

(2005) 07 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 2951 of 2002 and Cross Objection No. 6-CII of 2003 (O and M)

New India Assurance Company Limited

APPELLANT

Vs

Rakesh Vashisht and Others

RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) 1 ACC 722 : (2006) ACJ 1971 : (2006) 1 CivCC 474 : (2006) 142 PLR 75 : (2005) 4 RCR(Criminal) 804

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : Ashvani Talwar, for the Appellant; R.C. Dogra and S.K. Bawa, for the Respondent

Judgement

Ashutosh Mohunta, J.—The insurer has filed the present appeal against the judgment of the Motor Accident Claims Tribunal, Jalandhar, (hereinafter referred to as the Tribunal) dated 14.3.2002 by which a total compensation of Rs. 18,10,864/- along with interest was awarded in favour of the claimants. The claimants have also filed cross-objections for enhancement of the compensation.

2. Briefly the facts of the case are that on 13.12.1999 at about 1.00 P.M. Amita Vashisht, who was working as a Lecturer in Kanya Mahavidalya College Jalandhar, was going to the College on her scooter. On another scooter, her husband-Rakesh Vashisht along with one Harvinder Kumar were also going and were just behind Amita Vashisht. When Amita Vashisht tried to cross the Lamba Pind Chowk, a Tanker bearing No. UP-12A-7435, being driven by Gumam Singh in a rash and negligent manner and at a high speed, came from the side of Chugitti and also tried to cross the road from the wrong side as a result of which the tanker hit against the scooter of Amita Vashisht. She fell down from her scooter and at that very moment the tyres of the tanker ran over the legs and abdomen of Amita Vashisht who died instantaneously. A F.I.R. No. 218 dated 13.12.1999 was

immediately registered at Police Station Division No. 3, Jalandhar.

3. As a result of the accident, a claim petition u/s 166 of the Motor Vehicles Act was filed by the claimants who are the husband and minor children of the deceased Amita Vashisht and a compensation of Rs. 30 lacs was claimed. It was averred that the deceased was 32 years of age, was working as a Lecturer in the Kanya Mahavidalya College, Jalandhar, and was drawing a monthly salary of Rs. 12,341/-. In the claim petition, it was also averred that the vehicle which was driven by Gurnam Singh was owned by Jasbir Singh and was insured with respondent No. 3 i.e. New India Insurance ". Company Limited, Muzaffar Nagar, who is responsible for indemnifying the insured.

4. The Insurance Company also filed a separate written statement and averred that the liability of the Insurance Company is limited as per the terms and conditions of the insurance policy and that as the offending vehicle was driven against the provisions of the Motor Vehicles Act, therefore, the Insurance Company is not liable to pay any compensation.

5. The first question to be determined is - Whether Amita Vashisht died in the automobile accident because of the rash and negligent driving of the driver of the tanker No. UP-12A-7435?

6. The claimant Rakesh Vashisht, husband of the deceased, was examined as AW2 and he stated that he along with his brother Harvinder Kumar were going towards the Bazaar on their scooter while his wife Amita Vashisht was going ahead of them on her scooter and when his wife reached the Lamba Pind Chowk the offending tanker, which was being driven in a rash and negligent manner, came from the side of Chugitti and struck against the scooter of Amita Vashisht as a result of which she died. It was averred by AW2 that Amita Vashisht was crushed under the tyres of the tanker and died before she could reach the hospital. The claimants tendered in evidence a certified copy of F.I.R. No. 218 dated 13.12.1999 lodged at Police Station, Division No. 3, Jalandhar, as well as Ex.A3 which is a copy of the post-mortem report of the deceased. As per the opinion given by the Doctor, the death occurred because of the shock and hemorrhage in an automobile accident.

7. A perusal of the statement of AW2 clearly shows that the tanker had struck against the scooter from behind. This itself shows that the offending tanker was being driven in a rash and negligent manner by its driver. As the tanker was behind the scooter, therefore, the tanker driver ought to have taken precaution in slowing down the vehicle so as to avoid the accident. Not only did the tanker hit the deceased from behind but it also over ran her body which itself shows that the tanker was not being driven at a controllable speed.

8. In view of the above, the findings of the Tribunal are upheld and it is held that the accident took place of the rash and negligent driving of the driver of the tanker.

9. The next point raised by the counsel for the Insurance Company was that the driver of the truck did not have a valid driving licence. A perusal of the impugned judgment shows that no evidence was led by the Insurance Company by which this Court can come to the conclusion that the driving licence of the driver was fake. Hence, the findings of the Tribunal on the issue of fake driving licence are also held against the Insurance Company.

10. It has next been argued that the compensation awarded to the claimants is highly excessive. AW1 Pankaj Nayyar, Clerk, K.M.V. College, Jalandhar, has stated that Amita Vashisht was working as a Home Science Lecturer since 31.8.1984. She was drawing a salary of Rs. 13,224/- per month and her date of birth was 29.5.1967. Ex.A1 which is photocopy of the salary register has also been produced in evidence.

11. From the salary register it is clear that the deceased was drawing a gross income of Rs. 13,224/- per month out of which Rs. 1766/- was being deducted as contribution towards provident fund, Rs. 200/- towards premium of the LIC and Rs. 10/- as staff welfare fund. Thus, the net carry home salary of the deceased was Rs. 11,247/- per month.

12. Learned Counsel for the Insurance Company has argued that the amount of provident fund, premium towards LIC as well as contribution for the staff welfare fund should be deducted while determining the quantum of compensation. This argument of the counsel for the Insurance Company carries no weight because the contributions made towards the provident fund as well as towards the premium of LIC would obviously have come back to the deceased on her retirement or whenever she wished to draw the provident fund. This was the amount which was being contributed by the deceased and, therefore, the aforementioned amounts are not liable to be deducted from the gross income of the deceased. The deceased was working as a Lecturer and was a young lady. She had more than 20 years of service and, therefore, there was every prospect that she would have got higher salary and increments in future. Thus, the Tribunal has rightly determined the compensation by taking the gross salary of the deceased at Rs. 13,224/- which comes to Rs. 1,58,688/- per annum. After deducting 1/3rd amount for personal expenses, the annual dependency of the claimants has been calculated at Rs. 1,10,5992/-. In view of the fact that the deceased was 32 years of age, a multiplier of 17 has been applied which is absolutely appropriate. Thus, the Tribunal has rightly awarded a total compensation of Rs. 18,10,864/-. Apart from the above, a sum of Rs. 9,500/- has also been awarded for funeral expenses, loss of consortium and loss of estate.

13. The last contention of the counsel for the Insurance Company is that the interest in the present case has been awarded at 9% per annum from the date of award till realisation. Learned Counsel has relied upon the judgment in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, wherein the rate of interest was reduced to 7.5% per annum. Learned Counsel has contended

that as the bank rates have been considerably reduced in recent years, therefore, the interest in the present case should be reduced.

14. In view of the judgment in Tamil Nadu State Transport Corporation Ltd. "s case (supra) the argument of the counsel for the Insurance Company does carry weight. The interest in the recent years has been considerably reduced and, therefore, in view of the judgment in Tamil Nadu State Transport Corporation Ltd." case (supra) the interest on the amount of compensation is reduced from 9% per annum to 7.5% per annum. The claimants shall be entitled to the interest from the date of filing of the claim petition till the date of realisation.

15. The judgment of the Motor Accident Claims Tribunal, Jalandhar, dated 14.3.2002 is modified to the above extent. 16. There is nothing on record to show that the claimants can receive higher compensation than what has been awarded by the Tribunal. The gross income of the deceased has been taken into account while determining the compensation. Accordingly, the cross objections filed by the claimants are dismissed.