

(1989) 08 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 16 of 1985

Manjit Kaur and Others

APPELLANT

Vs

Pepsu Road Trans. Corpn. and Others

RESPONDENT

Date of Decision : 18-08-1989

Acts Referred:

Citation : (1990) ACJ 471

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—While travelling on the roof of the Pepsu Road Transport Corporation bus PJG 7132, a branch of a tree hit Gurmail Singh, as a result of which he sustained injuries and later died. This happened at about 5.30 p.m. on June 23, 1983 on the Moga-Baghapurana Road. The Tribunal held this to be a case of contributory negligence on the ground that "the deceased by travelling on the roof of the bus had voluntarily submitted himself to the risk involved in such travelling". The compensation payable to the claimants, they being the parents, widow and children of Gurmail Singh deceased, was assessed at Rs. 57,600/-, but after making the requisite deduction on account of the contributory negligence of the deceased, the amount actually awarded was only Rs. 28,800/-.

2. It is now the settled position in law, as held by this court in Vijay Singh Vs. Haryana Roadways and another, , that travelling on the roof of a bus does not per se constitute contributory negligence on the part of the bus passenger if due to the negligence of the bus driver, any injury is caused to him. It was further observed:

There is a duty of care that rests upon the driver of a bus towards all persons travelling on it which covers not only those in it, but extends also to passengers travelling on the roof of it, even though it may not have been permissible in law for them to be there. Breach of any rule or instruction prohibiting travel on the

roof of a bus cannot be construed as a licence to the bus driver to drive the bus without due regard to the care and safety of all passengers including those on the roof. Rather, when there are passengers on the roof, extra caution is imperative. These observations are, of course, not to be taken as approving or permitting travel on the roof of a bus. It is clearly incumbent upon the authorities concerned to ensure that travel on the roof of a bus is not only banned, but does not in fact take place as a risk of serious injury is so obviously inherent in such travel.

3. There can thus be no escape from the conclusion that the Tribunal clearly fell in error in attributing contributory negligence to Gurmail Singh, deceased, merely on the ground that he was travelling on the roof of the bus.

4. It would be pertinent in this behalf also to keep in view the testimony of AW 3 Makhan Singh and AW 4 Sowarn Singh, who were travelling with Gurmail Singh deceased at the time of the accident. According to both these witnesses, the bus was being driven at a very fast speed when a branch of a tree hit Gurmail Singh. RW 1 Gurdev Singh, the bus driver and RW 2 Gurdev Singh (Sic), the bus conductor, both testified to the fact that Gurmail Singh was travelling on the roof of the bus and he sustained injuries by striking against a branch of a tree. It is apparent, therefore, that the care and caution expected from a bus driver, to avoid injury to persons travelling on the roof of the bus, was not exercised here and this is what led to Gurmail Singh's death. The fault for the accident must thus lie wholly upon its driver. The finding on the issue of negligence is modified accordingly.

5. Turning now to the quantum of compensation payable to the deceased, the evidence on record shows that Gurmail Singh deceased was only about 30 years of age at the time of his death and he died leaving behind his young widow, who was about a year younger than him and four minor children besides his parents. According to the widow, AW 1 Manjit Kaur, Gurmail Singh was gainfully employed in cultivation of the land and in the business of dairy. In cross-examination, she stated that her late husband owned 5 to 6 killas of land which had since been given on lease at the rate of Rs. 1,300/- per killa, per year. As regards the dairy, it is pertinent to note that there is no mention of what was the quantity of the milk sold and to whom. The mere bald statement that the deceased had kept 5 to 6 buffaloes cannot suffice to justify the award of compensation for loss of dairy business.

6. There is indeed a monetary value to be ascribed to the labour and services of Gurmail Singh in the matter of cultivation of land. Besides his own land, he also cultivated other land. Keeping in view, therefore, the circumstances of the claimants and the deceased, in the context of the principles laid down by the Full Bench in *Lachman Singh v. Gurmit Kaur* 1979 ACJ 170 (P&H), the dependency of the claimants deserves to be assessed on the basis of the earnings of Gurmail Singh as an agricultural labourer and in fact a little more too, keeping in view the fact that he also owned some land. So considered, it would be fair and just to

assess the dependency at Rs. 5,000/- per annum with a multiplier of "16". This would work out to Rs. 80,000/-.

7. The compensation payable to the claimants is accordingly hereby enhanced to Rs. 80,000/- which they shall be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded. Out of the amount awarded, a sum of Rs. 5,000/- each shall be payable to the parents and the children of the deceased and the balance to his widow. The amount payable to the minor claimants shall be paid to them in such manner as the Tribunal may deem to be in their best interest.

8. This appeal is consequently hereby accepted with costs. Counsel's fee Rs. 500/-.