

(1982) 08 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 175 of 1976

Pal Bus Service

APPELLANT

Vs

Surjit Kaur and Others

RESPONDENT

Date of Decision : 31-08-1982

Acts Referred:

Motor Vehicles Act, 1988 — Section 130A

Citation : (1984) ACJ 91

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : N.K. Sodhi, for the Appellant; L.M. Suri, Mittal and Hemant Kumar, for the Respondent

Judgement

S.S. Sodhi, J.—On 17.2.1970 at about 9 a.m., Gurcharan Singh, Detective Foot Constable, posted at Police Station Longowal boarded bus No. PNC 1495 to go to Sangrur where he had to attend a meeting. He was thrown out of the bus at a turning a few furlongs away from the police station. Upon falling from the bus he suffered injuries as a result of which he later died. It is in respect of this accident that an application u/s 130-A of the Motor Vehicles Act was filed by his widow, children and parents seeking Rs. 80,000/- as compensation for the loss suffered by them on account of his death.

2. It was the finding of the Tribunal that the accident in this case had taken place due to the rash and negligent driving of the bus driver and a sum of Rs. 64,000/- was awarded as compensation to the claimants. It is this award which is now sought to be challenged in appeal.

3. It was the case of the claimants that when Gurcharan Singh deceased boarded the bus he sat on the seat opposite the front window thereof and he was thrown out of the bus when the driver of the bus turned the bus rashly with the left wheels of the bus coming on to the kacha portion of the road and the bolts of the window which were very loose flew open and the deceased was thrown out from the window and he thereby suffered injuries as a result of which he died.

4. The version of the accident as per the case of the claimants was deposed to by PW 2 Ajmer Singh, PW 3 Sarup Singh and PW 9 Sajjan Singh. All these witnesses stated that they were travelling in the bus at the time of the accident and it was their testimony that Gurcharan Singh came and sat on the seat near the front window of the bus and this window was loose and the driver of the bus had been driving the bus at a very fast speed and when the bus came near the canal minor and took a turn at a fast speed, the front window opened by itself and Gurcharan Singh fell out of the bus through this window.

5. The case of the Respondents, on the other hand, was that Gurcharan Singh deceased instead of taking a seat in the bus stood in the window resting his back against it and the window opened with the weight of the deceased when the bus took a turn on the canal bridge. It was, thus, pleaded that the accident had taken place on account of the negligence of the deceased himself.

6. In order to support their case, the Respondents examined RW2 Balwant Singh the driver of the bus who deposed that, Gurcharan Singh deceased stood in front of the door with his back against it when he boarded the bus. RW 1 Mandhir Singh, the conductor of the bus also stated to the same effect and went on to state further that when the bus took a turn, the door opened due to the weight of Gurcharan Singh as a result of which he fell down.

7. Mr. N.K. Sodhi, counsel for the owner of the bus, sought to assail the finding of the Tribunal on the point of negligence on the ground that despite the fact that Gurcharan Singh deceased was a constable posted at Police Station Longowal and a report regarding this accident having been made at this very police station by RW I Mandhir Singh, the conductor of the bus immediately thereafter, the driver of the bus was not challaned and no action was initiated against him by the police. It was further stressed in this behalf that the report Ex. P 1 which was entered in the daily dairy of the police station contained the version of the accident similar to the one deposed to by RW 1 Mandhir Singh and RW 2 Balwant Singh namely that the deceased fell out of the bus while standing near the door. These circumstances clearly negative the negligence of the bus driver. As regards the witnesses examined by the claimants it was sought to be suggested that they were stock witnesses of the police and as the deceased in this case was a police constable their evidence must be treated as that of interested witnesses and consequently not worthy of belief.

8. The issue relating to negligence has to be decided on the evidence brought on record. The action or conclusive (sic) though it is indeed a circumstance to be taken note of. PW 2 Ajmer Singh and PW 3 Sarup Singh were, no doubt, questioned with regard to their connection with the Police. PW 2 Ajmer Singh, admitted that he had appeared as a witness in some cases but he stated that he did so as he was the Sarpanch of the village. PW 3, Sarup Singh admitted having appeared as a witness in one or two cases. This fact is not, however, sufficient by itself to brand them as witnesses either under the influence of the police or as unreliable when regard is had to the testimony of the third witness examined in

this case namely P.W. 9 Sajjan Singh. This witness deposed as per the version put forth by the claimants and it is significant to note that his testimony was not in any manner challenged in cross-examination. The testimony of PW 2 Ajmer Singh and PW 3 Sarup Singh, is in consonance with that of PW9 Sajjan Singh and this is what lends credence to the testimony of all these witnesses.

9. In dealing with the evidence relating to negligence in this case another pertinent circumstance to take note of is that the statement of PW 2 Ajmer Singh and PW 3 Sarup Singh that the front window of the bus was loose and it had opened by itself once or twice before the accident was not challenged in cross-examination. PW 9 Sajjan Singh, had also deposed that the door was loose.

10. Turning to the testimony of RW 2 Balwant Singh, he was the driver of the bus and could not consequently be expected to know whether Gurcharan Singh sat on his seat in the bus or he kept standing near the door as he had stated in his examination-in-chief. In cross-examination he admitted that he had seen the deceased standing besides the door only at the time when he boarded the bus but did not pay any attention to him thereafter and did not see him standing after he had started the bus. Turning to RW 1 Mandhir Singh, it is pertinent to note that to begin with (sic) but then turned around and stated that he had not taken a seat but stood in the door way.

11. Having regard to the state of the evidence as has been discussed above and in the totality of the circumstances of this case there can be no manner of doubt that the deceased had been sitting in the bus and was thrown out of the bus when the bus turned suddenly and could not in any manner be blamed for falling out of the bus. The accident was, therefore, the result of the rash and negligent driving by the bus driver. The Respondents are, thus, liable to pay compensation to the claimants for the loss suffered by them on account of the death of the deceased.

12. Turning to the question of the compensation payable to the claimants in this case it will be seen that Gurcharan Singh deceased was about 38 years of age at the time of his death. It has come on record that his date of birth was 14.8.1932. He died leaving behind his widow Surjit Kaur and their five minor children, one son and four daughters ranging in age from six months to thirteen years. Gurcharan Singh deceased was a police constable. According to PW 10 Bhupinder Nath, the salary of the deceased at the time of his death was Rs. 130/- per month and he was also being paid dearness allowance @ Rs. 98/- per month. His total emolument were, thus, Rs. 228/- per month.

13. It was the contention of Mr. N.K. Sodhi, learned Counsel for the Appellants-bus owner that the loss suffered by the claimants in this case could not be taken to exceed Rs. 150/- per month after taking into account also the fact that some amount must have been spent by the deceased on his own maintenance and on this basis applying the multiplier of sixteen in accordance with the law laid down by the Full Bench of our High Court in Lachman Singh v. Gurmit Kaur 1979 A.C.J.

170 (P. and H.) the total compensation that the claimants could recover in this case would be Rs. 28,800/-. He consequently prayed that the award of the motor accidents claims tribunal be modified accordingly.

14. Mr. R.K. Mittal appearing for the claimants-Respondents, on the other hand, sought to emphasise the fact that had the deceased lived, his emoluments would have increased as was shown in the statement Ex. P3 and the loss suffered by the claimants on account of the death of the deceased must, thus, be computed taking into account also his future prospects.

15. The question, thus, arises whether it would be open to take into account the future prospects of the deceased in assessing the pecuniary loss caused to his dependents on account of his death. In dealing with this matter reference must be made to the observations of the Full Bench of our High Court in Laehman Singh's case 1979 A.C.J. 170 (P and H). While setting out the principles to be followed in assessing compensation payable to the heirs of the deceased it was laid down that the compensation to be assessed is the pecuniary loss caused to the dependents by the death of the person concerned and:

For the purpose of calculating the just compensation, annual dependency of the dependents should be determined in terms of the annual loss accruing to them due to the abrupt termination of life. For this purpose, annual earning of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependents will be the determining factor. This basic figure will then be multiplied by a suitable multiplier.

It has, however, also been observed:

In order to determine the quantum of damages in cases of fatal accidents, a basic figure indicative of the annual loss to the dependents from the premature death has to be arrived at. This amount is to be worked out not only on the basis of the salary or earning of the deceased at the time of the accident but also by taking into consideration the entire relevant data regarding the future prospects of increase in the course of employment or business, as the case may be.

A reading of the Full Bench decision referred to above shows that it is clearly permissible to take into account the future prospects of the deceased in seeking to assess the loss suffered by his dependents on account of his death. The former quotation from this judgment cannot be construed to mean that future prospects of the deceased are to be ruled out of consideration as was sought to be contended by the counsel for the Appellants. It would also be relevant to note here the case *Kasturba Sewa Mandir, Rajpura Township v. Bachan Kaur* 1980 P.L.R. 357, where after taking note of the Full Bench decision in *Laehman Singh's case* 1979 A.C.J. 170 (P. and H.) it was observed that the potential capacity of the deceased for earning in later life has also to be taken into consideration while fixing the amount of compensation payable to his dependents.

16. Adverting now to the facts of the present case it will be seen that while the

total emoluments of the deceased at the time of his death were Rs. 228/- per month this figure could have gone up to Rs. 271/- per month in another two years and to Rs. 372/- per month by 1974. The amount would have further increased thereafter.

17. Keeping in view the circumstances of the case and applying the principles for awarding compensation as discussed above the loss suffered by the claimants in the present case must be taken to be at the rate of Rs. 200/- per month. The appropriate multiplier in this case would obviously be sixteen keeping in view the ages of the deceased and the claimants. On this basis, therefore, the claimants are held to be entitled to Rs. 38,400/- (200 ? 16 ? 12) as compensation. The award of the motor accident claims tribunal must consequently be modified accordingly.

18. It is now well settled that the claimants are entitled to interest @ 10% per annum on the amount awarded as compensation from the date of the application to the date of payment thereof. In the present case a departure from this rule was sought in view of the order passed by this Court on October 1, 1976. This order had directed the Appellants to deposit Rs. 20,000/- within two months and to furnish security for the balance of the amount awarded. An undertaking was given by Mr. N.K. Sodhi, counsel for the Appellants that the Appellants would pay interest @ 9% per annum on the amount awarded over and above Rs. 20,000/- which the claimants may be found entitled to by this Court. The contention being that this order now debars the claimants from claiming interest on the amount awarded. No such interpretation is warranted with regard to this order.

19. In the result, the award of the motor accident claims tribunal is modified to the extent that the claimants shall be entitled to Rs. 38,400/- as compensation alongwith interest @ 10% per annum from the date of the application to the date of payment thereof. This appeal is consequently accepted to this extent. In the circumstances of the case, there will be no order as to costs.