

(2006) 07 P&H CK 0033
In the Punjab And Haryana At Chandigarh

Nirmal and Others	Vs	APPELLANT
Ram Kanwar and Others		RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Citation : (2007) ACJ 2766

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Judgement

Rajesh Bindal, J.—This is an appeal filed by the wife, daughter and mother of deceased Shiv Kumar on account of his death. At the very

outset, it is stated by counsel for the appellants that Parmesh-wari Devi, mother of deceased Shiv Kumar has expired during the pendency of

appeal, so the present appeal may be treated only qua the wife and daughter of deceased Shiv Kumar.

2. While deciding the claim petition, the Tribunal determined the income of the deceased who was stated to be running a kiriyana shop, had a

Matador and was also partner in the printing press business, at Rs. 1,400 per month with dependency at Rs. 900 per month, i.e., Rs. 10,800 per

annum and applied a multiplier of 16. The compensation was arrived at Rs. 1,72,800 which was reduced to a half because of findings on

contributory negligence. The amount of compensation was ordered to be shared between claimants in the manner indicated in the award.

3. Brief facts of the case are that in the night intervening 8/9.5.1989 the driver of Haryana Roadways bus brought the bus to Gurgaon from Rohtak

where he had taken a marriage party. The marriage party was dropped back outside village Gurgaon. The allegations in the claim petition are that

the driver of the bus sped away the bus while deceased Shiv Kumar was still in the bus. In spite of repeated requests made by deceased Shiv

Kumar, the driver did not stop the bus and reached the turning of Post Office Chowk where it was slowed down. However, when deceased Shiv

Kumar was alighting from the bus, the driver again accelerated its speed and hrew the deceased Shiv Kumar from bus, who suffered head injuries.

The occurrence was witnessed by Satish Chand Jain and Lal Singh, chowkidar. The matter was immediately reported to the police by Lal Singh,

chowkidar. Claims Tribunal while accepting the petition held that since there was contributory negligence, the amount of compensation awarded

was reduced to 50 per cent.

4. Counsel for the appellants submitted that it is clear from the evidence of Satish Chand Jain, an eyewitness, that the bus was in fact stopped at

the turning for a moment and was started again when the deceased Shiv Kumar was alighting from it. Even though the Tribunal has not doubted the

presence of Satish Chand Jain at the spot at the time of accident at about 2.30 a.m. in the night intervening 8/9.5.1989 still his statement to the

effect that the bus in fact was stopped at the turning for a moment but was started again when the deceased was alighting from it, was disbelieved.

There is nothing on record to suggest that deceased Shiv Kumar was not a member of the marriage party which was taken by the driver of the bus.

It is also evident from the addresses of the claimants in the petition that they were also residents of village Gurgaon. So deceased Shiv Kumar was

to alight from the bus at the Gurgaon village and there is nothing on record to suggest that deceased Shiv Kumar had gone of his own with the bus

to the city in the midnight and died while alighting from the running bus. The negligence of the driver of the bus is evident from the record. He even

without confirming that all the passengers, i.e., members of the marriage party, had alighted from the bus or not, drove away he bus and even in

spite of repeated requests by the deceased Shiv Kumar, did not stop it. Even when the bus was stopped for a moment, the deceased Shiv Kumar

was thrown out from the bus while he was alighting as the bus was again sped away by the driver. It has come in the statement of Satish Chand

Jain that he had even heard the crying of man inside the bus for getting the bus halted but the bus did not stop.

5. Seeing the totality of the circumstances and the evidence on record, I am of the view that it is not a case of contributory negligence. Findings of

the Tribunal on this issue are reversed. Resultantly, the deduction made by the Tribunal on that account is uncalled for.

6. As far as the assessment of income of the deceased, dependency and application of multiplier is concerned, I am of the view that the assessment

of income of the deceased Shiv Kumar needs no interference. However, keeping in view the facts and circumstances of the case it would be

appropriate to assess the dependency at Rs. 1,000 (round off), that would mean a sum of Rs. 12,000 per annum. In addition to this, in my opinion,

even the application of multiplier of 16 in the present case requires a little up-gradation and the same is determined at 17. Applying the multiplier of

17 at the dependency of Rs. 12,000 per annum, the amount of compensation would be arrived at Rs. 2,04,000.

7. Since mother of the deceased Shiv Kumar has already expired, the entire amount of additional compensation would be payable to the widow

and daughter of deceased Shiv Kumar in equal shares, along with the interest at the rate of 7.5 per cent per annum from the date of the claim

petition, i.e., 7.6.1989. The award of the Claims Tribunal is modified to the extent indicated above.

8. The appeal is disposed of accordingly.