
(2014) 02 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. Nos. 158 and 1593 of 1993

Jasbir Kaur

APPELLANT

Vs

Punjab State
 National Insurance Co. Ltd. Vs Jasbir
Kaur

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Citation : (2015) 3 ALLMR 65 : (2014) 2 RCR(Civil) 567

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : L. M. Suri, Senior Advocate and Mr. Neeraj Khanna, Advocate in F.A.O. No. 158 of 1993, Mr. P.S. Bajwa, D.A.G., Punjab in F.A.O. No. 45 of 1993 and Mr. Prateek Mahajan, Advocate for Mr. B.R. Mahajan, Advocate in F.A.O. No. 1593 of 1992, Advocate for the Appellant; L.M. Suri, Senior Advocate and Mr. Neeraj Khanna, Advocate for Respondent No. 3 and 5 in F.A.O. No. 1593 of 1992 and 45 of 1993. Mr. P.S. Bajwa, D.A.G., Punjab for Respondent No. 1 in F.A.O. No. 1593 of 1992, Advocate for the Respondent

Judgement

K. Kannan, J.—All the three appeals are connected. The appeals arose out of a consequential case of death of driver owner of a Maruti Car which collided with the bus belonging to the Punjab Roadways. The court found that the driver of the car and the driver of the bus were equally responsible and after assessing the compensation made a partial abatement of 50% for the negligence attributed to the driver of the Maruti Car but at the same time directed the insurer of the car also to bear the burden of compensation. The insurer's appeal is F.A.O. No. 158 of 1993. The appeal by the State denying the liability is brought through F.A.O. No. 45 of 1993 while the appeal by the claimants for enhancement is F.A.O. No. 1593 of 1992. The accident was spoken to by an eye witness who claims that he was following the Maruti Car and has stated that the bus was being driven in a rash and negligent manner and although there was enough space for the driver of the bus to negotiate without colliding with the bus, the driver of the bus drove negligently to cause the accident. In the course of the cross examination it was

elicited through him that the site of collision was almost at the middle of the road. It is contended that the driver of the bus had literally parked the bus on the kacha beam of the road and the accident took place only when the driver of the Maruti car while attempting to overtake a cyclist came to the wrong side of the road and dashed against the bus. There was, according to the State, no negligence on the part of the driver of the bus.

2. Counsel for the claimant points out to photographs that showed that there was enough space still on the left side of the road for the driver of the bus to steer without colliding with the car if the bus had been driven carefully. Counsel would point out to the eye witness account which bore out to the falsity of the evidence of the driver of the bus and he would explain that a mere statement that the accident took place almost at the middle of the road ought not to have been taken as constituting as an act of contributory negligence of the driver of the car. He also contended that a heavy vehicle ought to exercise more caution and if only the driver of the bus had been more careful the accident could not have taken place. The State counsel would respond to this argument that the contention that the accident had taken place only when the driver of the car was attempting to overtake a cyclist and going to the wrong side of the road and even the negligence attributed to the driver of the bus by the tribunal must be reversed.

3. I am of the view that there had been surely a negligence on the part of the driver of the car and the photographs suggest that it was not a head on collision to apportion the liability equally. It is the right side of the car which had been fully damaged and it is the driver's portion of the bus which has been damaged. With the greater care by either of the drivers the accident could have been averted. I would apply a common sense rule that heavier vehicle ought to exercise a greater circumspection and care in driving the vehicle. I will apportion a large portion of liability on the bus driver and take the level of contribution of the driver of the Maruti car to the extent of 30%. The assessment made at 50:50 shall therefore stand modified as 30:70 between the driver of the car and the driver of the bus respectively.

4. That takes us to consideration for determination of compensation where the evidence was that the deceased was a business man. He was earning Rs. 1,26,000/- as her return of income to I.T. authorities. There have been recent decisions that approve of a particular application of future prospects of increase in income and therefore I will take the income to have raised by another 30%, considering the fact that he was 42 years of age and make a deduction of 1/3rd and apply a multiplier of 14 against 16 applied by the Tribunal. Counsel for the State also argues that there must have been deduction for tax. The evidence placed before the tribunal was that he was earning Rs. 1,54,000/- per year but the tribunal took the income only at Rs. 1,26,000/-. Though presently no tax would be necessary for this amount I would provide 30% increase and after deducting 1/3rd towards personal expenses and also making a provision for tax

deduction of 10% I will take the contribution at Rs. 1 lac and apply a multiplier of 14 instead of 16 and take the loss of dependency at Rs. 14 lacs and provide for loss of consortium at Rs. 1 lac, loss of love and affection for the children at 1 lac. I will take the funeral expenses at Rs. 5,000/-. Out of the amount determined, I will apply 30% deduction for the liability of contributory negligence that I have assessed and take the amount payable as Rs. 11,23,500/-. This amount shall be distributed amongst the widow, daughter and mother in the ratio of 2:2:1. The accident had taken place in the year 1988 and no part of the amount would require to be retained. The amount in excess over what has already been determined shall attract interest at 7.5% from the date of petition till the date of payment. The liability for the entire amount shall be on the State and the liability already cast on the insurer of the Maruti car is set aside. F.A.O. No. 158 of 1993 is therefore allowed excluding the liability of the insurer. F.A.O. No. 1593 of 1992 filed by the claimed is allowed enhancing the compensation as mentioned above. F.A.O. No. 45 of 1993 filed by the State is dismissed.