(2006) 04 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Mimla Devi and Others APPELLANT

Vs

Pepsu Road Transport Corporation and Others RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Citation : (2007) ACJ 2700 : (2007) 145 PLR 387 : (2006) 4 RCR(Civil) 230

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma, J.—By way of present appeal, the claimants-appellants have challenged the award of the Motor Accident Claims Tribunal qua the quantum of compensation.

2. The facts leading to the filing of the present appeal are that deceased Chuhar Singh along with. Dev Ram, Harbalas and Krishan, was coming from village Passian after purchasing the bullock-cart from Sanuri Gate, Patiala on 26.9.1988. When they reached on the back of Passiana near Military area. Bus No. PUC-3464 driven by Shri Inderjit Singh, respondent No. 3 rashly and negligently came from Patiala side and struck against the deceased. As a result thereof, he died on the spot. On account of the accident, the claimants claimed the compensation to the tune of Rs. 10 lacs on the ground that the deceased was earning a sum of Rs. 3,000/- per month from the selling of milk and Rs. 30,000/- to Rs. 40,000/- per year from the agricultural land.The respondents contested the claim and controverted the allegations and claimed that the accident had occurred due to the negligence of the deceased as he was going in the center of the road under the influence of liquor. It was also pleaded that the deceased was holding a rope of the buffalo and was moving from left to right without caring for the traffic on the road. The case of the respondents was that the deceased along with the buffalo went to the right side of the road and when the bus reached near them, the buffalo suddenly took left turn and ran towards the right side of the road by dragging the deceased.

On the pleadings of the parties following issues were framed:

1. Whether respondent Inderjit Singh caused Motor accident on 26.9.1988 in the Military Area, Patiala on Sangrur Patiala Road by his rash and negligent driving of bus No. PUC-3464? OPP

2. Whether Chuhar Singh died as a result of injuries received by him in the accident in question? OPP

3. Whether the claimants are entitled to compensation on account of death of Chuhar Singh, if so, to what amount and from which the respondent? OPP

4. Relief.

3. The learned Motor Accident Claims Tribunal decided issue No. 1 in favour of the claimants and held that the accident had occurred due to rash and negligent driving of Bus No. PUC-3464 and on issue No. 2 it was pleased to hold that Chuhar Singh died on account of the injuries sustained by him in the accident.

4. On issue No. 3, the learned Motor Accident Claims Tribunal came to the conclusion that the monthly income of the deceased from the agricultural land was Rs. 1,400/-per month and by deducting a sum of Rs. 500/- as his personal expenses, held that the dependency of the claimants was Rs. 900/- per month and by applying a multiplier of 14, the Tribunal was pleased to grant a compensation to the tune of Rs. 1,51,000/- alongwith interest @ 12% P.A. from the date of the claim petition till recovery.

5. Mr. S.K.Singla, learned Counsel for the appellants has argued that the findings of the learned Tribunal on issue No. 3 cannot be sustained, as though the evidence having been produced on record showing that besides agricultural income, the deceased was also doing the business of selling of milk, but the same has been completely ignored merely on the grounds that the deceased was not paying any income tax and also that no statement of account was produced on record in support of this claim. Learned Counsel for the appellants has also argued that the claimants produced AW-3 Shri Harblas, AW-4 Shri Balwinder Singh and AW-5 Shri Vijay Kumar, besides the claimant Smt. Mimla Devi herself appearing in the witness box as AW-6. While appearing as AW-3 Shri Har-balas stated that the deceased was selling milk and he was a Gujar by caste. Shri Balwinder Singh, AW-4 in his statement deposed that he used to sell milk to the deceased @ Rs. 3/- per k.G. He further made a statement that the deceased used to collect about 100 killos of milk in a day as the collection was twice a day. In his cross-examination, this witness stated that out of the total milk collection, 10-12 Kgs. of milk was used to be supplied by him. AW-5 Shri Vijay Kumar, who runs a Halwai shop, made a statement that the deceased Chuhar Singh used to supply to him about 40 Kgs. of milk in the morning and 40 Kgs. in the evening and the same was purchased by him @ Rs. 4/- per K.G. Similarly Smt. Mimla Devi, claimant, made a statement that the deceased used to sell about 40-50 Kgs. of milk in the morning and 40-50 Kgs. in the evening. Though the statement of this witness was challenged in the cross-examination, but it was only in the form of suggestion. However, 1 do not agree with the Motor Accident

Claims Tribunal in rejecting the evidence merely on the ground that as no income tax was being paid by the deceased and to presume that he was not earning anything from the sale of milk. When the evidence has been brought on record showing the persons from whom he used to purchase the milk and also the person to whom he used to sell the same, at best, some cut could be imposed on the income for want of documentary evidence. However, I cannot lose sight of the fact that the agricultural income is exempted from the income tax and there is every possibility of a person of an ordinary prudence to think that the income derived from the jobs which are ancillary to the agriculture may be exempted from the income tax. Therefore, it would be appropriate to add another income of Rs. 1,400/- per month on account of sale of milk. It may also be noticed that besides the personal expenses, as per judgment of the Tribunal, the deceased must be incurring additional expenses on sale of milk as he had to go out for sale at different places. Therefore, the personal expenses are enhanced to Rs. 600/- per month. Thus, the total dependency would come to Rs. 2,000/- per month. As the deceased was 35 years of age at the time of his death, a multiplier of 17 can be applied and thus the total compensation payable to the claimants would come to Rs. 4,08,000/-. In addition to this, the claimants shall also be entitled to Rs. 2,000/- as funeral expenses and Rs. 5,000/- as consortium. However, without disturbing the interest of 12% P.A. on the amount of compensation already awarded, I think it appropriate to grant interest on the additional amount @ 9.5% P.A. from the date of filing of the claim petition till payment.

6. The findings on issue No. 3 are accordingly modified and the appeal is partly allowed with no order as to cost.