

(1989) 05 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 165 of 1986

Mrs. Vijay Chopra and others

APPELLANT

Vs

Udham Singh and others

RESPONDENT

Date of Decision : 05-05-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Motor Vehicles Act, 1939 — Section 110B, 110C

Citation : AIR 1990 P&H 350

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : L.M. Suri, for the Appellant; R.S. Bindra Munishwar Puri Mahraj Baksh Singh and Miss Renu Bala, for the Respondent

Judgement

1. The claimants have come up in appeal against the award of the Motor Accident Claims Tribunal, Kapurthala. The learned Tribunal found that the accident had taken place as a result of rash and negligent driving of the offending vehicle by respondent No. 1, but no compensation was awarded to the claimants since they had failed to prove income of the deceased.

2. Facts first: Updesh Kumar Chopra died in an accident, which took place on August 29, 1984, at 1 p.m. on G.T. Road near Sugar Mills, Phagwara. He was going on his scooter bearing Registration No. PBT 9398 on G. T. Road, Phagwara. Respondent No. 1 was driving Truck No. PUM 3905 and was coming from Jullundur towards Phagwara. He was driving the truck rashly and negligently and struck against the scooter. As a result of the impact, Updesh Kumar was crushed and died at the spot. The claimants, who are the wife and children of Updesh Kumar deceased, claimed compensation to the tune of Rs. 84 lacs.

3. The respondents contested the application. They denied that the accident had taken place due to rash and negligent driving of the truck by respondent No. 1.

4. The pleadings of the parties gave rise to the following issues :--

1. Whether Updesh Kumar Chopra died in accident caused by rash and negligent driving of truck No. PUM 3905 driven by Udham Singh driver respondent? OPA.
2. Whether the claimants are the legal heirs of the deceased? OPD
3. To what amount of compensation the claimants are entitled? OPA
4. Whether Udham Singh, respondent No. 1 was holding a valid licence at the time of alleged accident? OPR
5. Relief.

Under issue No. 1, it was held that the death was caused due to the rash and negligent driving of the offending vehicle by Udham Singh, respondent No. 1. Issue No. 2 was not pressed by the respondents and at the trial they did not dispute that the applicants are the legal heirs of the deceased. Issue No. 3 was found against the claimants as income of the deceased was not proved. Issue No. 4 was decided in favour of the respondents.

4A. Mr. Munishwar Puri, learned Counsel for respondent No. 2, assailed the finding of the learned Tribunal under issue No. 1. He submitted that the evidence of A.W. 2 Rajinder Singh, who is the only eye-witness of the occurrence is not reliable and in addition thereto, even if it is proved that the accident took place due to rash and negligent driving by Respondent No. 1, the circumstances fully established that it was a case of contributory negligence. I have gone through the evidence of A. W. 2 Rajinder Singh. He appears to be a straightforward and truthful witness. He acted in a manner warranted by the exigencies of the circumstances. Merely because he did not intimate the father-in-law of the deceased about the accident in the first instance will not make his presence at the spot unnatural. The minor discrepancies are inconsequential. It could not be expected that the witness should have acted in the manner suggested. When a young man was killed in the accident, there was panic. The witness must be anxious to inform the police immediately so that it could be put in motion and the driver of the offending vehicle is arrested. This is the normal conduct of a human being.

5. Responding 1 and 2 did not take the plea of contributory negligence in the written statement. In the absence of any plea, I do not think it will be permissible for the learned counsel to argue the matter at the appellate stage. The learned counsel relied upon Krishna Goods Carriers (P) Ltd. Vs. Union of India, , in support of his plea that it was not necessary for the respondents to plead and lead any evidence about the contributory negligence as it could be inferred from the evidence adduced by the claimants. This ruling renders no assistance to the respondents. Facts briefly in that case were that the driver of the plaintiff company was driving a mercedes motor truck. On September 23, 1961, of about 1.30 p.m., he was returning to Delhi from Meerut on the Meerut-Delhi road. On this road between Meerut City and Kharkhoda Railway Station, there is a manned public level-crossing. This level crossing has iron gates on

both side of the road. There is a cabin and lodging for the gateman. The practice of the Railway was to close the gates when a train was crossing. When the plaintiffs driver reached the Railway crossing he found the gates open. When he entered the gate he suddenly found a goods train running at full speed from Hapur side towards Meerut City in front of his truck. A head-on collision could not be averted. The truck was badly damaged. The plaintiff company brought a suit for damages against the railway administration. The learned trial Judge dismissed the suit holding that the driver of the truck was guilty of contributory negligence. On appeal, the learned Judge found that the plea of contributory negligence could not be sustained on the evidence brought in the case. He allowed the claim of the plaintiff company. The observations in the later portion of the judgment that the burden of proving contributory negligence is on the defendant and it can be inferred from the evidence adduced by the plaintiff is merely an obiter dicta. On the facts and circumstances of that case, this question did not arise since the learned Judge had found as a matter of fact that the accident took place as a result of the negligence of the gate keeper, who omitted to close the gates when the goods train was passing through the level crossing. Even otherwise, the proved circumstances of the case in hand are not suggestive that the plea of contributory negligence can be sustained. The driver of the offending vehicle was responsible for causing the accident resulting in the death of the deceased. The submission is, therefore, repelled.

6. Mr. R. S. Bindra, the learned counsel for the Insurance Company also reiterated the submission made by the learned counsel for Respondents 1 and 2. This plea is not open to the learned counsel for the Insurance Company. I permitted him to argue the matter, but I have not been persuaded to take a contrary view from what I have taken earlier. The finding of the learned Tribunal under issue No. 1 is accordingly affirmed.

7. On the question of quantum of compensation payable, the learned Tribunal refused to award any compensation for the reason that the claimants failed to prove the income of the deceased. In order to obviate any difficulty to arrive at the conclusion as to what was the income of the deceased, the learned counsel for the appellants moved Civil Miscellaneous Application No. 4077-CII of 1986 under O. 41, R 27 of the CPC for permission to place on record a certificate duly attested by the authorities authorised to authenticate mission of India in London. This certificate is per se admissible under the Diplomatic and Consular Offices (Oaths and Fees) Act 1948. Notice of this application was issued to the counsel for the opposite side Mr. Manohar Lal and it was ordered to be heard along with the main appeal. No reply was filed to this application by the respondents. Even at the argument stage, no meaningful argument was addressed by the learned counsel for the respondents for disallowing this evidence to be brought on record. Though the application was stated to have been filed under O.41, R. 27 of the Code, this provision per se is not applicable to the enquiries contemplated under S. 110-B of the Motor Vehicles Act (for short "the Act") by the Motor Accidents Claims Tribunal Section 110-C enables the Tribunal to follow such

summary procedure when conducting an enquiry subject to the rules that may be made in this behalf. The Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and for enforcing the attendance of witness and of compelling the discovery and production of documents and material objects for the purpose of the enquiry. Nevertheless, the Tribunal can adopt such summary procedure as it thinks fit while conducting enquiry. The Tribunal's jurisdiction is not circumscribed by the rigour of the strict rules of the CPC for admitting evidence and the same is equally applicable to the High Court while exercising appellate jurisdiction. In the interest of justice, this Court can allow evidence to be brought on record to substantiate the cause of justice. As pointed out earlier, the application although labelled under O.41, R.27 of the Code is in fact a request to the High Court, which is seized of the matter to take the evidence into consideration while disposing of the claim application. It is of course correct that the High Court has to be satisfied that the evidence sought to be introduced is authentic. There can be no doubt about the authenticity of the certificate which is sought to be produced at the appellate stage and I accept this document which is marked as Exhibit H. C. /1. No request was made by the learned counsel for the respondents to lead evidence in rebuttal. According to Certificate Exhibit H. C/1, the deceased was getting income from the following two sources:

(1) Mars Ltd. Pay ? 17,140 less tax paid f 4344.10

(2) Berkshire Pay 1 1059 less tax paid ? 317.70 Council Total net income in Pounds = 12,796.00 + 742.00 = 13,538.00 Pounds

Taking into consideration the cost of living in Great Britain, I assume that the deceased was spending 50 per cent of his income for his maintenance. Converting the balance 50 per Rs. 1,01,535.00 per annum. I take this amount towards his contribution to the deceased was aged 36 years at the time of his death. Applying a multiplier of 16, the claimants are entitled to Rs. 16,24,560.00. This amount shall be apportioned amongst the claimants in equal shares. Besides the entitled to interest that the rate of 12 per cent per annum from the date of application till realisation. The respondents are jointly and severally liable to pay the compensation awarded.

8. The appellants allowed in the above terms.

9. Appeal allowed.