

(2006) 04 P&H CK 0123
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1195 of 1987

Pawan Kumar and others

APPELLANT

Vs

Amar Nath and others

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Citation : (2006) 4 RCR(Civil) 557

Hon'ble Judges : Uma Nath Singh, J

Advocate : Mr. V.B. Singla, Advocate, Mr. D.P. Gupta and Mr. D.C. Kumar, Advocates., Advocates for appearing Parties

Judgement

Uma Nath Singh, J. (Oral)

1. This first appeal arises out of an award dated 16.9.1987 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Kurukshetra, in MACT Case No. 62 of 1986, awarding a sum of Rs. 86,400/ out of a total compensation worked out to be Rs. 1,72,800/. Half of the award amount has been denied because of the findings of contributory negligence on the part of the deceased. Learned counsel for the appellants assailed the findings of the contributory negligence and submitted that the compensation amount is absolutely meagre. The deceased, Raj Lakshmi, was aged 34 years on the date of accident, i.e., 21.11.1986. She was a Government Teacher and, admittedly, was drawing a salary of Rs. 1,270/ per month. While she was returning home situated at Radaur on her moped from her school situated towards Jathlana side, she was struck by a Truck bearing No. HRA7134 driven rashly and negligently by respondent No. 1 (proceeded ex parte before learned Tribunal) which came from village Gumthla side. The deceased was carried to the Civil Hospital, Yamunanagar, where she succumbed to the said injuries on 1.12.1986, after a gap of 10 days. The occurrence is not disputed nor the insurance of the offending vehicle. However, learned counsel for the Insurance Company submitted that the accident took place way back in 1986 and the amount of compensation worked out at that time is just and reasonable. He also submitted that a higher rate of interest being

12% per annum has been granted whereas it should have been at the bank rate. It appears from the site plan (Ex. P3) that the offending vehicle was coming from Gumthla side and was to take right turn to reach Jathlana. The deceased was coming from Jathlana side and was going straight to Radaur. The accident took place at Gumthala crossing on the left side of the road taken by the deceased and that too adjacent to left side katcha path. Thus it indicates that the truck was being driven at a high speed and, therefore, it could not be controlled by applying brake at the time of accident and, hence, it came to its extreme right. In a judgment reported in *Bimlesh and others v. HPRTC and others*, 1998(8) Supreme Court Cases 686, the accident took place when the offending vehicle was coming downhill and motorcyclist was moving uphill. The bus was being driven comparatively at a high speed and the accident took place on a curve. Under such circumstances, Hon"ble the Apex held that the offending vehicle was being driven rashly and negligently and it was solely responsible for the accident. In the instant case also, the accident took place near a curve when the truck came to its extreme right while taking a right turn on the curve. Thus, it can be safely concluded that the offending vehicle was being driven at a high speed in a negligent manner. Further, in the aforesaid judgment, Hon"ble the Apex Court found the award amount of Rs. 42,000/ grossly inadequate and increased it to Rs. 1,00,000/ (inclusive of interest). In the instant case, it is Rs. 1,72,800/ with an interest @ 12% per annum, therefore, the compensation amount need not be enhanced further. Moreover, in another case reported in *Municipal Corporation of Greater Bombay v. Laxman Iyer and another*, 2003(4) RCR(Civil) 764 : 2003(8) Supreme Court Cases 731, Hon"ble the Apex Court has held that to prove the contributory negligence, the act or omission of the person should be proximate and immediate cause of death. The act or omission should materially contribute to the damage and, hence, the amount should be attributed to the negligent person. In the instant case, there is nothing on record to show that the victim contributed to the accident in any manner, much less to say materially. Despite that, learned Tribunal has attributed 50% compensation amount to the deceased for contributory negligence.

2. Under the circumstances, the impugned award is set aside in part and 50% of compensation amount attributed to the contributory negligence of the deceased is held to be unsustainable. Accordingly, the claimants would be entitled to receive the entire compensation amount worked out to be Rs. 1,72,800/ from the Insurance Company. However, in view of the ratio of the judgment of Hon"ble the Apex Court reported in *Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya and others*, 2006(1) RCR(Crl.) 598 : 2005(4) RCR(Civil) 628 : 2005(2) PLR 650, the rate of interest to be charged on 50% compensation amount would be 7 per cent from the date of the claim petition.

3. Accordingly, this FAO No. 1195 of 1987 is allowed in part with no orders as to costs.