
(1992) 03 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 462 of 1989

Narpal and Another

APPELLANT

Vs

Kanta Devi and Others

RESPONDENT

Date of Decision : 27-03-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1993) ACJ 175 : (1992) 102 PLR 85

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : S.S. Grewal and T.P.S. Mann, for the Appellant; S.K. Mittal and B.S. Rana, for the Respondent

Judgement

V.K. Jhanji, J.—This will dispose of F A. O. Nos. 462 of 1989, and 434 of 1989.

2. F. A. O. No. 462 of 1989 has been preferred by the driver and owner of the truck, whereas F. A. O. No. 434 of 1989, has been preferred by the claimants against the award dated 17th February, 1989, passed by the Motor Accident Claims Tribunal, Gurgaon, vide which, it was held that the accident took place due to the contributory negligence of appellant No. 1 in F. A. O No. 462 of 1989, and deceased, Suresh Kumar. Since the learned Tribunal found that both the drivers were equally negligent in causing the accident, their liability was apportioned as 50 : 50. The appellants were thus, held liable to pay a sum of Rs. 57,600/- as total amount of compensation to the claimants.

3. In the appeal filed by the driver and owner, the only point raised is that appellant No. 1 was not equally negligent in causing the accident, and in the appeal filed by the claimants, the grievance made is that the compensation awarded by the Tribunal is not adequate. In order to determine the matter in controversy, it is necessary to state the facts in brief, which are :

That on 14.11.1987 at about 7.30 P. M. Suresh Kumar, deceased, who at the relevant time, was 27 years of age, was coming on a motor-cycle bearing

Registration No. PP-6527 from Garni Harsaru side towards village Bhangrola, and struck against a tractor bearing Registration No. HRC-7186 being driven by appellant No. 1, as a result of which, Suresh Kumar died at the spot due to the injuries received by him in the said accident. An F.I.R. was lodged on the next day at about 12-20 P.M. on the statement" of Naresh Kumar, brother of the deceased, Suresh Kumar. The learned Tribunal on the basis of evidence produced by the parties, found that both the drivers were equally negligent in causing the accident

4. As per the admitted case of the parties, when the accident took place, four persons were riding the motor-cycle, along with six empty drums of milk carried on it. The learned Tribunal also returned a finding that deceased, Suresh Kumar, and three other pillion-riders had consumed liquor at the railway station and at the time of accident, they were under the intoxication of liquor. It is no doubt correct that Suresh Kumar, deceased, should not have " taken four persons, including himself, on the motor cycle, as taking of so many persons on the motor-cycle is not permissible under the Motor Vehicles Rules, but this fact alone is not enough to hold that the deceased, Suresh Kumar, alone was responsible in causing the accident. The matter would have been different in case the Tribunal had come to a conclusion that the deceased while driving the motor-cycle, and carrying three other persons apart from him, and also six empty drums of milk carried on the .said motor-cycle, lost balance and thus, caused the accident. The Tribunal while holding that the driver of the motor-cycle as well as the pillion-riders, were under the intoxication of liquor, took into consideration the statements u/s 161, Criminal Procedure Code, recorded by the police. The statements recorded u/s 161, Criminal Procedure Code, were not proved in accordance with law and there- fore, no reliance could be placed on the said statements. This fact is also not proved from the Post-mortem report. The motor-cycle as well as the tractor had no lights and the accident seems to have taken place in the middle of the road. In this, "view of the matter, I am of the opinion that the Tribunal rightly concluded that both the drivers were equally negligent in causing the accident

5. At the time of accident, the deceased was 27 years, ,of age. On the basis of the evidence produced on record, the Tribunal found that the deceased must be earning Rs. 1,000/-"pen month. After deducting 1/3rd amount which in the opinion of the Tribunal", the deceased must be spending on himself, the dependency of the claimants was determined to be Rs. 600/- per month and Rs. 7,200/"- as annual. By applying a multiplier of 16, the total compensation was computed to Rs. 1,15,200/-. On apportionment of the liability (i. e. 50 : 50), the claimants were held entitled to a total compensation of Rs. 57 600/-.

6. As stated above, the deceased, at the relevant time," was 27 years of age, and apart from a widow, he left behind a minor son, two minor daughters, and father and mother. Therefore after taking these circumstances into consideration, I am of the view that the deceased must not be spending more than Rs. 300/-

per month, on himself, and therefore, the dependency of the claimants can safely be determined to be Rs. 700/- per month and Rs. 8,400/- as annual. Learned counsel for the claimants has referred to some decisions where a multiplier of more than 20 was applied. In *Jyotsna Dey v. State of Assam* 1987 91 P. L. R. 646 where the age of the deceased was 45 years, a multiplier of 25 was applied but 20% deduction was made on account of lump sum payment ; in *Smt. Kiran Wati, widow v. Hari Singh* 1991 100 P.L.R. 555 where the deceased was 29/30 years of age, multiplier of 20 was applied, and in *Smt. Urmila Devi v. Baljit Singh* 1989 95 P. L. R. 562 where the deceased was 39 years of age, multiplier of 20 was applied. In the light of these judgments in the present case, a multiplier of 20 will be just and proper. Thus, the order of the Motor Accident Claims Tribunal is required to be modified to this extent. Applying the same to the dependency of the claimants at the rate of Rs. 700/- per month, it would come to Rs. 1,68,000/- (Rs. 700x 12x 20). In view of the finding that both the drivers were equally negligent in causing the accident, the claimants shall be entitled only to 50% of Rs. 1,68,000/- which comes to Rs. 84 000/-. The claimants shall also be entitled to interest at the rate of 12% per annum, with effect from the date of filing the claim petition till the realization of the amount.

7. For the reasons, recorded above, the appeal (F. A. O. No. 461 of 1989) filed by the driver and owner, is dismissed with costs, and the appeal (F. A. O. No. 434 of 1989) filed by the claimants is allowed with costs, and the order of the Motor Accident Claims Tribunal is modified to the extent indicated above. The claimants shall be entitled to a total sum of Rs. 84,000/- as compensation, to be paid by the respondents (in F. A. O. 434 of 1989) jointly and severally, along with interest at the rate of 12% per annum, with effect from the date of filing the claim petition till realization of the amount. Out of this amount, a sum of Rs. 7,000/- each shall be paid with proportionate costs, to father and mother, and the remaining amount with proportionate costs, shall be divided equally in four shares ; one share shall be given to the widow of the deceased, and the remaining amount shall be deposited in equal shares in the name of a minor son and two minor daughters in some nationalised bank in fixed deposit carrying interest, and the same shall be allowed to be withdrawn on their attaining majority.