, a number of passenger were admittedly standing. It appears that the deceased was nearest the window. When the bus struck against the tree, the window opened and he fell out. The injuries proved fatal. In this situation, there is nothing to indicate that the passenger was negligent. He was standing near the window only because the bus was over loaded. It was not out of choice. That being the position, he cannot be said to have been negligent. Learned Counsel for the appellant (respondent in the connected appeal) has not been able to refer to any evidence to show as to how the deceased was negligent.

8. Learned Counsel has also placed reliance on the judgment of the Allahabad High Court in *Smt. Meena Misra and Anr. v. 1st Additional District Judge and Ors.* 1995 (2) CCC 132 (All) to contend that non locking of the door is an act of negligence on the part of the conductor and, therefore, negligence was attributable to the conductor and the driver of the bus as it was on account of their negligence that the deceased, who was standing at the door fell down and resultantly died. The Hon'ble Allahabad High Court was pleased to hold that the management of the bus is with the conductor and if the conductor is not agile enough to ensure the proper locking of the doors, then the negligence has to be

attributed to him.

9. On the other hand, learned Counsel appearing for the State contended that the judgment of this Court referred to above is distinguishable as in that case death had occurred due to accident and not merely on the ground that the passenger had fallen down. However, a reading of the judgment clearly shows that this Court was considering the factum whether the negligence could be attributed to the person standing at the window and in that case this Court was pleased to reverse the findings of the Motor Accident Claims Tribunal where 1/3rd negligence was attributed to the deceased. Therefore, the contention raised by the learned Counsel for the State cannot be accepted. Therefore, keeping in view the contentions raised by Mr. Arora, it can safely be concluded that the findings of the Motor Accident Claims Tribunal on issue No. 1 cannot be sustained and they are accordingly reversed. It is held that Gurtej Singh deceased died on account of rash and negligent act of the driver Mohar Singh and conductor Sukhdev Singh. However, the findings on issue No. 2 are affirmed as no argument has been raised on these findings.

10. Learned Counsel for the appellant has further argued that findings recorded on issue No. 3 cannot be sustained even if it is taken that the evidence led by the claimants did not prove the income of the deceased by dyeing the clothes and findings of learned Tribunal are upheld, still claimant is entitled to compensation. The contention of the learned Counsel is that in view of the judgment of the Supreme Court in Manju Devi and Anr. v. Musafir Paswan and Anr. 2005 A.C.J. 99 (S.C.), it has to be held that notional income as stipulated in Second Schedule was to be taken into consideration and, therefore, an amount of Rs. 15,000/- p.a. was to be considered as income of the deceased. He also placed reliance on the judgment of Delhi High Court in Shyam Narayan v. Kitty Tours Travels and Ors. 2006 (1) R.C.R. 555 (Delhi) for seeking compensation for the death of deceased Gurtej Singh. Though the Delhi High Court in the aforesaid case was pleased to hold that income of a child was incapable of assessment or estimation, yet notional income for compensation in case of fatal accident is to be stipulated at Rs. 15,000/- p.a. and the parents of the deceased were entitled to compensation of Rs. 2,25,000/- on account of loss of financial support and another sum of Rs. 50,000/- on account of loss of company of the child as also for pain and suffering suffered by them as a result of the untimely death.

11. Learned Counsel for the State has not been able to show any contrary law on the point. Keeping in view the judgments quoted above, Smt. Gurmeet Kaur, mother of the deceased, would be entitled to compensation to the tune of Rs. 2,25,000/- by taking notional income of Rs. 15,000/- p.a. The Counsel for the appellants further argued that in the present case a multiplier of 16 should be applied in view of the age of the deceased. I agree with the submission made by the counsel for the appellants and by applying multiplier of 16, the claimant No. 1 Smt. Gurmeet Kaur is held entitled to a sum of Rs. 2,40,000/-. In addition, thereto, she would be further entitled to Rs. 50,000/- on account of pain and

suffering suffered by her as a result of untimely death of her son. The claimant shall also be entitled to interest @ 7.5% from the date of claim petition till actual payment.

12. Accordingly, the appeal is accepted and the order of the learned Motor Accident Claims Tribunal is modified. The appellant shall be entitled to a sum of Rs. 2,90,000/-with interest @ 7.5% p.a. from the date of filing of claim petition till payment. No order as to costs.