
(1969) 08 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 76 of 1967

Punjab State

APPELLANT

Vs

Smt. Hardeep Kaur and others

RESPONDENT

Date of Decision : 18-08-1969

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B

Citation : (1970) ACJ 150

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : B.S. Dhillon, A.G., Punjab, for the Appellant; Lalit Mohan Suri and Ravinder Mohan Suri, for the Respondent

Final Decision : Allowed

Judgement

H.R. Sodhi, J.—This appeal by the State Government has arisen in the following circumstances. A Government truck No. PNT 5598 of the P.W.D. (Buildings and Roads) collided on 22nd December, 1965, with scooter No. DLW 1500 in the area of Patiala Cantonment at about 9-30 a.m. The collision resulted in the death of Gurdeep Singh who owned and was driving the scooter, and injuries to Miss Amarjeet Kaur who was sitting on its pillion seat. It is alleged that the deceased Gurdeep Singh was going on the scooter to his father Major Kehar Singh in the N.C.C. Camp in Patiala Cantonment on the fateful day when the truck driven rashly and negligently by Brij Mohan driver from the opposite direction struck against the scooter. Brij Mohan is said to have suddenly swerved his vehicle to his right and knocked down scooter No. DLW 1500 which was coming on its left side. Gurdeep Singh died on the spot whereas Miss Amarjeet Kaur received injuries and became unconscious. Both of them were taken to the Rajendra Hospital, Patiala, by the N.C.C. Camp staff immediately. Gurdeep Singh died immediately after the accident, whereas Miss Amarjeet Kaur was admitted to the hospital for treatment.

2. Two claim applications, one jointly by Smt. Hardeep Kaur mother of the

deceased and Major Kehar Singh father of the deceased (C.A. No 15/CT/66) and the other by Amarjeet Kaur (C.A. No. 48/CT/66, were filed. Both these applications have been disposed of by one order of the Motor Accidents Claims Tribunal, Punjab, dated 28th December, 1966, against which the present appeal has been preferred by the State Government, as owner of the vehicle.

3. The State Government and the driver, respondents denied in their written statements that there was any negligence or rashness on the part of the driver of the truck and pleaded that it was the deceased who was driving the scooter rashly and negligently trying to overtake another truck going in front of him and that it was because of his rashness and negligence that the accident took place. The parties went to trial on the following issues:

1. Was the accident the result of any rash and negligent act of the driver of the P.W.D. vehicle involved or that of the driver of the scooter or of both and with what effect?

2. What is the quantum of compensation due if any and from whom to whom?

3. Relief.

4. Under issue No. 1, the Tribunal came to the conclusion that it was Brij Mohan driver of the truck who was negligently and rashly driving his vehicle and was responsible for the unfortunate accident. As regards the quantum of compensation, the Tribunal was of the view that the parents of the deceased were entitled to a sum of Rs. 96,000/-. There is no appeal in the matter of claim by Amarjeet Kaur before me, and the award of compensation to the parents of the deceased has been challenged in the present appeal.

5. The learned Advocate-General appearing for the State has not seriously controverted the findings of the Tribunal on Issue No. 1 whereby it has been held that the driver of the truck was driving the vehicle rashly and negligently. He could not indeed do so in view of the direct testimony of eye-witnesses. Two eye-witnesses, A.W. 4 Amar Singh and A.W. 5 Rajinder Pal, have been produced in this case. Amar Singh A.W. 4 was working as Accountant in the N.C.C. at Patiala, and Rajinder Pal A.W. 5 was also connected with the N.C.C. It was winter season and both these witnesses were basking in the sun looking towards the road side at about 9-30 a.m. when they saw the collision of the truck with the scooter. They have stated that Gurdeep Singh was driving the scooter on his left side and the truck driver made no effort to avoid the accident. These witnesses have been believed by the Tribunal and there is no reason to disbelieve their evidence.

6. The only argument advanced in this connection by the learned Advocate-General is that Brij Mohan accused was prosecuted in a criminal Court but acquitted by the Sessions Judge. The judgment by a criminal Court is not relevant to prove in civil Court the guilt or innocence of the person driving the vehicle. Civil Court or the Tribunal determining the matter of compensation has to come to its own independent findings on the evidence produced before it. The

Sessions Judge took into consideration the fact that Amarjeet Kaur had not been produced as a prosecution witness. She was not produced probably because she was not available and I am told now that she had gone abroad. Be that as it may, the evidence of these eye-witnesses is quite independent and no reasons have been shown which can justify interference with the findings of the Tribunal on issue No. 1.

7. The only next question that requires to be determined is as to whether the amount of compensation awarded to the parents of the deceased is excessive. The deceased was employed in England with Marryat and Scott Engineering Ltd. and his average wages there were ₹16. 1s. 6d. per week. There was additional income of ₹2 11s. 2d per week by way of bonus. A certificate to that effect was produced and Major Kehar Singh, father of the deceased has also deposed to that effect. The tribunal was justified in accepting the statement of Maj. Kehar Singh applicant that his son was a graduate and a young man of 20 years of age who was earning ₹18 a week. There is no rebuttal on the other side. The family of the deceased is quite long lived inasmuch as the grand-mother of the deceased is still living and is more than 75 years of age. Grand-father of A.W. 6, Maj. Kehar Singh, died at the age of 65 years and grand-mother died at the age of 90 years. The father of Kehar Singh of course died at the age of 48 years but that was due to pneumonia. It is in evidence that Maj. Kehar Singh, father of the deceased, enjoys good health but his wife, the other applicant, has been ailing. There is, however, no evidence to show the nature of the ailment. It cannot, therefore, be said that the ailment was of the type which is bound to shorten her normal life. The deceased was unmarried but had come to India to get married with Amarjeet Kaur with whom he was driving the scooter at the time of the accident. He was sending to his parents from abroad Rs. 800/- a month before his death. The tribunal has worked out the amount of compensation on the following hypothesis. The parents of the deceased were likely to live for another 20 year and the deceased would have continued helping them for that much period by remitting the same amount from England though this amount, according to the Tribunal, was to be reduced after he went back having married. The Tribunal seemed to think, and rightly, that the deceased after marriage would have in all probabilities reduced the amount which he was sending earlier to his parents in order to help them in the maintenance of the family and the education of his brothers and sisters, who, at that time, were school going. The Tribunal has reduced the amount of Rs. 800/- which the deceased was sending every month to half of the same, that is, Rs. 400/- which, according to the Tribunal, the parents could reasonably be expected to have continued to receive as a pecuniary help for a period of 20 years till the father attained the age of 65 years. The normal span of life, as held by the Tribunal, would certainly be not less than 60 or 65 years and the parents of the deceased can legitimately expect to live upto that age. They are entitled to compensation which has to be worked out on a monthly basis for 20 years. The amount of compensation is directly proportionate to the monetary benefit that was derived from the deceased and

would have continued to be derived if he had not died. In the matter of compensation an element of subjective determination must creep in and no objective data can give unchallengeable rule of guidance keeping in view variety of human conduct and the society to which the parties belong.

8. In my opinion, the amount of Rs. 96,000/- as awarded by the Tribunal, is rather excessive. I cannot believe that the deceased would have continued giving Rs. 400/- per month out of an income of Rs. 1000/- or so, after marriage. He would have required a good bit for his personal expenses and that of his wife after marriage and the parents could expect towards their maintenance and support Rs. 300/-per month which would be nearly one third of the income of the deceased, two-third being retained by him. The compensation payable to the claimants respondents for 20 years at this rate thus comes to Rs. 72,000/- and the amount awarded by the Tribunal is reduced accordingly. The appellants must, therefore, pay to the claimants, parents of the deceased Gurdeep Singh, a sum of Rs. 72,000/- as compensation.

9. Deduction of 10 to 20 per cent is generally made out of the total amount of compensation in order to do justice between the parties in view of uncertainty of life and the possibility of the deceased having died early even if the accident had not taken place. The rule of deduction in the matter of claims under the Fatal Accidents Act is no doubt based on justice and fairplay but it cannot be said that deduction must be made in every case when the amount is to be paid in a lump sum. We have to look to the circumstances of each case, and no inflexible rule of equity, justice or fairplay can be said to govern all cases. The Tribunal u/s 110-B of the Indian Motor Vehicles Act, 1939 is only called upon to determine the amount of compensation which appears to be just and there may be cases where justice demands that the deduction is not made.

10. In the circumstances of the present case, when I am reducing the amount of monthly pecuniary help from Rs. 400/- to Rs. 300/-, it does not seem just that another deduction be made on the ground that the amount is to be paid in lump sum. In the overall picture of the whole situation, a compensation in a sum of Rs. 72,000/- seems to be just. The appeal is accordingly allowed to the extent that the award of the Tribunal is modified and the amount of compensation payable by the appellants is reduced to Rs. 72,000/-. The appellants will also bear the costs of the respondents in this appeal.