

(1996) 09 P&H CK 0155
In the Punjab And Haryana At Chandigarh

National Insurance Co. Ltd.	Vs	APPELLANT
Sudarshan Devi and Others		RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Citation : (1996) 2 ACC 691

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Judgement

Amarjeet Chaudhary, J.—This order of mine will dispose of F. A.O. No. 546 of 1988 filed by the Insurance Company for setting aside the award of the Motor Accident Claims Tribunal, Ambala and Cross Objection No. 36-CII of 1988 filed by the claimants for enhancement of compensation.

2. The Motor Accident Claims Tribunal, Ambala vide its award dated 7.1.1988 on a claim petition filed by Smt. Sudarshan Devi and others had awarded a sum of Rs. 1,08,000/- to the claimants on account of death of Madan Lal in a road accident on 26.3.1987. The liability to pay compensation was fastened on the Insurance Company with which the offending truck bearing registration No. HPS 4130 was duly insured.

3. Aggrieved, the Insurance Company has filed the present appeal challenging the award of the Tribunal on the ground that the liability to pay compensation should not have been fastened on it as the deceased was travelling on the truck as a gratuitous passenger.

4. The case of the claimants before the Tribunal was that on 26.3.1987, Madan Lal, deceased, who was employed with M/s. Shanker Fruit Traders, Rajpura Town, was travelling in truck bearing registration No. HPS-4130 in which fruits belonging to the firm were loaded. He was sitting on the seat behind the driver. When the truck was in the process of taking a turn towards Jandil Bridge, it hit the iron rods fixed on the bridge and fell in the pits. The driver of the truck had not slowed down the truck as a result of which the truck had fallen and Madan

Lal received multiple injuries. He was removed to the Civil Hospital, Ambala City where he succumbed to his injuries. The driver and the cleaner of the truck fled away from the spot. The accident was witnessed by A.S.I. Inder Singh.

5. The claim petition was resisted by the driver, owner and the Insurance Company. The Tribunal eventually awarded a sum of Rs. 1,08,000/- as compensation to claimants 1 to 4. As mentioned in the earlier part, the liability to pay compensation was fastened on the Insurance Company.

6. Learned Counsel for the appellant contends that the Insurance Company is not liable to pay compensation to the claimants as the deceased was travelling on the truck, which met with an accident, as gratuitous passenger, Counsel in order to fortify his submission has relied upon *Oriental Fire and General Insurance Co. Ltd. v. Gurdev Kaur and Ors.* (1967) 69 PLR 461.

7. The authority relied upon by the Counsel for the appellant is of no help to the appellant as the facts of the present case are quite distinguishable.

8. The employment of the deceased with M/s. Shanker Fruit Traders, Rajpura Town has been proved from the testimony of Baldev Raj, CW 3, who has stated that the wages of the deceased were entered in the pay book. It has not come in the evidence that the deceased while travelling in the truck was warned at any stage by the driver or owner of the truck that he will be travelling at his own risk and responsibility and in case of any accident they were not responsible.

9. I am of the considered view that the deceased, in no manner, can be termed as a gratuitous passenger of the truck as the deceased was accompanying the goods belonging to the firm in which he was employed and it was necessary for him to remain on the truck so that the goods are not stolen or damaged. Moreover, no objection to his travelling on the truck was raised. As such, he cannot be termed as an unauthorised passenger.

10. For the fore-going reason, I find no merit in the appeal and the same is hereby dismissed.

11. So far as Cross Objections are concerned, there is no scope for enhancement of compensation. The Tribunal has rightly assessed the income of the deceased and the dependency of the claimants on the deceased and has rightly applied multiplier of 15. However, the Tribunal has erred in awarding the interest on the compensation amount from the date of award instead it should have been awarded from the date of filing of claim petition.

12. In this view of the matter, the claimants are held entitled to the interest at the rate of 12% per annum from the date of filing of claim petition.

13. Cross objections are disposed of accordingly.