

(1987) 09 P&H CK 0080
In the Punjab And Haryana At Chandigarh

Om Parkash Bhatia and Another	Vs	APPELLANT
Jagir Singh and Others		RESPONDENT

Date of Decision : 18-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (1988) 2 ACC 59 : (1989) ACJ 68

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Judgement

J.V. Gupta, J.

1 This judgment will also dispose of F.A.O. No. 508 of 1983 as both these appeals have arisen out of the same award dated 23rd May, 1983 passed by the Motor Accident Claims Tribunal, Karnal.

2. The accident between the truck and the car had taken place on G.T. Road between Panipat and Samalkha on 13th November, 1981 at about 2 P.M. The occupants of the car were Baldev Raj Bhatia, aged 63 years, and Sanjay Bhatia, aged 19-1/2 years. Both of them had died in the accident in question. Baldev Raj Bhatia was engaged in the business of manufacturing and fabrication of steel products. He was also a partner in a few partnership concerns including a Joint Hindu Family concern. His yearly income was stated to be Rs. 76,000/- in the claim petition. Sanjay Bhatia was a B.A. student having already cleared Part-1 examination. His parents Om Parkash Bhatia and Smt. Sudarshan Bhatia claimed a sum of Rs. 50,000/- as compensation; whereas the widow and the son of deceased Baldev Raj Bhatia claim a sum of Rs. 2 lacs as compensation. The manner of accident as described in para 24 of the claim petition reads as under:

The accident took place on November 13, 1981 at about mid-day in the circumstances as detailed in FIR No. 201 dated 13-11-1981 registered at Police Station Samalkha lodged by Om Parkash son of Surat Singh resident of Dahar, Tehsil Panipat, an eye-witness. Copy of the FIR No. 201 is attached. Briefly the

facts are that the deceased was in the company of Shri Baldev Raj Bhatia of Panipat who was the elder brother of the husband of the deceased's father's sister. Both of them left Delhi in Car No. CHA 1144 owned and possessed by Shri Baldev Raj Bhatia. Shri Baldev Raj Bhatia was on the wheel driving the car while the deceased was the only other occupant seated by his side on the front seat, when the car arrived at a place short of a road block set up by the Engineering Deptt. in charge of the road, in half of the Width of the road, for some construction work, which was in progress; the remaining half of the road a little less than half had been left open for the passage of traffic. The car was slowed down in order to negotiate the said block diversion. From the opposite side, truck No. JKQ 1463 driven by Jagir Singh respdt. No. 1 came at a reckless speed, and although the driver of the car, which had arrived at the entrance of the diversion of the road, blew his horn and gave the light signal, the driver of the truck ignored the signal and continued to push on accelerating the speed, in a bid to pass through the diversion ignoring the fact that the car of the deceased had already entered the threshold of the diversion and acting in rash, reckless and negligent manner the truck dashed against the front of the car in a head on collision, with the result that the car was smashed and the occupants including the deceased received serious injuries resulting in their deaths in Civil Hospital, Panipat.

3. In both these petitions three written statements were filed-one on behalf of respondents Nos. 1 and 2 (driver and owner of the truck, respectively), the second on behalf of the Insurance Company representing the truck, and the third on behalf of the Insurance Company representing the car. In the first two written statements the accident was admitted but its manner was denied. The version given by respondents Nos. 1 and 2 in reply to para 24 of the claim petition reads as under:

That para No. 24 of the application is incorrect. The accident occurred on account of rash and negligent driving of Baldev Raj Bhatia. The truck of the respondents was at a stand still at the time when the accident took place as Mr. Bhatia, the driver of the car, was driving at a very high speed. Respondent No. 1 seeing the danger stopped the truck which was going at a very low speed which is also proved from the photographs taken from the site of the accident. The bridge was under construction and one half side of the road had been blocked on account of the construction. Respondent No. 1 was going on his left side while a separate road with pucca bricks had been constructed for the traffic coming from the opposite direction and Baldev Raj the driver of the car instead of going on the brick laid road temporarily built, struck against the truck of the respondents and the car struck against the right mudguard of the car. The truck had already crossed the bridge which was under repair and it was the duty of Shri Baldev Raj Bhatia, the driver of the car, to have stopped his car and to allow the driver of the truck to pass on. Since he was going at a very high speed, he could not control his car when the accident occurred. Moreover, he was not possessed of any valid licence at the time of accident because no such driving licence was

recovered from his car at that time. It was duly searched by the Police.

4. On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the accident in question took place due to rash and negligent driving of truck No. JKQ 1465, driven by respdt. No. 1 ?

(2) Whether deceased Baldev Raj Bhatia was responsible for causing the accident in question by dashing his car in truck No. JKQ 1465? OPR (No. 1)

(3) To what amount of compensation are the claimants of the respective petitions entitled and from whom?

(4) Whether the petitions are bad for non joinder of parties?

(5) Relief.

Issues Nos. 1 and 2 were discussed together and "it was concluded that negligence of the truck driver was amply proved because he entered the passage which was not meant for him According to the learned Tribunal, the car had entered the passage first and subsequently the truck entered the same, resulting in the accident. The stand taken by the truck-driver that the truck was at a stand-still at the time of the accident was negated. The learned Tribunal also observed that the testimony of the claimants' witnesses on this aspect i.e. the car had earlier entered the passage carries more conviction than the interested and belated version of the respondents. Under issue No. 3 the learned Tribunal found that in case of the death of Sanjay Bhatia-student of B.A. Part II the annual dependency could be of Rs. 1800/- and by applying a multiplier of 20 a sum of Rs. 36,000/- was determined as the amount of compensation payable. The Tribunal also allowed interest at the rate of 6% from the date of application.

5. In the case of the claim petition filed by the widow and the sons of Baldev Raj Bhatia (deceased) aged 63 years, the learned Tribunal found that the claimants were not entitled to any compensation because the business of the deceased was continued by the claimants and they had not suffered in any manner in the said business.

6. Dissatisfied with the said award, the claimants in both the cases have filed the two appeals-F.A.O. No. 507 of 1983 was filed on behalf of Om Prakash and his wife on the death of their son Sanjay Bhatia, whereas FA.O. No. 508 of 1983 on behalf of Smt. Sushila Devi and her two sons Kamlesh Kumar Bhatia and Sanjeev Kumar Bhatia on account of the death of Shri Baldev Raj Bhatia aged 63 years. Cross-objections have been filed in F.A.O. No. 507 of 1983 on behalf of Respondent No. M/s. Kailash Transport Service, Jammu City the owner of the truck in which it has been stated that the Tribunal has erred in awarding the sum of Rs. 36,000/- to the appellants-claimants. The findings of the Tribunal on the question of negligence, which was the subject-matter of issues Nos. 1 and 2, have also been challenged.

7. As regards the question of negligence on the part of the truck driver, learned

Counsel for the respondents submitted that from the evidence on the record it could not be held that the accident took place due to the rash and negligent driving of the truck driver. According to the learned Counsel, from the plan Ex. P. 17, it is clear that the truck had virtually crossed the diversion and it was the car which had entered the same knowing it well that the truck was already coming from the opposite direction. Thus, argued the learned Counsel, it was the duty of the car driver to stop the car till the passage was cleared. According to the learned Counsel, the testimony of Om Parkash RW 3 the Santri, who was there at the time of the accident has not been properly appreciated and has been discarded arbitrarily. He also referred to the statement of Jagir Singh, driver of the truck, who stated that he had slowed down the truck but it was the car driver who struck the car against the truck.

8. I have heard the learned Counsel and have gone through the relevant evidence on the record on this issue, but I do not find any merit as to justify any interference in the findings of the learned Tribunal in this behalf. In the written statement in para 24, as reproduced above, the stand taken by the truck driver was that the accident occurred due to the rash and negligent driving of Baldev Raj Bhatia because the truck was at a stand still at the time when the accident took place. Now there is absolutely no evidence except the bald statement of the driver of the truck that the truck was at a stand-still at the time of the accident. Even RW 3 Om Parkash Santri did not support the truck driver in this behalf. Thus the first part of the defence taken by the truck driver is not substantiated by any evidence. The other stand taken in the written statement was that the truck had already crossed the bridge which was under repair and, therefore, it was the duty of the driver of the car to have stopped the car and to allow the driver of the truck to pass" on. This story also has not been proved by any satisfactory evidence. Main reliance was placed on the plan Exhibit P. 17, which was prepared by PW 5 Hakim Chand, Head Constable. In his cross- examination, he has categorically stated: "The accident, however, has taken place at point "A", shown in the site plan. Point "A" is most in the middle of two red flags." No further question was put to the said witness that how point "A" has been wrongly shown at the end in the site plan Exhibit P. 17. Hakim Chand was the best witness to explain the plan prepared by him. Therefore, from his testimony it is proved that the story put up by the truck driver is belied when it was stated by him in the written statement that the truck" had already crossed the bridge which was under repair. Apart from that, the claimants produced Om Parkash P. W. 4 who was also a truck driver and was coming from the Delhi side. The car involved in the accident was following the truck. He stated that the car had overtaken his truck at some distance prior to the brick kiln. At the time of accident, the car was 30 to 40 feet ahead of the truck. He further stated that the car was on its correct side. The offending truck was seen coming from the opposite direction. The driver side of the truck struck with the driver side of the car. He also stated that the truck also had entered the passage from where the car was passing. In view of the evidence, the learned Tribunal rightly observed: "Not

much help can be sought from the photographs because they were taken after the accident and these photographs cannot throw any light on the aspect as to where the accident took place. Even otherwise Hakim Chand PW 5 has shown place A in the site plan Ex. P. 17 as a place where the accident took place and according to his statement this place is in the middle of the bridge. This fact also shows that the car had entered the passage and subsequently the truck driver entered the same resulting in the accident." Not only that, the learned Tribunal also observed that "the testimony of the witnesses produced by the claimants on this aspect i.e. the car had earlier entered the passage carries more conviction than the interested and belated version of the respondents." In these circumstances, I do not find any illegality or infirmity in the findings of the Tribunal under issues Nos. 1 and 2.

9. As regards the claim of the parents of Sanjay Bhatia, aged 19-1/2 years, the learned Tribunal relying upon certain judgments, came to the conclusion that by applying the tests laid down therein "it can be safely concluded that in the present case the deceased would have earned at least Rs. 500/- per mensem if not more to start with and also keeping in view the fact that he would have married at a subsequent stage and in that case the dependency on the claimant would have decreased". Rs. 150/- per mensem would be the reasonable amount to be considered as the dependency of the claimants. By applying a multiplier of 20, ultimately a sum of Rs.36,000/- was determined as the amount to be paid as compensation.

10. Learned Counsel for the claimants submitted that the deceased was the only son of his parents and was 19-1/2 years at the time of his death. He was a student of B.A. Part II in D.A.V. College, Chandigarh, His academic record was quite brilliant as evidenced by Exhibit P. 3, P. 4 and P. S. Exhibit PS shows that he secured First Division in B.A. Part-I. Exhibit P. 6 further shows that he had been receiving prizes in his academic career. According to his father Om Parkash Bhatia, he was spending about Rs. 400 to Rs. 500 per mensem on his education. Thus, argued the learned Counsel, taking into consideration the facts and circumstances of the case, the claimants were entitled to at least Rs. 50,000/-. In support of his contention he referred to N. Sivammal and Ors. v. Managing Director, Pandian Roadways Corporation and Anr. 1985 ACJ 75; K.L. Kasar and Anr. v. Haribhau Savlaram Shejwal and Ors. 1985 ACJ 92 Amini George and Another Vs. Bhagat Singh and Others, ; Rajasthan State Transport Corporation situated at Parivahan Harg, Jaipur, v. Bhajan Lal Bishnoi (1987) 91 PLR 279; Harbans Lal Sharna v. Chemical Vessels Fabricators Private Limited (1987) 91 PLR 287; and Saraswati Bai Vs. Damodar Prasad and Another,

11. No meaningful argument could be raised on behalf of the respondents to challenge the finding of the Tribunal in this behalf.

12. Om Parkash Bhatia, father of Sanjay Bhatia (deceased), has appeared as PW 2. He has stated in his examination-in-chief that the deceased Sanjay Bhatia was his only son. He was a brilliant student. He received many prizes in sports as well

as in academic activity. He also got noble prize for standing first in Economics. According to him, he would have sent his son for Law and in view of his brilliant career, he would have been sent for I.A.S. He was not cross examined on behalf of the respondents to rebut this statement. The learned Tribunal determined the dependency to the tune of Rs. 150/- per mensem, which was very inadequate on the facts and circumstances of the case, particularly, keeping in view the fact that the deceased was the only son of his parents. Thus from the evidence on the record as stated by his father and there being no rebuttal thereto, a sum of Rs. 50,000/- as claimed in the petition, was the proper and just compensation in his case.

13. Consequently, F.A.O. No. 507 of 1983 is allowed. All the respondents will be jointly and severally liable for the payment of the amount. The claimants shall also be entitled to interest at the rate of 12% per annum from the date of the application, on the amount of Rs. 50,000/- which has been allowed as compensation to the claimants-appellants.

14. As regards the claim filed by Smt. Sushila Devi Bhatia and her two sons, namely, Karalesh Kumar Bhatia and Sanjeev Kumar Bhatia, on the death of Sh Baldev Raj Bhatia, aged 63 years, the learned Tribunal found that the deceased had established the business. His two sons were already partners and were earning members even during his life time. They" inherited his share in the partnership after his death. The widow also became a partner in respect of the share of the deceased. The business was not closed down. Rather the income remained the same as it was during the life time of the deceased. Thus, it was concluded that it could not, therefore, be said that any loss to the estate had occurred in the present case. Relying upon the judgment of this Court in F.A.O. No. 92 of 1967 Mohinder Singh and Anr. v. Ind Kaur decided on 4th May, 1971 wherein it was held where the business of the deceased was continued by the claimant, the latter was not entitled to any compensation, the Tribunal found that the claimants were not entitled to any compensation on the death of Shri Baldev Raj Bhatia.

15. During the pendency of this appeal (F.A.O. No. 508 of 1983) C.M. No. 3788 CII of 1987-an application Under Order 41, Rule 27 of the Code of Civil Procedure-in F.A.O. No. 507 of 1983 was filed on behalf of the claimants in F.A.O. No. 508/1983. As a matter of fact the same should have been filed in F.A.O. No. 508 of 1983 as it relates to the claim on the death of Shri Baldev Raj Bhatia. However, by virtue of the said application the claimants wanted to bring on record the receipts for payment of the Estate Duty on the death of Baldev Raj Bhatia to the tune of Rs 94,716/- by the claimants. The original receipts-five in number-showing the payment of the said amount on different dates were produced. Reply was filed to the said civil miscellaneous on behalf of respondents 2 and 4. One of the objections taken was that this application was not maintainable in the present appeal. I have already referred to above that it was a mistake on the part of the appellants to move this application in F.A.O No. 507 of

1983, whereas it should have been filed in F.A O. No. 508 of 1983. However, it was stated in the reply that no ground had been made out for involving the appellate jurisdiction Under Order 41, Rule 27 C.P.C. This evidence, how sought to be produce, was available during the pendency of the claim petition before the Motor Accident Claims Tribunal, and since it was never produced, the same could not be allowed to be produced at this stage.

16. Learned Counsel for the claimants-appellants submitted that the whole approach of the learned Tribunal in this behalf was wholly wrong, illegal and misconceived. The judgment referred to above in F.A.O. No. 98 of 1967 has been wrongly applied. Moreover, argued the learned Counsel, in L.P.A. No. 345 of 1971 Smt. Ind Kaur v. Mohinder Singh and Ors. decided on 9th May, 1973 the appeal against the said judgment was accepted and the order of the learned Single Judge was modified and a sum of Rs. 10,000/- was awarded as damages to the claimants. Moreover, argued the learned Counsel, the fact that after the death of Baldev Raj Bhatia his widow was taken into partnership was of no consequence. Even if the business was continued by his sons and the widow, the claimants were entitled to compensation on account of the death of Baldev Raj Bhatia. According to the learned Counsel, it could not be successfully argued on behalf of the respondents that Baldev Raj Bhatia was not contributing to the family out of his earnings or to the business itself. Thus, the criterion, on the basis of which no compensation has been allowed, has been wrongly applied by the learned Tribunal. In support of his contention he referred to Damyanti Devi and Ors. v. Sita Devi and Ors. 1972 ACJ 304; Chamei Wati and Anr. v. Delhi Municipal Corporation and Ors. 1984 ACJ 134; National Insurance Co. Ltd. and Another Vs. Mrs. Sarla R. Gupta and Others, and Kewal Krishan Sharma and Ors. v. Pepsu Road Transport Corporation and Anr. 1986 ACJ 787. In any case, argued the learned Counsel, the claimants had to pay a sum of Rs 94,716/- as Estate Duty on the death of Shri Baldev Raj Bhatia, which amount was not otherwise payable if the death would not have occurred. Not only this, the Estate Duty was abolished in - the year 1985 and if the deceased had lived, then the amount would not have been payable either by the deceased or by the claimants. Thus, argued the learned Counsel, in any case the claimants were entitled to this amount over and above the compensation on account of the loss to the state of the deceased.

17. On the other hand, learned Counsel for the respondents submitted that since there was no loss to the business in which Baldev Raj Bhatia was one of the partners, therefore, it has been rightly held by the Tribunal that there was no financial loss as such which the claimants had suffered on account of the death of Baldev Raj Bhatia. Thus, argued the learned Counsel, the ratio in F.A.O. No. 98 of 1967, referred to above, has been rightly applied. According to the learned Counsel, the authorities relied upon on behalf of the claimants have no applicability to the facts of the present case.

18. As regards the civil miscellaneous for permission to allow the secondary

evidence, I find that the said evidence is necessary for proper adjudication of the claim petition filed on behalf of the appellants. More over the authenticity of the original receipt produced by the appellants could not be doubted in any manner, nor in the reply it has been repelled that the said amount was not paid by the claimants. Only argument raised on behalf of the respondents was that if the claimants had paid the said amount by way of Estate Duty, they had also inherited the property left behind by the deceased and, therefore, they could not make any grievance on that account. I do not find any merit in this contention. Estate Duty was payable only on account of the death of Shri Baldev Raj Bhatia. If this death would not have taken place, the claimants were not liable to pay any Estate Duty as such. Moreover, it is no more disputed that in the year 1985 the Estate Duty was abolished. That being so, if the deceased would have lived upto the year 1985 (the accident took place on 13th November, 1981), no Estate Duty as such was payable either by the deceased or by the claimants. Thus the said amount of Rs. 94,716/- was paid by the claimants only because of the death of Shri Baldev Raj Bhatia. This loss of the claimants had suffered on account of the death of Shri Baldev Raj Bhatia. Therefore, on the facts and circumstances of the case, the claimants are entitled to reimbursement of this amount.

19. Apart from that, the mere fact that the business continued even after the death of the deceased was by itself no reason to disallow the compensation to the claimants. It could not be denied that the deceased was contributing in the business as well as to his family, particularly his widow Smt. Sushila Devi. Sanjiv Bhatia, son of the deceased, has appeared as PW 1. He has stated that his father was managing partner of several firm's manufacturing steel products. He has also stated that his father was an Income Tax payee in his individual capacity as well as a member of the H.U.F. According to his statement, his father was earning Rs. 40,000/- to Rs. 50,000/- per year in the HUF, whereas in his individual capacity he was having an income of Rs. 80,000/- per annum. In his cross-examination he has stated that he was maintaining his family out of the income earned by him in his individual capacity, as partner of the aforesaid firm. His mother was living with him. There is no rebuttal to the said evidence on behalf of the respondents. Thus, taking into consideration the facts and circumstances of the case and the evidence produced on the record, it could be safely concluded that the deceased was contributing Rs. 500/- per mensuna in any case to his wife during his life-time, and that being so, the annual dependency comes to Rs. 6000/- in his case. Even if the multiplier of 5 is applied, keeping in view his age of 63 years at the time of the accident, his widow is entitled to a sum of Rs. 30,000/- at least as compensation on the death of her husband. She will also be entitled to interest at the rate of 12% per annum on the said amount from the date of application. All the respondents will be jointly and severally liable for the payment of the said amount. Since the total amount comes to Rs. 1,24,716/-, the liability of the Insurance Company will be to the extent of Rs. 50,000/- as per the terms of the policy.

20 Consequently, both the appeals succeed and are allowed with costs to the

eatent indicate d above, whereas the cross-objections shall stand dismissed.