

(1998) 01 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : F.A.O. No's. 159, 160, 162, 166, 168 and 177 of 1990 and 33, 90, 112 and 170 of 1991 and Cross-objections No's. 186 of 1991 and 55, 78, 83 and 278 of 1992

Himachal Road Transport Corporation and Others

APPELLANT

Vs

Kunta and Others

RESPONDENT

Date of Decision : 01-01-1998

Acts Referred:

Citation : (1998) 1 ACC 572 : (1999) ACJ 646 : (1998) 2 ShimLC 29

Hon'ble Judges : R.L. Khurana, J;A.L. Vaidya, J

Bench : Division Bench

Advocate : Deepak Gupta, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The above noted ten appeals and five cross-objections having arisen out of the same accident which took place on 2.7.1988 at Bhandar Nallah, Pargana Manjir in District Chamba, are being disposed of by this single judgment since common questions of facts and law are involved.

2. Briefly stated, the facts of the case giving rise to the present appeals and cross-objections are these. On the ill-fated day, that is, on 2.7.1988 at 10.30 a.m. at Bhandar Nallah, within the local limits of the jurisdiction of Police Station Kihar, District Chamba, an accident took place between the bus bearing No. HPC 613 belonging to the Himachal Road Transport Corporation (for short "the Corporation") and truck No. HIK 3577 belonging to respondent Vaneeta Mahajan, hereinafter referred to as truck owner.

3. Respondent Nos. 3 and 5 were respectively the bus driver and truck driver. They are being referred to accordingly hereinafter. Respondent No. 6 is the insurer of the truck.

4. In such accident Karam Chand, Jagto, Jagat Ram, Bhagat Ram, Mahant Paul, Ratto Devi and Dial Chand had died. A number of other passengers of the bus,

including Duni Chand, Mohinder Khanna and Nar Singh were injured.

5. The bus was proceeding to Bhandal from Chamba. The above-named deceased and injured were travelling in the said bus from Chamba to different destinations. The truck in question was moving ahead of the bus. It was fully loaded. The bus and truck were being driven by the respective drivers in a rash and negligent manner. Each one of them was trying to overtake the other and in such process, the bus happened to strike against the truck as a result it rolled down into the khud at Bhandar Nallah.

6. The legal heirs of the above-named deceased approached the learned Motor Accidents Claims Tribunal at Chamba seeking compensation in respect of the death of the deceased Karam Chand, Jagto, Jagat Ram, Bhagat Ram, Mahant Paul, Ratto and Dial Chand. The three injured Duni Chand, Mohinder Khanna and Nar Singh also approached the said Tribunal seeking compensation for the bodily injuries sustained by them in the accident. While claiming compensation, rash and negligent driving was attributed to both the bus driver and the truck driver. In other words, as per the claimants, the accident was as a result of composite negligence of the two drivers.

7. The Corporation while resisting the claim petitions admitted the accident. It also admitted the death of the above-named deceased and injuries to the above-named injured. It denied the rash and negligent driving on the part of bus driver. It was averred that the accident was as a result of rash and negligent driving on the part of the truck driver. The Corporation pleaded the following version with regard to the accident:

That on 2.7.1988 bus No. HPC 613 belonging to HRTC, Chamba Depot was being plied on Chamba-Bhandal route. When the said bus reached near the Bhandar Nallah, there was a steep ascent at the site where the accident took place. Truck No. HIK 3577 which was owned by one Vaneeta Mahajan was being driven by her driver, Man Singh, who was driving the above truck No. HIK 3577 ahead of HRTC bus about 15 to 20 feet and was climbing uphill. The truck was badly and heavily loaded than its loading capacity containing grocery and other edible materials. The accident had occurred due to the rash and negligent driving by the truck driver. The overloaded truck while climbing up could not climb further in the gear applied earlier and in the process of changing to other gear in order to make truck climb further, the truck driver failed in applying gear properly as a result of which the truck started rolling back. On seeing the truck coming back, the driver of the bus immediately started reversing the bus but slowly and safely as the road at that point was not very wide. The driver of the bus who held his hand out of the driver's exit window to look back for safe reversal of the bus but the truck which rolled back very fast struck the bus when it was driven back. When the truck struck the bus the driver of the truck lost control over the truck and the truck again struck the bus with more force as a result of which the leg and arm of the bus driver were seriously lacerated. The bus driver in pain and agony could not reverse the bus any more when the truck struck the bus third time and the

bus rolled down into the nalla resulting in death and injuries to the passengers and driver/conductor. The accident occurred solely due to rash and negligent driving of the truck driver of truck No. HIK 3577.

8. The Corporation also averred that a sum of Rs. 1,000 as interim relief and Rs. 30,000 as ex gratia payment was paid in respect of each of the above-named deceased and that in the event of an award being made against the Corporation, the above amounts were liable to be deducted from the amount of compensation which may be held payable in respect of each of the deceased.

9. The truck owner and truck driver filed a joint written statement. They admitted the accident but denied the rash and negligent driving by the truck driver. It was pleaded in the following terms:

That para 24 of the petition is admitted to the extent that the deceased was travelling in the ill-fated bus No. HPC 613 which had outlived its life and was being driven by respondent No. 1 in rash and negligent manner without keeping in mind rules of safety and prudence. It is incorrect that the driver of truck No. HIK 3577 was rash and negligent. As the truck was moving ahead of the bus there could not be any rash and negligent driving by the truck driver. In fact, the truck was going uphill climb and was loaded to its capacity. The driver of the bus was driving the bus in a rash and negligent manner and wanted to overtake the truck. All of a sudden, while applying heavy gear on the deep ascent truck driver lost its motion and in order to save himself struck the truck against the hill side and turned turtle. The driver of the bus who was following truck in a rash and negligent manner got the vehicle in reverse gear and while reversing vehicle without the assistance of conductor and looking towards the turtled truck failed to apply brakes and fell into khud resulting into the accident. No collision between the bus and truck took place at all.

10. The insurer of the truck vide a separate written statement took the stand similar to the one taken by the truck owner and truck driver.

11. The bus driver did not put in appearance in spite of service and was thus proceeded against ex pane.

12. The learned Tribunal vide ten different awards made on different dates awarded varying amounts of compensation to the claimants. The learned Tribunal came to the conclusion that the accident took place as a result of composite negligence of the bus driver and the truck driver in the proportion of 25 per cent and 75 per cent respectively.

13. Feeling aggrieved by and being dissatisfied with the awards of the learned Tribunal holding it liable to the extent of 25 per cent, the Corporation has come up before this Court by way of the above mentioned ten appeals, that is, F.A.O. Nos. 159, 160, 162, 166, 168 and 177 of 1990, and F.A.O. Nos. 33, 90, 112 and 170 of 1991.

14. The claimants in F.A.O. Nos. 160, 162 and 168 of 1990 and in F.A.O. No. 112

of 1991 on being dissatisfied with the quantum of compensation awarded in their favour have preferred Cross-objections Nos. 186 of 1991 and 78, 55 and 83 of 1992. The Cross-objections No. 278 of 1992 in F.A.O. No. 170 of 1991 have been preferred by the owner/driver of the truck assailing the findings of the learned Tribunal holding the driver of the truck guilty of composite negligence to the extent of 75 per cent.

15. Be it stated that in the other cases the findings of the learned Tribunal as to negligence of truck driver have not been assailed either by the owner or the driver or the insurer of the truck.

16. On the question of negligence it has been contended on behalf of the Corporation that the evidence coming on record proves that the truck was moving ahead of the bus while on the ascend and because of the heavy load, the truck could not climb the gradient, its motion broke and it started moving backward. On the hilly track, though it was not possible for the bus driver to reverse his vehicle, he tried his best to avoid the truck. However, the truck while moving backward on the descend at a high speed, all of a sudden came and struck the bus twice or thrice as a result the bus rolled down into the khud. The facts and circumstances of the case indicate that the accident was solely as a result of rash and negligent driving of the truck driver.

17. Alternatively, it was contended that the learned Tribunal ought to have ordered the deduction of the amounts paid to the claimants by way of ex gratia grant and interim relief. It was also contended that the amount of compensation awarded was even otherwise excessive.

18. The claimants, on the other hand, supported the findings of the learned Tribunal as to the composite negligence of the two drivers, on the grounds and for the reasons recorded by the learned Tribunal in the impugned awards.

19. Admittedly, the truck was moving ahead of the bus. Both the vehicles were on the ascend. The truck was loaded to capacity. It is also not disputed that due to the heavy load, the truck could not climb the gradient, its motion broke and it came to a halt and then it started rolling back. While so rolling it struck the bus coming behind and due to such impact, the bus rolled down into the khud.

20. It is well settled that every vehicle coming from behind has a duty to control the movement of the rear vehicle in such a manner that neither the vehicle going ahead would be hit from behind nor the vehicle coming behind would be hit by the rear portion of the vehicle moving ahead either as a result of sudden stop or due to its reverse movement. The driver of the vehicle following another vehicle should allow a sufficient space in between the vehicles for dealing with the ordinary exigencies of traffic. The duty to keep a safe, reasonable and adequate distance on the driver of the rear vehicle, is all the more heavy when the vehicles are moving uphill and are on the ascend.

21. Law is equally well settled that when the vehicle moves back, greater burden

lies on the driver to ensure that nothing untoward happens.

22. As stated above, save and except in F.A.O. No. 170 of 1991 the findings of the learned Tribunal as to the negligence of the truck driver, have not been assailed by the owner, driver and insurer of the truck. Such findings having thus become final, are not open to challenge in the present case. Therefore, the only question for determination is whether the bus driver was guilty of composite negligence and, if so, to what extent?

23. Evidence has come on the record that the bus driver not only failed to keep a reasonable distance while following the truck, he was driving the bus at a high speed in an attempt to overtake the truck moving ahead while on the ascend and in such process it happened to be struck by the truck which had started rolling back as a result of break in its motion due to heavy load and the-gradient of the road.

24. Had the bus driver acted in a prudent manner, he would have not only maintained a safe, reasonable and adequate distance from the truck going ahead, he would have tried to overtake the truck only at a safe place and after taking all the necessary precautions reasonably expected of him.

25. The driver of the bus, though did not file any written statement to explain the cause of accident, has appeared as a witness for the Corporation. He has admitted that during those days he had been newly appointed as a driver and that his appointment was only on "daily wage basis". This admission coming from the bus driver himself, goes to show that he was a novice and had not much experience in driving a heavy vehicle like omnibus. There is no other evidence on the record to show that prior to his appointment on "daily wage basis" with the Corporation as a driver, he was driving heavy vehicles and if so since when and that he was having the experience of driving such heavy vehicles on hilly roads.

26. The truck driver, while appearing as his own witness, has deposed that the bus driver while following the truck was constantly blowing the horn in order to overtake the truck. He was never cross-examined by the Corporation on this part of his statement. Therefore, it has to be presumed that such part of the statement of the truck driver has been admitted by the Corporation and that the bus driver was in fact making an attempt to overtake the truck and in such process the bus happened to be struck by the truck while rolling backward.

27. On the facts and in the circumstances of the case, the learned Tribunal has rightly found the bus driver to have contributed to the accident. The composite negligence on his part has been rightly apportioned at 25 per cent.

28. The next question that arises for determination is whether the amount of Rs. 1,000 paid by way of interim relief and the amount of Rs. 30,000 paid by way of ex gratia grant by the Corporation to the legal heirs of the deceased are liable to be deducted from the amount of compensation payable by the Corporation. This

question is no more *res Integra*. It has been held by this Court in *Himachal Road Trans. Corpn. v. Arvind Singh Mann* 1991 ACJ 825 (HP), that the amount paid by way of *ex gratia* grant is not to be deducted from the total amount of compensation awarded to claimant(s). However, the amount paid by way of interim relief is to be deducted from the amount of compensation awarded.

29. In order to examine whether just and adequate compensation stands awarded to each set of claimants, we now proceed to examine each case individually.

F.A.O. No. 159 of 1990

30. Respondent Nos. 1 to 3 are the claimants in this case. They are the widow and minor children of the deceased Karam Chand, a young man of about 27 years of age.

31. The deceased, at the time of his death, was employed with National Hydro Electric Power Corporation at its Chamera Project as a beldar. The deceased, as per the evidence coming on record, was drawing a monthly salary of Rs. 1,315.75, by adopting the unit method, the learned Tribunal assessed the dependency of the three claimants at Rs. 800 per month, that is, Rs. 9,600 per annum. By applying a multiplier of 15, the learned Tribunal assessed the compensation at Rs. $9,600 \times 15 = \text{Rs. } 1,44,000$. To this amount was added conventional damages of Rs. 5,000 on account of loss of expectation of life. Thus, total compensation of Rs. 1,49,000 was awarded to the claimants in this case. In addition, the claimants were awarded costs amounting to Rs. 500 and interest at the rate of 12 per cent per annum from the date of petition till the date of payment of the amount.

32. On the basis of evidence coming on the record, we are satisfied that the learned Tribunal has rightly assessed dependency of the three claimants. The multiplier of 15 applied also is reasonable and by application of such multiplier just and adequate compensation stands awarded to the claimants.

F.A.O. No. 160 of 1990 and Cross-Objections No. 55 of 1992

33. The deceased in this case is Jagto. He was of about 39 years of age and was working as a beldar with Baira Siul Project and was drawing the monthly wages of Rs. 1,472.30. Respondent Nos. 1 to 5, the claimants before the learned Tribunal, are his widow and minor sons and daughters. The learned Tribunal, on the basis of unit method, assessed the monthly dependency of the claimants at Rs. 1,000 and by applying the multiplier of 12 has determined the compensation of Rs. 1,44,000. To this sum, an amount of Rs. 5,000 was added for the loss of expectancy of life and the total compensation payable was fixed at Rs. 1,49,000.

34. The Corporation has averred that the compensation assessed is on a higher side while the claimants by virtue of cross-objections have claimed the compensation to be on a lower side. According to them at least Rs. 2,00,000 should have been awarded as compensation in their favour.

35. On the facts and in the circumstances of the case, we are satisfied that the learned Tribunal has rightly assessed the dependency of the claimants at Rs. 1,000 per month. Considering the age of the deceased and that of each of the five claimants and the probable period during which the claimants would have remained dependent on the deceased, a multiplier of 12 has been rightly applied. The compensation awarded can neither be termed as excessive nor on a lower side. Just and adequate compensation stands awarded and no interference is called for by this Court.

F.A.O. No. 162 of 1990 and Cross-Objections No. 186 of 1991

36. One Jagat Ram, aged about 42 years, is the deceased in this case. He was employed as a peon with the Baira Siul Project and was drawing monthly salary of Rs. 1,419.60. The claimants, who are the respondent Nos. 1 to 5 before this Court, are the widow, minor children and mother of the deceased.

37. The learned Tribunal assessed the dependency of the claimants at Rs. 12,000 per annum, that is, Rs. 1,000 per month. A multiplier of 12 was applied and compensation was assessed at Rs. 1,44,000 to which the conventional sum of Rs. 5,000 for loss of expectancy of life was added and total compensation payable to the claimants was determined at Rs. 1,49,000.

38. The Corporation and the claimants have assailed the quantum of compensation awarded. While the Corporation has claimed the quantum to be on a higher side, the claimants have claimed the same to be inadequate being on a lower side,

39. Considering the evidence coming on record in its totality, we are satisfied that just and adequate compensation stands awarded to the claimants and no interference thereto is called for.

F.A.O. No. 166 of 1990

40. In the present case, the learned Tribunal has awarded the compensation amounting to Rs. 66,000 to the claimant, Duni Chand, for the bodily injuries sustained by him, as under:

(i) Pain, shock and suffering Rs. 10,000

(ii) Loss of amenities of life Rs. 10,000

(iii) Loss of earnings and earning capacity Rs. 36,000

(iv) Medical expenses Rs. 10,000 ----- Total Rs. 66,000 -----

41. The claimant suffered fracture of the left tibia. Though the fracture stands united, there has been shortening of left lower limb to the extent of 2.5 cm. The claimant was working as an Assistant with the Irrigation and Public Health Department. The nature of disability sustained by the claimant would not affect the nature of duties to be performed by the claimant nor it would affect his future earning capacity.

42. Considering the nature of injury sustained by claimant, the period during which he might have remained under treatment and confined to bed, the amount of compensation awarded in no terms can be held to be excessive. The compensation awarded is just and adequate.

F.A.O. No. 168 of 1990 and Cross-Objections No. 78 of 1992

43. The learned Tribunal in this case has awarded a total compensation of Rs. 1,25,000 to the claimants, namely, the widow, sons and daughter of the deceased Bhagat Ram in respect of the death of the deceased.

44. The deceased at the time of his death was about 46 years of age. He was working as a painter with H.P. P.W.D. Though no specific evidence has come on the record as to the monthly income of the deceased, during the course of cross examination of Tek Chand, PW 2, it has been suggested by the Corporation that the monthly income of the deceased was about Rs. 1,400 to Rs. 1,450. Learned Tribunal took the monthly income of the deceased at Rs. 1,500 p.m. and on the basis of such income the dependency of the claimants was assessed at Rs. 1,000 per month, or say, Rs. 12,000 per annum. After applying a multiplier of 10, the compensation was assessed at Rs. 1,20,000 and after adding the conventional amount of Rs. 5,000 towards loss of expectancy of life, total compensation was fixed at Rs. 1,25,000.

45. The adequacy of the quantum of compensation has been disputed by the Corporation as well as by the claimants. While according to the former the compensation awarded is on the higher side, according to the latter the compensation has been awarded on a lower side.

46. For the reasons recorded by the learned Tribunal, we are satisfied that the compensation awarded can neither be said to be on a higher side nor on a lower side. The compensation awarded is just and equitable. On the basis of the age of the deceased, that of each of the five claimants and the period during which the claimants are likely to remain dependent on the deceased just and proper multiplier stands applied. We see no reason to interfere with the amount of compensation awarded.

F.A.O. No. 177 of 1990

47. The claimant in the case is the injured Mohinder Khanna. He has been awarded compensation of Rs. 61,000 for the injuries sustained by him, as under:

(i) Pain, shock and suffering Rs. 10,000

(ii) Loss of amenities of life Rs. 5,000

(iii) Loss of earnings and earning capacity Rs. 36,000

(iv) Medical treatment Rs. 10,000 ----- Total Rs. 61,000 -----

48. The claimant suffered fracture of left shoulder and tibia. Due to malunion of shaft humerus, there has been a permanent disability to the extent of 20 per

cent. The movement of the left shoulder is now restricted.

49. The claimant is a shopkeeper at Surangani. The business in the shop is being run by him in partnership with his brothers. His monthly income has been assessed at Rs. 1,000. At the relevant time, he was about 32 years of age.

50. Having regard to the facts and circumstances of the case including the age of the claimant, the extent of disability suffered, nature of work being performed, the nature of injury and the period during which the claimant might have remained under treatment and out of movement, we are satisfied that the compensation awarded is just and adequate.

F.A.O. No. 33 of 1991

51. In respect of the deceased Mahant Paul, the learned Tribunal has awarded a sum of Rs. 1,25,000 as compensation to the claimants, that is, widow, sons and daughters of the deceased.

52. The deceased at the time of his death was working as a process server in the court of Senior Sub Judge, Chamba. His monthly wages was about Rs. 1,500. He was about 50 years of age. He was found to be having income from agriculture to the tune of Rs. 100 per month.

53. On the basis of monthly income of the deceased, dependency of the claimants was assessed at Rs. 1,000. By application of a multiplier of 10, compensation was fixed at Rs. 1,20,000. To this amount a sum of Rs. 5,000 for loss of expectancy of life was added and total compensation was determined at Rs. 1,25,000.

54. From the evidence coming on the record, we are satisfied that the compensation awarded is just and adequate and we see no reason to interfere therewith.

F.A.O. No. 90 of 1991

55. The injured claimant, Nar Singh, was awarded compensation of Rs. 22,000 for the injuries sustained by him as under:

- (i) Pain, shock and suffering Rs. 2,000
- (ii) Loss of amenities of life Rs. 1,000
- (iii) Loss of earnings and earning capacity Rs. 18,000
- (iv) Medical treatment Rs. 1,000 ----- Total Rs. 22,000 -----

56. The claimant had sustained a crush injury on his left hand, resulting in removal of proximal phalanx stump of the middle finger. He is a mason by profession.

57. Having regard to the nature of injury, the period during which the claimant might have remained under treatment, the extent and nature of disability vis-a-

vis the profession of the claimant, the compensation awarded by the learned Tribunal appears to be just and adequate.

F.A.O. No. 112 of 1991 and Cross-Objections No. 83 of 1992

58. The deceased in the case is Ratto Devi, a housewife of about 35 years of age. The claimants are her husband, minor daughter and minor son.

59. The loss of services being rendered by the deceased to her family, in terms of money, was assessed at Rs. 400 per month, that is, Rs. 4,800 per annum. Applying the multiplier of 15, the compensation was assessed at Rs. 72,000. To this amount were added the following sums:

(i) Conventional amount for loss of life expectancy Rs. 5,000

(ii) Transportation charges of dead body Rs. 600 ----- Total Rs. 5,600

Thus, total compensation was determined at Rs. 77,600.

60. The quantum of compensation as determined by the learned Tribunal has been assailed both by the Corporation and the claimants.

61. We have carefully considered the evidence coming on the record. We are satisfied that the learned Tribunal has rightly determined the loss of services in terms of money and by applying a correct and proper multiplier, has awarded just and adequate compensation in favour of the claimants. No fault can be found either in the mode of assessment adopted or in the quantum of compensation awarded.

F.A.O. No. 170 of 1991 and Cross-Objections No. 278 of 1992

62. The deceased Dial Chand was about 57 years of age. He was a cloth vendor. The claimants are the widow, sons and daughters of the deceased.

63. The learned Tribunal by taking the monthly income of the deceased as Rs. 1,000, has assessed the dependency of the claimants at Rs. 600 per month or say Rs. 7,200 per annum. A multiplier of 8 was applied and by adding a conventional sum of Rs. 5,000 thereto towards the loss of life expectancy, total compensation payable was assessed at Rs. 62,600.

64. The compensation awarded to the claimants, on the facts and in the circumstances of the case, cannot be termed as excessive. Rather on the face of it, the same appears to be on a lower side. However, in view of the fact that the quantum of compensation has not been assailed by the claimants either by way of appeal or cross-objections, we do not propose to interfere with the amount of compensation awarded by the learned Tribunal.

65. The owner and driver of the truck in the present case have preferred cross-objections assailing the findings of the learned Tribunal holding them jointly and severally liable.

66. These cross-objections are liable to be dismissed on the short ground that since the owner and driver failed to assail such findings in the other nine connected cases, these findings in those cases having become final against them would operate as res judicata against them.

Final order

67. Resultantly, all the above ten appeals and the five cross-objections are dismissed leaving the parties to bear their own costs.