
(1995) 09 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from the Order No. 728 of 1984

Gurmukh Singh Nagi

APPELLANT

Vs

Sheo Karan and Others

RESPONDENT

Date of Decision : 13-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1
Motor Vehicles Act, 1939 — Section 110A, 95(2), 95(4)

Citation : (1996) ACJ 706 : (1996) 112 PLR 115

Hon'ble Judges : N.C. Jain, J

Bench : Single Bench

Advocate : K.G. Chaudhary, for the Appellant; L.M. Suri and Deepak Suri, Maharaj Baksh Singh, for the Respondent

Final Decision : Allowed

Judgement

N.C. Jain, J.—This judgment of mine would dispose of FAO Nos. 728, 729, 844, 845 and 846 of 1984 and Cross Objections No. 73-CII of 1985 in F.A.O. No. 844 of 1984 as they arise out of one accident which took place on 25th December, 1980. The factum of accident having taken place is admitted.

2. The facts, shortly stated, are that on December 25, 1980 a Taxi bearing No. DLT 5458 insured with the National Insurance Company was proceeding from Ambala to Delhi. Truck bearing No. PUC 9911 again insured with the National Insurance Company was going ahead of the aforesaid Taxi and when the Taxi driver tried to overtake the truck, the Taxi rammed into the Bus bearing No. HYB 1904 belonging to the Haryana Roadways. The negligence is proved by the Statements of AW.3 Gurmukh Singh Nagi, P.W.1 Seo Karan Driver of the Haryana Roadways and P.W.2 Satnam Singh, conductor of the Bus.

3. It has been found by the Motor Accident Claims Tribunal that the liability of the Insurance Company was unlimited. The learned counsel for the Insurance Company has not advanced any argument on the point of negligence and, therefore, the finding of the Tribunal on this point is hereby affirmed.

4. The learned counsel for the Insurance Company Mr. Maharaj Baksh Singh has tried to raise a point on the limited liability of the Insurance Company. He contended that the Company was not liable to pay more than Rupees 10,000/- per passenger as no additional premium was paid by the insured to the Insurance Company. The plea taken in the written statement to this effect has been read before me. He has cited before me *Jalandhar Transport Co. v. Mrs. Raj Bali* (1989)95 P.L.R. 259 L.P.A. No. 419 of 1986 *Piara Singh Vs. Smt. Kaushalya Devi Geora and Others*, , and *Desraj and Others Vs. Ram Narain and Others*, for the aforementioned proposition.

5. The perusal of the Award clearly shows that no issue was invited by the counsel for the Insurance Company on the plea taken in the written statement. No argument was advanced before the Tribunal on the afore-mentioned point. Had an issue been invited, the insured would have proved on the record that additional premium was paid by him. In view thereof, the argument of the counsel for the Insurance Company is hereby repelled. The other argument raised by the Insurance Company's counsel is that since more than five passengers were sitting in the taxi, the Insurance Company is not liable to pay any compensation what so ever. The argument is devoid of any merit. No judicial pronouncement has been cited in which it has been held that if a taxi driver accommodates more passengers than the capacity of the taxi, the claimants will not be entitled to claim compensation for the injuries suffered by them or the heirs of the deceased would not be entitled to claim compensation for the death of the occupants sitting in the taxi.

Having rejected the contentions of the learned counsel for the Insurance Company, individual claim of the claimants would be discussed separately.

Cross Objection No. 73-CII of 1985

In F.A.O. No. 844 of 1984 filed by Surinder Kaur and Ors..

6. This claim petition has been filed by Surinder kaur aged 24 years, Harmit Singh her son aged 3 years, Anju daughter aged 1-1/2 years and Sheela daughter aged 5 months. They have claimed compensation to the tune of Rs. 2,05,000/- for the death of Sukhwant Singh who was the husband of Surinder Kaur and father of Hermit Singh, Anju and Sheela. The claimants have been granted compensation to the extent of Rs. 1,02,400/- by recording a finding that the income of the deceased was Rs. 600/- per month. Annual dependency has been assessed at Rs. 6400/-.

7. After hearing the learned counsel for the parties and after examining the evidence produced on the record of the case, I am of the view that the compensation awarded to the claimants is less. It has been stated by Surinder Kaur AW.1 that her husband was contributing Rupees 1500/- to Rupees 2000/- per mensem for running the household affairs. It appears to me that the annual dependency of Sukhwant Singh deceased has been determined at Rs. 6400/- by following the statement of the father of the deceased Balbir Singh. His statement

has been read before me. Balbir Singh has stated that his son was carrying on business along with him and that he was giving him Rs. 700/- to Rs. 800/- per month for managing the household affairs. He had never stated before the Tribunal that the income of the deceased was Rs. 700/- to Rs. 800/- per month. Giving of the aforesaid amount by the father of the deceased for running the household affairs is something different than the actual income of the deceased. The Tribunal has taken the afore-mentioned figure as the income of the deceased and this view of the Tribunal, in my considered view, cannot be endorsed by this Court. If this Court excludes the statement of Balbir Singh father of the deceased on the point of income, this Court will have to depend either on the guess work or upon the statement of Surinder Kaur. Surinder Kaur has stated that her husband used to give Rs. 1500/- to Rs. 2000/- per month for running the household affairs. Even if the statement of Surinder Kaur is not taken on its face value and even if this Court assumes that she is giving exaggerated version, this Courts inclined to adjudge the income of the deceased at Rupees 1500/- per mensem and after deducting personal expenses of the deceased, the annual dependency of the claimants will have to be adjudged at Rupees 12000/-. After applying a normal multiplier of 16, the compensation is fixed at Rupees 1,92,000/-. The claimants are further held entitled to the grant of interest at the rate of 12 per cent per annum from the date of the application till payment. Surinder Kaur, wife of the deceased, is held entitled to 50 per cent of the compensation which be paid to her. The children are entitled to the rest of the amount of compensation. All the three children would be entitled to share the compensation amount to the extent of 1/3rd each. The amount would be deposited by the executing court in a schedule nationalised bank in fixed deposits. The share of Anju and Sheela daughters as paid to them at the time of their marriage whereas Harmit Singh (son) be paid his share, on his attaining majority.

F.A.O. No. 728 of 1984

Gurnukh Singh Negi v. Sheo Karan and Ors..

8. Gurmukh Singh Negi claimant aged 42 years was injured in the accident and he was treated by A.W.2 Dr. D.N. Bhardwaj, Prof. of Surgery, Medical College, Patiala, he was a partner in the contractorship business. Dr. D.N. Bhardwaj who treated the injured stated that two upper incisors and one canine on the left side were broken. He further stated that two upper incisors and one canine on the left side were broken. He further stated that there was evidence of weakness of both lower limbs. The claimant sustained multiple injuries including injury to the spine. The claimant himself stated that his lower limbs were totally paralysed and that he did not feel any sensation in the lower parts of the body. He further stated that he has been rendered unfit to enjoy the marital life. He was confined to the bed for the last three years. It was further stated by him that he could not perform daily routine of life.

9. The Tribunal has assessed the loss of income of the claimant at Rs. 4000/-per

annum and by applying a multiplier of 16, total compensation for the loss of income has been assessed at Rs. 64000/-. Under this head no further enhancement is called for as the assessable income for the subsequent year has fallen to the tune of Rs. 4000/- per annum. Moreover, the injured was aged 42 years at that time and it cannot be said that the multiplier is on the lower side. If it were to be found by me that this loss of income is more, multiplier being on the higher side, the ultimate figure of Rs. 64000/- arrived at by the Tribunal cannot be described to be unjust.

10. A sum of Rs. 19200/- has been given on account of the claimants inability to carry on the daily routine of life as he needed the employment of a servant. The salary of the servant has been found to be Rs. 1200/- per annum. On the fact of it, the salary of the servant has been found to be quite on the lower side. I am of considered view that the salary of the servant should have been Rupees 4500/- per annum and by giving a multiplier of 16, the compensation under this head is fixed at Rupees 72000/-.

11. Adverting to the 3rd head i.e. the grant of compensation by way of general damages on account of permanent disablement suffered by the injured, the calculation of compensation at Rupees 40000/- is also on the lower side. The court has to keep in mind that the injured has not only been rendered permanently disabled but also it has to keep in view that he lost all interest in life including the enjoyment of marital life. He was on the wheel chair when he gave his statement before the Court. After taking into consideration permanent disability, pain and suffering and loss of enjoyment of normal life, I am of the view that the claimant is entitled to a sum of Rs. 80,000/- by way of compensation under this head. The total compensation amount thus comes to Rupees 2,16,000/-. In addition there to, this claimant would have interest at the rate of 12 per cent from the date of the application till payment.

F.A.O. NO. 729 of 1984.

Dhanpati widow of Ratti Pal etc. v. Sheo Karan and Ors..

12. Dhanpati is the widow of the deceased Ratti Pal and the other three are the children of the deceased. They have been granted total compensation in the sum of Rs. 69120/-. The deceased was 45 years old and a multiplier of 16 has been given. The deceased was getting a total salary of RS. 540/- per month. The widow of the deceased Dhanpathi as AW 8 has stated that her husband used to pay her Rupees 400/- per month to run the household affairs. The Tribunal has deducted 1/3rd of the amount, which according to the Tribunal, the deceased was spending upon himself. It has been held in Joginder Kaur and Others Vs. The State of Haryana and Others, that a person who is poor would not be spending 1/3rd of the amount upon himself and that he would save each and every penny for being spent upon his children. It has further been held in Joginder Kaur's case (supra) that dependency can even be 90 per cent in such a case. The widow of the deceased has in categorical terms stated on oath that her husband used to

give Rupees 400/- per month towards the household affairs. Nothing was elicited in the cross-examination that she was telling a lie. Even otherwise, the income of the husband was meagre. He must be contributing a sum of Rs. 400/- per month towards the household affairs. In view thereof, the annual dependency of the claimants is held to be Rs. 4800/-. It is rounded off to Rupees 5000/-. After giving a multiplier of 16, the compensation amount is assessed at Rupees 80,000/-. The claimants are further held entitled to the grant of interest at the rate of 12 per cent per annum from the date of filing of the application till payment. Dhanpati widow of the deceased would be entitled to get 50 per cent of the compensation amount whereas the rest of the amount of compensation would go to the children. The children would be entitled to share 1/3rd each. The amount would be deposited by the executing Court in a scheduled nationalised bank in fixed deposits. Master Ram Anand son of the deceased be paid his share on attaining his majority whereas the share of daughters Miss Dharma and Miss Gatau be paid to them at the time of their marriage.

13. All the claimants would also have the costs of the appeal or Cross-objections which is quantified at Rupees 2500/- in each claim petition.

14. For the reasons recorded above, the appeals cross objections filed by the claimants are allowed to the extent indicated above whereas the appeals filed by the Insurance Company are hereby ordered to be dismissed with no order as to costs.