
(1989) 08 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No. 666 of 1984 and Cross-objection No's. 95-CII and 96-CII of 1984

Punjab State and Another

APPELLANT

Vs

Onkar Nath and Others

RESPONDENT

Date of Decision : 07-08-1989

Acts Referred:

Citation : (1990) 2 ACC 214 : (1990) ACJ 170 : (1989) 96 PLR 462

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

Bench : Single Bench

Advocate : H.S. Bedi, A.G. and S.S. Kang, A.A.G, for the Appellant; A.L. Bansal, for the Respondent

Judgement

S.S. Sodhi, J.—The challenge in appeal here is to the award of Rs. 54,000/- as compensation to the parents, sisters and brothers of Som Nath deceased, who was killed when the Punjab Roadways bus PUE 9929, he was travelling in, overturned. This happened on the Hoshiarpur-Mahilpur Road at about 2.15 p.m. on September 13,1982. It was the finding of the Tribunal that the bus driver was entirely to blame for this accident.

2. The conclusion arrived at on the issue of negligence warrants no interference in appeal. It is the common case of the parties that the bus in which Som Nath deceased was travelling did indeed turn turtle. According to the claimants, this happened as the bus went out of control on the steering-wheel getting free, whereas the plea put forth on behalf of the bus driver and the State of Punjab was that the bus overturned when it went on to the kacha portion of the road on its left to enable a truck following it to pass. This kacha portion was said to be sandy and this is what led to the bus overturning.

3. It would be pertinent at the very outset to note the testimony of the investigating officer, PW 12, Sub-Inspector Balkar Singh, who deposed that on mechanical examination, the steering-wheel of the bus was found to be free and its brakes too were defective.

4. The case of the claimants is founded upon the testimony of PW4 Ishwar Dutt and PW 5 Hazara Ram who claim to have been travelling in the ill-fated bus. From the side of the opposite party, the only witness examined was the bus conductor RW 1, Harbhajan Singh, who deposed that when the bus moved towards its left to enable a truck coming from behind to pass, the front wheel of the bus got stuck in the soft earth as a result of which it overturned.

5. It would be seen that even on the plea raised by the bus driver and the State of Punjab as also the testimony of the bus conductor RW1 Harbhajan Singh, negligence of the bus driver is writ large. If the condition of the road was such that it was unsafe for the bus to get off the metalled portion of the road and yet the bus was taken off it, negligence is clearly spelt out thereby and it is for the bus driver to answer for it. He certainly cannot be heard to put forth such a plea either to absolve himself from the charge of negligence or even as an extenuating circumstance. No exception can thus be taken to the finding of negligence recorded against the bus driver.

6. Turning now to the quantum of compensation awarded to the claimants, it will be seen that the Tribunal clearly fell in error in holding the sisters and the brothers of the deceased entitled to compensation in the presence of the parents of the deceased. It has, no doubt, been held by the Full Bench in *Parkash Chand v. Pal Singh* 1985 ACJ 597 (P&H), that brothers and sisters, as legal representatives of the deceased, can lay a claim for compensation for loss to the estate of the deceased, but a reading thereof would show that who amongst the legal representatives would be entitled to succeed to the estate, would depend upon the law of succession applicable to the deceased. Here, the parents would clearly be preferential heirs and they would, therefore, exclude the brothers and sisters of the deceased. The compensation, therefore, awarded to them cannot be sustained.

7. As for quantum of compensation payable to the parents, the evidence on record shows that Som Nath deceased was only about 22 years of age at the time of his death and he was unmarried. According to the claimants, he in partnership with his cousin was running a grocery shop in the village and his income from there was Rs. 600/- per month and besides this, he earned a similar amount by singing devotional songs at Jagratas. Exaggeration in stating the income of the deceased is apparent when regard is had to the testimony of the father PW 3 Onkar Nath to the effect that neither he nor his deceased son had made any contribution to the capital of grocery shop and what is more, it was serving a village of only 200 residents. No accounts or other corroborative evidence with regard to the extent of the income is forthcoming.

8. Besides this, it must be borne in mind that had the deceased lived he would, in all likelihood, have got married and thereafter raised a family and he would then have upon him the financial burden of maintaining them. It is after making an allowance for this and the amount that the deceased would have spent upon himself and generally the principles laid down by the Full Bench in *Lachman*

Singh v. Gurmit Kaur 1979 ACJ 170 (P&H), that the loss to the parents can be assessed. Considering, therefore, the circumstances of the claimants and the deceased, the loss to the claimants deserves to be assessed at around Rs. 2,500/- per annum with a multiplier of "15". So computed, compensation payable to them would work out to Rs. 37,500/-. The compensation awarded to them is Rs. 37,200/-. The difference thus being negligible, no change in the compensation awarded is called for. In other words, the amount already awarded as compensation to the parents is hereby upheld and affirmed. The parents shall, however, be entitled to interest thereon at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded.

9. In the result, the appeal filed by the State of Punjab is accepted to the extent indicated above, while the cross-objections of the claimants are hereby dismissed. There will, however, be no order as to costs.