
(1993) 04 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From the Order No. 342 of 1985

Jaimal Singh and Another

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-04-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1994) ACJ 447 : (1993) 104 PLR 353

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : G.S. Bhatia, for the Appellant; Munishwar Puri, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—This first appeal is directed against the award dated November 15, 1984 passed by the Motor Accident Claims Tribunal, Ferozepur whereby the application, for compensation filed u/s HO-A of the Motor Vehicles Act 1939 by the appellants herein had been dismissed.

2. The relevant facts are that on; May 9, 1983 Rajinder Singh- deceased boarded bus No. RRM-7696 owned by the Rajasthan State Road Corporation, Jaipur on Sri Ganganagar road for coming to village Maujgarh. The said bus was driven by Darshan Singh, driver who is one of the respondents and Bhanwar Lal was the conductor. When the bus reached Maujgarh, the deceased asked the conductor to stop the bus as he wanted to get down. The conductor is said to have given a whistle and the bus stopped. According to the case of the appellants, while Rajinder Singh was getting down from the bus, the conductor again whistled whereupon Darshan Singh, driver started the bus. Rajinder Singh who was in the process of getting down received a jerk and fell down on the road and received head injuries. He was taken to the civil hospital where he was declared dead. According to the post mortem report, head injuries received by the deceased were sufficient to cause death in the ordinary course. Rajinder Singh deceased was about 14 years of age at the time of the accident and was a student of 8th

Class His father who is a mason and his mother Smt. Muni Devi filed a claim application u/s 110 A of the Act claiming a sum of Rs. 50,000/ as compensation on the allegations that his death was caused due to rash and negligent driving of the aforesaid bus

3. The claim was resisted by the respondents. While admitting the accident and the death of Rajinder Singh, it was pleaded that the bus was still in the process of slowing down when Rajinder Singh himself opened the door and jumped out from the moving vehicle and, therefore, died due to his own negligence. The pleadings of the parties gave rise to the following issues : --

(1) Whether Shri Rajinder Singh died due to the rash and negligent act of the Darshan Singh respondents alleged ? OPC.

(2) Whether the claimants are entitled to compensation if so to what amount and from whom ? OPC.

(3) Relief

4. The Tribunal found issue No. 1 in favour of the respondents and against the claimants and held that the death of Rajinder Singh was not due to rash or negligent act of Darshan Singh, driver. Under issue No. 2, it was held that the claimants were entitled to compensation u/s 9-A of the Act to the extent of Rs. 15,000/- only It is this award which has been impugned in the present appeal

5. I have gone through the statements of the witnesses produced by the parties In my opinion, the Tribunal has erred in recording a finding that the driver of the bus in question was not negligent at the time of the accident. We have the statement of Khushi Ram (AW-2) who was travelling in the bus and had boarded the same from Ganga nagar for going to Fazilka. This witness has categorically stated that when the bus reached Mauigarh bus stop. Rajinder Singh deceased asked the conductor to stop the bus as he wanted to get down. According to the witness, the bus stopped and while Rajinder Singh was getting down, the conductor again whistled and the driver started the vehicle. It was at this stage that Rajinder Singh fell down and received head injuries and he died on the spot even before he could be taken to the hospital. The testimony of this witness has been discarded by the Tribunal by observing that his presence at the scene of the occurrence was doubtful and he appears to be a got up witness. This finding of the tribunal is, in my opinion, not correct. There is nothing in the cross examination of this witness which would suggest that he was not present at the time of the occurrence. He was a fellow passenger with the deceased and was sitting in the bus when the accident took place Similarly, Tara Chand (AW-3) who had gone to the bus stop to tee off his guests had witnessed the accident and he too supports what has been stated by Khushi Ram. It is true that the matter was reported to the police who after some enquiry did not think it proper to register a case against the driver for causing the death of Rajinder Singh by rash and negligent driving. This fact by itself is not very relevant so as to conclusively establish that there were no negligence on the part of the driver and how does it

matter if the police did not record the statement of Khushi Ram (AW-2). If the statements of these two witnesses (AW-2 and AW-3) are believed which I do, it leaves no room for doubt that the death of the deceased was caused by rash and negligent act of the driver of the bus. Consequently, the finding of the Tribunal on issue No. 2 is reversed and it is held that Rajinder Singh died due to rash and negligent act of the driver.

6. The question that now arises is as to what should be the amount of compensation payable to the claimants. It is common case of the parties that the appellants herein are the parents of the deceased who was about 14 years of age at the time of the accident and was a student of 8th class. In the case of a young boy who is studying in school and is not earning anything, it is difficult to value his future earning capacity and loss to the claimants. The Court has to assess the value of the loss of the dependency. One does not know what might have been his future if this school going boy had not died as a result of the accident at his tender age. The value of the prospects, chances or probabilities or support can, however, be estimated by taking all significant circumstances into account. There is no uniform rule for measuring the value of human life and the measure of damages cannot be arrived at by any precise mathematics or scientific calculations. The amount recoverable depends upon the particular facts and circumstances of each case and it is true that to some extent arbitrariness or conjecture is unavoidable. The value of pecuniary loss can, indeed never be static and it must vary by the change of time and the change of money value. In determining the compensation payable to the parents on the death of a child, the present value of the future contribution which the deceased would have made to them is a legitimate head of claim generally accepted by the Courts. In the present case, the age of the father as has come in evidence was 60 years at the time of the accident and the mother, I presume, must be younger. The father was a mason and no wonder the son might have joined him soon to earn a living or continued his studies to build up a career which might have enabled him to do better in life. In the circumstances of the present case, I hold that the parents are entitled to a sum of Rs. 40,000/- as compensation from respondents No. 2 and 3 who will be jointly and severally liable for the same. They shall be entitled to interest at the rate of 12% per annum from the date of filing of the claim application till payment. Of course, the amount already paid under the award of the Tribunal shall be adjusted.

7. Consequently, the appeal is allowed and the claimants are held entitled to the amount as aforesaid. The parties are left to bear their own costs.