
(2015) 05 P&H CK 0290

In the Punjab And Haryana At Chandigarh

Case No : FAO Nos. 2025 and 2580 of 2002 (O and M)

Mamta Bhatia and Others

APPELLANT

Vs

Ram Parkash and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 166
Penal Code, 1860 (IPC) — Section 279, 304-A

Citation : (2015) 05 P&H CK 0290

Hon'ble Judges : Karam Chand Puri, J

Bench : Single Bench

Advocate : Sagar Aggarwal, for the Appellant

Final Decision : Disposed off

Judgement

Karam Chand Puri, J.—Vide this common order, I intend to dispose of two appeals bearing FAO No. 2025 of 2002 titled as, "Mamta Bhatia and others vs. Ram Parkash and others" and FAO No. 2580 of 2002 titled as, "Madan Gopal Bhatia and others vs. Ram Parkash and others", as both of them have arisen out of the common Award dated 18.01.2002 passed by Shri A.K. Bimal, Motor Accident Claims Tribunal, Karnal.

2. Briefly stated, Mamta Bhatia-widow and Mehak Bhatia-minor daughter of deceased Anil Bhatia filed claim petition bearing MACT No. 215 of 1999, whereas Madan Gopal Bhatia-father, Santosh Bhatia-mother and Rama Bhatia-unmarried sister of deceased Anil Bhatia filed claim petition bearing MACT No. 130 of 2000, seeking compensation on account of death of Anil Bhatia in a motor vehicular accident. Chaudhary Gobind Singh Bhatia filed claim petition bearing MACT No. 131 of 2000 seeking compensation on account of injuries received by him in a motor vehicular accident. All the three claim petitions were decided by the Tribunal vide common Award dated 18.01.2002.

3. The case of the claimants as set forth in the all the three claim petitions was

that on 21.09.1999 at about 9.30 AM, Anil Bhatia along with other colleagues were going from Karnal to Delhi on bus bearing registration No. HR-05/PA-0131. The driver of the bus i.e. respondent No. 1 Ram Parkash was driving the bus in a rash and negligent manner. All the passengers of the bus requested the driver to drive the bus at a moderate speed to avoid any mis-happening but he did not bother and continued to drive the same in zig-zag manner. When the bus reached near village Siwah on GT Road near Panipat, one truck was seen coming. The driver of the bus could not control his bus and hit the truck and caused the accident. FIR No. 351 dated 22.09.1999 u/s 279/304-A of the Indian Penal Code was registered accordingly. Due to the accident, Anil Bhatia and others received multiple and grievous injuries. Anil Bhatia and Chaudhary Gobind Singh Bhatia were shifted to hospital. Anil Bhatia succumbed to his injuries on 25.09.1999. It was further pleaded that Anil Bhatia (deceased) was working as Accounts Clerk in S.D Girls Senior Secondary School, Railway Road, Karnal and was drawing salary to the tune of Rs. 10,000/- per month. The claimants further pleaded that they spent Rs. 30,000/- on treatment of Anil Bhatia.

4. Upon put to notice, respondents No. 1 and 2 filed joint written statement controverting the allegations made in the claim petition. It was further pleaded that the accident had not taken place due to rash and negligent driving of bus in question. It was further pleaded that the accident took place due to rash driving of truck No. HR-05-PA-0131, who tried to overtake the bus and he fled away from the spot after causing the accident. However, it was admitted that on 21.09.1999, Anil Bhatia along with other school teachers was going to Delhi to attend the funeral ceremony of Malik Lila Krishan, Ex-President of School. When the bus reached village Siwah, a truck came from behind in a rash and negligent manner and while overtaking the bus, it struck against the bus.

5. From the pleadings of the parties, following issues were framed:-

1) Whether the accident which took place on 21.09.1999 near bus stand of village Siwah on GT Road, Panipat, the same was result of rash and negligent driving of respondent No. 1 to his vehicle and in which Anil Bhatia died and Chaudhary Gobind Singh Bhatia received injuries, if so, its effect? OPP

2) If Issue No. 1 is proved in affirmative, whether the claimants are entitled to receive any compensation and from whom? OPP

3) Whether the claim petitions are bad for misjoinder and non-joinder of necessary parties? OPR

4) Whether at the time of alleged accident, the driver of the vehicle was not holding the valid driving license, if so, its effect? OPR

5) Relief.

6. In order to prove their case, Gobind Singh Bhatia appeared as PW-1, Madan Gopal as PW-2, Mamta Bhatia as PW-3 and tendered certain documents.

7. On the other hand, respondent No. 1 - Ram Parkash appeared as RW-1. Gulshan Dua, Clerk of S.D. Senior Secondary School, appeared as RW-2.

8. The learned Tribunal, after appreciating the evidence, decided Issue No. 1 against the claimants whereas regarding Issue No. 2 it was held that Anil Bhatia was the passenger of the bus and as such, the claim petition was partly accepted under Section 163-A of the Motor Vehicles Act. The income of the deceased was taken as Rs. 1800/- per month. After deducting 1/3 in respect of personal expenses, the income was calculated as Rs. 1200/- per month. The yearly dependency was calculated as Rs. 14,400/-. The multiplier of 17 was applied by the Tribunal. In this manner, a sum of Rs. 2,44,800/- was calculated. The claimants were also held entitled to claim Rs. 5000/- in respect of funeral expenses and consortium. Rs. 6860/- was also awarded towards medical bills. In this manner, the claimants were held entitled to claim Rs. 2,56,660/- as compensation on account death of Anil Bhatia.

9. The widow and minor daughter of deceased Anil Bhatia filed FAO No. 2025 of 2002 whereas parents and unmarried sister of deceased Anil Bhatia filed FAO No. 2580 of 2002.

10. Learned counsel for all the appellants have contended that Anil Bhatia was simply a passenger of the bus. There was accident of truck and bus in question and even if the story of respondents is taken as it is, in that case also a case of composite negligence is made out in view of authority Pawan Kumar and Another etc. Vs. Harkishan Dass Mohan Lal and Others, (2014) 1 ACC 386 : (2014) ACJ 704 : (2014) AIRSCW 1062 : (2014) 2 JT 381 : (2014) 2 RCR(Civil) 764 : (2014) 1 SCALE 760 : (2014) 3 SCC 590 : (2014) 4 SCJ 354 . It is further contended that the claimants can claim compensation from any of the wrongdoers. It is further submitted that the Tribunal should have accepted the claim petition under Section 166 of the Motor Vehicles Act. It is further contended that proved income of the deceased was Rs. 4545/- i.e. salary certificate Exhibit P-38. It is further submitted that the said document has been ignored by the Tribunal and as such, the Tribunal has committed grave error as RW-2 Gulshan Dua has also admitted the execution of Exhibit P-38. It is further submitted that even if this document is ignored, in that case also, the income of deceased cannot be taken less than Rs. 4545/- per month as the same has been admitted by respondents No. 1 and 2 in their written statement.

11. Learned counsel for the appellants have further contended that the amount granted in respect of funeral expenses, last rites, transportation, consortium is also on lower side. It is further contended that no amount in respect of loss of love and affection has been granted. It is also contended that the deceased was a permanent employee and as such, future prospects should have been allowed. It is further contended that medical bills were valuing Rs. 8860/- but the Tribunal has allowed only a sum of Rs. 6860/- in respect of medical bills.

12. Learned counsel for the Insurance Company has supported the Award passed

by the Tribunal and has contended that the income of deceased has been rightly taken by the Tribunal. It is further contended that correct multiplier has been applied by the Tribunal, keeping in view Section 163-A of the Motor Vehicles Act. It is further contended that salary of the deceased is not proved. So, income of the deceased has been rightly taken as Rs. 1800/- per month.

13. I have heard learned counsel for the parties and have gone through the records of the case.

14. The claimants have filed claim petition under Section 166 of the Motor Vehicles Act. The Tribunal has returned the findings on Issue No. 1 against the claimants, whereas the Tribunal has held that the accident had taken place due to use of bus in question. It is not disputed during the course of arguments that Anil Bhatia was simply a passenger of the bus and there was accident of bus and truck. The Hon''ble Apex Court in Pawan Kumar and another's case (supra) has differentiated the principles of contributory negligence and composite negligence. The contributory negligence can be there if the deceased was a party to the accident. Admittedly, Anil Bhatia was not a party to the accident, he was merely a passenger of the bus in question. As such, it is a case of composite negligence. The legal heirs of Anil Bhatia can claim compensation from any of the wrongdoers i.e. from the owner, driver and insurance company of the bus in question or from the owner, driver and insurance company of the truck in question. In these circumstances, I have no hesitation in holding that it is a case of composite negligence, in which Anil Bhatia was not a party. So, the claimants are held entitled to claim compensation from the driver, owner and insurance company of the bus in question.

15. The second point for consideration is regarding income of the deceased. The Tribunal has ignored the salary certificate on the ground that same has not been proved in accordance with law. However, the Tribunal has committed grave error by ignoring the pleadings of the parties. Respondents No. 1 and 2 in their written statement have pleaded that income of the deceased was Rs. 4545/- per month. Otherwise also, RW-2 Gulshan Dua has also proved on record the salary certificate Exhibit P-38. The salary certificate has to be taken into consideration. From the perusal of same, it is revealed that the income of deceased was Rs. 4545/- per month which includes basic pay Rs. 3425/-, D.A Rs. 754/-, H.R.A Rs. 190/-, CCA Rs. 51/-, Medical Rs. 125/-. In the salary certificate Exhibit P-38, it is also mentioned that Anil Bhatia was a permanent Clerk of the S.D. Girls Senior Secondary School, Karnal. So, the future prospects are also required to be taken into consideration. The deceased was aged about 32 years. So, by adding 50% in respect of future prospects, keeping in view the authority Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 :

(2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 . So, in this manner, the income of deceased is taken as Rs. 6817/- per month. In this case, there are five claimants in all. So, 1/4th amount stands deducted in respect of personal expenses. In this manner, the monthly dependency comes to Rs. 5113/-. The yearly dependency comes to Rs. 61,356/-. The multiplier applicable at the age of 32 is 16, as per *Sarla Verma and others*" case (supra). So, by applying the said multiplier, the amount comes to Rs. 9,81,696/-. Another sum of Rs. 8860/- stands allowed in respect of medical bills. The claimants are also held entitled to claim Rs. 10,000/- in respect of funeral expenses and last rites. Another sum of Rs. 25,000/- stands allowed in respect of consortium. The claimants are also held entitled to claim another sum of Rs. 25,000/- in respect of loss of love and affection. In this manner, the claimants are held entitled to claim Rs. 10,50,556/- say Rs. 10,50,600/-. Out of the enhanced amount of Rs. 7,93,940/-, the appellants of FAO No. 2580 of 2002 shall get Rs. 2,50,000/- which shall be shared by them equally. Mehak-appellant No. 2 of FAO No. 2025 of 2002 shall get a sum of Rs. 2,00,000/- whereas the remaining amount shall be paid to the widow-appellant No. 1 Mamta Bhatia. The liability to pay the amount shall remain the same as ordered by the Tribunal. The enhanced amount shall carry interest @ 7.5% per annum from the date of filing the application till its payment.

16. In view of the above, both the appeals stand disposed of accordingly.