
(2002) 11 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 996 of 1992

Meera Sinha and others

APPELLANT

Vs

Sh.Mehar Singh @ Mehar Chand and others

RESPONDENT

Date of Decision : 29-11-2002

Acts Referred:

Citation : (2004) 1 CurLJ 475 : (2004) 2 LJR 661 : (2004) 2 RCR(Civil) 11

Hon'ble Judges : H.S.Bedi, J

Advocate : Mr. Ashit Malik, Advocate.For the Respondent Nos. 2 and 3, Ms. Arti Thakur, Advocate.For the Respondent Nos. 1 & 4, None, Mr. Ravinder Arora, Advocate., Advocates for appearing Parties

Judgement

H.S. Bedi, J. (Oral)

1. F.A.O. No. 996 of 1992 (Smt. Meera Sinha & others v. Mehar Singh @ Mehar Chand & others), F.A.O. No. 666 of 1992 (Raj Rani & another v. Mehar Chand & others), F.A.O. No. 832 of 1992 (Himachal Road Transport Corporation v. Smt. Raj Rani & others) and F.A.O. No. 833 of 1992 (Himachal Road Transport Corporation v. Meera Sinha & others) are being disposed of by this judgment. The facts are taken from F.A.O. No. 996.

2. Ashok Sinha, who are working as a Product Manager with M/s Orient Electronics Private Ltd., New Delhi, was killed in an accident on February 2, 1988, involving bus bearing No. HIU1301, belonging to the Himachal Road Transport Corporation, Una. The legal heirs of Ashok Sinha, i.e., his widow, his mother and his minor children filed a claim application before the Motor Accident Claims Tribunal, claiming a sum of rs. 8,00,000/ as compensation. The claimants in claim petition No. 142 of 1991 (FAO No. 666 of 1992) had claimed compensation of Rs. 6,49,000/ on account of the death of their son Rakesh Kumar.

3. Separate replies were filed in pursuance of the notices issued to the respondents and it was pleaded by respondent Nos. 1 to 3 that the accident had not taken place on account of the rash and negligent driving by the bus driver as

at the time of the accident the bus was being driven at a very slow speed and it was the fourwheeler, in which the deceased was travelling, that had been driven rashly and negligently, leading to the accident, which was denied by respondent No. 4, the owner of the fourwheeler in question and pleaded that the accident had taken place due to the negligence of respondent No. 1, the driver of the bus.

4. On the pleadings of the parties, the following issues were framed in the present petition as well as in the connected matters :

Issues framed in claim petition No. 141 of 1991

1. Whether Ashok Sinha died in vehicular accident with bus No. HIU 1301 due to rash and negligent driving of said vehicle by Mehar Chand respondent No. 1 ? OPP.

2. Whether the claimants are entitled to compensation if so, how much and from whom ? OPP.

3 Whether petition is bad for nonjoinder of necessary parties ? OPR.

4. Relief.

Issues framed in claim petition No. 142 of 1991

1. Whether Rakesh Kumar died in an accident with bus No. HIU1301 due to rash and negligent driving of respondent No. 1 ? OPP.

2. Whether the petitioners are entitled to recover any compensation, if so, how much and from whom ? OPP.

3. Relief.

5. The Tribunal observed that the fact that the bus was being driven by driver Mehar Chand (RW1) was an admitted fact and the defence story that the accident had happened on account of the rash and negligent driving of the vehicle in which the deceased was travelling, was not worthy of belief. On issue No. 2 in claim petition No. 141 of 1991 (FAO No. 996 of 1992), it was found that the deceased had left behind his mother, his wife and three children and they were entitled to get compensation on account of his death. The Court then went to the question of the age and the dependency of the deceased and concluded that it appeared from the postmortem report that Ashok Sinha had been 40/42 years of age at the time of his death and that as per salary certificate (Exh.PK), he was drawing a salary of Rs. 3500/ per month. The Court, however, disbelieved the salary certificate holding that the relevant account books had not been produced by his employer and accordingly concluded that his monthly salary would be about Rs. 2250/ per month and after deducting 1/3rd towards his personal expenditure, his annual dependency was assessed at Rs. 18000/ (1500x12) and applying a multiplier of sixteen, the claimants were held entitled to a sum of Rs. 2,88,000/ in all as compensation, to be shared by the legal heirs. The Court also examined issue No. 2 in claim petition No. 142 of 1991 (FAO No.

666 of 1992) and concluded that Rakesh Kumar deceased was about 22 years of age at the time of his death and that his parents were dependent upon him. It was also observed that keeping in view the nature of his employment he was earning Rs. 750/ per month, leaving a dependency of Rs. 500/ per month to his legally heirs, making a sum of Rs. 6000/ per annum for the first five years and after which if he was got married, he would have contributed 20% towards upkeep of his parents which was Rs. 100/, making Rs. 1200/ per annum and as such his legal heirs were entitled to the compensation of Rs. 30,000/ for the first five years and after his death for the remaining eight years his legal heirs were entitled to Rs. 7,200/ in all making a round figure of Rs. 37,000/.

6. Four appeals have been filed against the award of the Tribunal, two by the legal heirs of the deceased and two by the Himachal Road Transport Corporation.

7. I have gone through the evidence recorded by the Tribunal and have also considered the legal position. The Tribunal held that the accident had happened due to the rash and negligent driving by the bus driver Mehar Chand. The Tribunal has discussed the evidence both the circumstantial and ocular threadbare to arrive at a conclusion, which to my mind, requires no interference. The finding on issue No. 1 is, therefore, confirmed. I am, however, of the opinion that the Tribunal was wrong in not relying on the certificate (Exh.PK) issued with respect to the salary drawn by Ashok Sinha. In the cross-examination of PW3 Sanjay Jain, it has clearly been revealed that the account books had been sent to the Auditors and as such were not available in the office at that time. This aspect has not been alluded to by the Tribunal as has not ever been controverted during the course of arguments before the Tribunal. I am, therefore, of the opinion that it has to be taken that the salary of Ashok Sinha at the time of his death was Rs. 3500/ and deducting 1/3rd as has been spent on himself, would make Rs. 28,008/, rounded to Rs. 28,000/ per annum as the dependency and applying a multiplier of sixteen in all, the legal heirs would be entitled to Rs. 4,48,000/. They would also be entitled to interest at the rate of 12% per annum from the date of the filing of the claim application till the realisation of the amount.

8. I have also discussed the question of compensation in the connected matters with respect to the legal heirs of Rakesh Kumar deceased. I find absolutely no reason to interfere with the amount awarded by the Tribunal. The appellants cannot, therefore, take the benefit of the amendment made.

It was been pointed out by Mr. Ashit Malik, the learned counsel appearing for the appellants that the mother of the deceased, Ashok Sinha, was about eighty years of age and was not in a position to travel and that a crossed bank draft, to be made out in her name, should be handed over to her daughter-in-law Meera Sinha. He also states that the entire family is living together and that the three children have now attained the age of majority and are likely to be married shortly. It is accordingly directed that the compensation shall be divided equally amongst the claimants and shall be paid by way of crossed bank draft to be made in their individual names, but as the family is residing in Bihar, all the bank

drafts shall be handed over to Meera Sinha, the widow of the deceased. The appeals filed by the claimants are disposed of accordingly. The appeals filed by the Himachal Road Transport Corporation are dismissed.