
(2013) 04 P&H CK 0070
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 4684 of 2008

Kiran Bala and Others

APPELLANT

Vs

Rajeev Sharma and Others

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 2 PLR 790 : (2013) 3 RCR(Civil) 474

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : Ashwani Arora, for the Appellant; Savita Rana, Advocate for the Respondent No. 1 and 2 and Paul S. Saini, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Disposed Off

Judgement

M. Jeyapaul, J.—The claimants aggrieved by the decision of the Tribunal that there was no nexus between the death of Shiv Parsad and the injuries he sustained in the motor accident have come forward with the present appeal. The Tribunal having thus held awarded only a sum of Rs. 50,000/- as lumpsum compensation. It has been contended by the claimants in the claim petition that when Shiv Parsad (since deceased) was going alongwith his wife Kiran Bala in a rickshaw from their house to PGI, Chandigarh on 3.12.2005, a motorcycle bearing registration No. HR-23-B-9602 driven at a high speed in a rash and negligent manner by the 1st respondent came from behind and struck against the rickshaw and as a result of which Shiv Parsad fell down and received serious injuries. Contending that he remained under treatment and later on died on 13.3.2006 due to the injuries he sustained in the accident, the claimants claimed a sum of Rs. 25 lacs as compensation.

2. The 1st and 2nd respondents contended in the written statement that the claimants suppressed the fact that the deceased was a patient of diabetes for more than 10 years and that he had been undergoing treatment in PGI, Chandigarh. They sought for dismissal of the claim petition.

3. The 3rd respondent-insurance company submitted in its written statement that the driver of the offending motor vehicle was not holding a valid and effective driving licence at the time of accident. On merits, it was contended that the claim petition deserves to be dismissed.

4. The Tribunal held that deceased Shiv Parsad sustained injuries in the accident on account of the rash and negligent driving of the motorcycle bearing registration No. HR-23-B-9602 driven by respondent No. 1. It has also been held that the 1st respondent was holding a valid driving licence at the time of accident and the offending vehicle also was insured with respondent No. 3-insurance company. But the Tribunal having held that there was no nexus between the death of Shiv Parsad and the road accident, just granted a sum of Rs. 50,000/- as a consolidated sum of compensation without fixing the amount of compensation in terms of the Motor Vehicles Act.

5. Learned counsel appearing for the appellants/claimants, referring to the evidence of PW1 Dr. H.S. Kohli and PW5 Dr. Ramesh Sain attached to PGI, Chandigarh would submit that the death had taken place only on account of the injuries sustained by the deceased who was already a diabetic with kidney disease and Tuberculosis disease. It is his submission that the Tribunal had completely misread the evidence and come to a conclusion that there was no nexus between the death of Shiv Parsad which took place on 13.3.2006 and the accident which took place on 3.12.2005.

6. Learned counsel appearing for respondent No. 3-Insurance Company would submit that PW3 and PW5 have not come out with any definite version that the death has occasioned only on account of the injuries Shiv Parsad sustained in the motor accident. Referring to the medical evidence, learned counsel appearing for respondent No. 3 would submit that Shiv Parsad had diabetic problem apart from the kidney and tuberculosis diseases he was afflicted with. The very fact that there was no evidence to establish the follow-up treatment would go to show that he had died only on account of health complications he had even prior to the accident. It is his submission that no post-mortem examination was conducted. Nor was any information passed on to the police as to the death of Shiv Parsad. It is his further submission that the deceased had left the hospital against the medical advise. Therefore, it is his submission that the Tribunal has rightly held that there was no nexus between the death and the accident.

7. It is the admitted position that the deceased was a diabetic for about 10 long years prior to the accident. Infact, the averment in the claim petition would disclose that the accident took place when they were proceeding to PGI, Chandigarh for treatment. The evidence of PW3 Dr. H.S. Kohli who treated Shiv Parsad prior to the accident would categorically state that Shiv Parsad was afflicted with diabetes problem. He was also suffering from end stage kidney disease and was therefore, on hemodialysis. He was also taking anti-TB treatment till 19.10.2005. It is his affirmative version that healing of the wounds received by Shiv Parsad on account of the injuries he sustained in the accident

would have been delayed and the chances of infection were more for a person like Shiv Parsad who was a diabetic with end stage kidney disease.

8. PW5 Dr. Ramesh Sain who treated Shiv Parsad after the accident which took place on 3.12.2005 has deposed that the deceased had sustained a fracture dislocation of right hip joint. As he was suffering from the disease of diabetic nephropathy, he was virtually put on dialysis. He would depose that the injured Shiv Parsad was advised to go for surgery for the sake of management of hip dislocation. But, unfortunately, Shiv Parsad refused to undergo surgery and got himself discharged on 14.12.2005 against medical advise.

9. It is to be noted that PW5 has categorically stated that surgery to be performed on such a patient would be really complicated and highly risky. He has also come out with a medical opinion that there is a possibility for the death of Shiv Parsad on account of the injuries he suffered as he had diabetic problem.

10. Mere fracture dislocation of right hip may not be a proximate cause of death of a normal person. But the fracture injury sustained by Shiv Parsad which ultimately led to his death on 13.3.2006 will have to be viewed in the background of the high risk health complications he had developed even prior to the accident. Even a small adverse implication on his health profile would be proved to be a last nail in his coffin. His health profile was already volatile. As already pointed out, he had kidney disease and tuberculosis complications coupled with his diabetic problem. He was on dialysis on regular basis. PW3 has categorically stated that healing of the wound would be definitely delayed and the chances of infection were more. PW5 also has fortified the above opinion by deposing that it is highly risky to conduct a surgery on such a patient. Inspite of the poor health profile, it appears that PW5 had advised for surgery of hip dislocation. The Doctors would normally apprise the patient as well as the attendants about the high risk in undergoing such a surgery. It is quite possible that injured Shiv Parsad would have left the hospital abruptly against the medical advice coming to know of the high risk in the surgery suggested by PW. 5.

11. It is a matter on record that the deceased had taken treatment till 14.12.2005. Of course, there is no evidence to show that the deceased took treatment thereafter as an out-patient. It is a common knowledge that a diabetic patient with proper treatment and a patient with kidney disease with proper medical care and the tuberculosis patient on proper drug would survive for a quite long time.

12. The opinion expressed by PW5 Dr. Ramesh Sain based on the assessment of the diseases encountered by the patient to the effect that there was a possibility for the death of the patient on account of the injuries sustained by him in the motor accident cannot be simply ignored by the Court of law.

13. The claimants who had lost the only breadwinner had not sought for post-mortem examination. Nor had they passed on the information to the police as to the death of Shiv Parsad due to the injuries he sustained in the accident. Such a

lapse on the part of the claimants would not in any way dilute the other evidence available on record to establish that there existed a nexus between the death of Shiv Parsad and the accident. It is not a case where the death had occasioned after a quite long time from the date of accident. The accident had taken place on 3.12.2005. The injured had taken treatment till 14.12.2005. He had left the hospital unwilling to risk his life on account of the surgery. But unfortunately, he died on 13.3.2006. The nature of diseases he had been afflicted with and the fact that there was no possibility for healing of the wound would demonstrate the nexus between the death and the accident. Had there been no violent intervention in the form of accident, such a patient would have definitely survived with proper treatment. Therefore, I hold that the death of Shiv Parsad had occurred only due to the fracture dislocation of right hip injury he sustained.

14. In view of the above, sustaining the findings recorded by the Tribunal that the accident had taken place on account of the rash and negligent driving of the motorcycle by respondent No. 1, that the 1st respondent was holding a valid driving licence and that the offending vehicle was insured with respondent No. 3 and holding the Shiv Parsad died only on account of the injuries he sustained in the accident that took place on 3.12.2005, the matter stands remanded to the Tribunal to fix the quantum of compensation alone. The appeal stands disposed of accordingly. Both the parties shall appear before the Tribunal on 15.5.2013.