(1986) 03 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Rajinder Singh Jasbir Singh APPELLANT

Vs

Pawan Kumar and Others and Urmil and Others RESPONDENT

Date of Decision : 13-03-1986

Acts Referred:

Citation : (1986) 2 ACC 123 : (1987) ACJ 35 : (1986) 89 PLR 647

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Judgement

Gokal Chand Mital, J.—On 18th June, 1980, Ram Niwas, who was on scooter No. CHD-5459, was run over by truck No. CHW-7177, owned by M/s Rajinder Singh, Jasbir Singh and driven by Ram Prit on the inter-section between sectors 29 and 30. Ram Niwas died at the spot as he suffered numerous injuries in the accident. The truck hit him from the front left side and dragged him to quite & distance and inspite of the call given by the clearner, the truck was not stopped and was driven away.

2. Young widow and a minor s on of six months and parents of the deceased filed claim application before the Motor Accident Claims Tribunal, Chandigarh, (for short ''the Tribunal''), to claim compensation of Rs. 5,00,000/-. Another claim application was filed by Pawan Kumar owner of the scooter to claim compensation for damage to the scooter. The insurance company of the truck was also impleaded besides the owners and driver of the truck. The owners and driver of the truck contested the petition and blamed the deceased. The insurance company denied their liability as the driver did not have the licence.

3. On the contest of the parties, the following issues were framed:

1. Whether the accident took place due to the rash and negligent driving of truck No. CHW-7177 driven by the respondent No. 1, resulting in death of Ram Niwas?

2. To how much compensation, if any, the claimants are entitled to and from which of the respondents?

4. On the evidence led in the case, the Tribunal, by award dated 28th April, 1982, awarded Rs. 1,44,000/- as compensation to the widow and minor child of the deceased after recording a finding that the annual income of the deceased was Rs. 1200/- per month, out of which Rs. 600/- per month was considered as the dependency and the multiplier of 20 years was applied. To Pawan Kumar, Rs. 3615.16 were awarded for damage to the scooter.

5. Against the aforesaid common award, F.A.O. No. 288 and 611 of 1982 have been filed by the owners of the truck and RFA Nos. 490 and 491 of 1982 have been filed by the driver of the truck. In FAO No. 288 of 1982, the widow and the minor son of the deceased have filed cross-objections to claim Rs. 5,00,000/- as the compensation. Since they arise out of the same proceedings, they are being disposed of by this common judgment.

6. The counsel for the appellants have not disputed the finding of negligence of the truck driver recorded by the Tribunal. They have also not disputed the award of damages to the owner of the scooter. The argument is confined to the quantum of damages and regarding the liability of the Insurance company to re-imburse the insured.

7. Adverting first to the question whether the Insurance company would be liable to reimburse or not, it is urged on behalf of the owners and the driver of the truck that the driver had a licence for a light vehicle and had applied for driving a heavy vehicle on 10th June, 1980 and in fact he was granted licence for heavy vehicle on 19th June, 1980, i.e. one day after the accident. It is further urged that on 11-6-1980, test for driving the Motor Vehicle was conducted by the Inspector and after the driver was found suitable, recommendation was made for grant of licence. In view of the suitability being found to drive a heavy vehicle on 11th June, 1980, it is urged that for damages to be paid to the heirs of the deceased on the basis of accident, which took place on 18th June, 1980, the Insurance company should be held liable to re-imburse.

8. Before legal position is adverted to, factual aspect on the record deserves to be noticed. The driver had produced his licence for heavy motor vehicle but on that the date of grant of licence stood erased. A look at the driving licence placed on the record clearly goes to show that the date on the licence has been deliberately erased. The explanation of the driver was that the licence had fallen in water. A look at the driving licence does not support this stand of the driver. The Licence Clerk was produced to prove the application dated 10-6-1980, which is Exhibit RW1 at page 149/150 of the record. According to the endorsement, the Licensing Authority granted permission for grant of the licence on 19-6-1980, which endorsement is marked Exhibit RW2/A. At the bottom of the application, there is another endorsement Exhibit RW2/B, by which the application was forwarded to the Motor Vehicle Inspector for test, by the Licensing Authority. On the date put on this endorsement again there is erasion and 19th June has been erased to read as 10th June. This application was produced by V.K. Sood, Licence Clerk as RW-3. He was asked a court question if there is a register where

applications are entered and his reply was in the affirmative but he stated that he did not find the register pertaining to the licence in dispute. The impression left in my mind is that after the accident this application was filed for grafting of licence but date of 10th June, 1980 was put.

9. Assuming that the application was filed on 10th June, 1980 and the driving test was held before the accident and the driver was found fit to have a licence for driving heavy motor vehicles, the fact remains that the licence was granted on 19th June, 1980, as is evident from the statement of RW 3 and the endorsement RW 2/A. On the date of accident, the driver did not possess a licence for driving the heavy motor vehicles. The question of law that arises is whether on these facts the Insurance company can be held responsible to pay the compensation on behalf of the insured. The answer is in the negative. The learned Counsel for the owners and driver of the vehicle was not able to cite any judgment on these facts which may make the Insurance company liable to reimburse the compensation. However, two cases namely, United India Insurance Co. Ltd. v. Tilak Ram and Ors. 1985 A.C.J. 481 and Ishwar Devi v. Reoti Raman and Anr. 1978 A.C.J. 340, were cited. In the first case, the driver was holding a learner''s licence and it was held that the Insurance Company had to reimburse. In the second case the learner''s licence had expired. According to the law, if a driver possesses a licence or had a licence before the accident, which may not have been got renewed on the date of accident, unless there is any disability imposed on the driver, the Insurance company would be liable. The facts of the present case are clearly distinguishable. Hence, these two decisions do not help the owners of the truck and driver. Consequently, I uphold the decision of the Tribunal that the Insurance company cannot be held liable to reimburse the insured and his driver.

10, Adverting to the quantum, the arguments raised before me are that on the basis of Exhibits P17 to P19, the Court below has drawn the inference that the monthly income of the deceased was Rs. 1200/- per month; these documents are inadmissible because these are unattested and unauthenticated copies of the orders alleged to have been passed by the Income Tax Officer, in regard to the income of the deceased. Exhibits P17 to P19 were proved by Kapur Chand, who is the father of the deceased. No objection was taken at the time as to the admissibility of these documents, otherwise certified copies or duly authenticated copies could have been produced. That apart, PW 7 has stated from the account books that the total profit of the firm were Rs. 40,000/- before the death of the deceased during the last year. He was confronted with the account books which he had brought in Court and from the account books he gave the total net profit of the firm as Rs. 39,656.82 The share of the deceased in the partnership firm was 30 per cent and copy of the Partnership Deed is Exhibit P20 on the record, the original having been produced before the Income Tax Authorities. From the total annual income of partnership, the share of the deceased would be slightly over Rs. 1100/- per month. Even if Exhibits P17 to P19 are ignored, from the statement of PW7 read with account books which remained unchallenged the income of the deceased is proved to be Rs. 1100/- per month.

11. It was then contended that the Tribunal was in error in applying multiplier of 20 years and multiplier of 16 years should have been applied. This Court had laid down the rule that it would be reasonable to apply multiplier of 16 years to 20 years and on peculiar facts of this case, I am of the view that the Tribunal rightly applied the multiplier of 20 years. The driver as PW1 in cross-examination dated 20th March, 1982, admitted that he drove away the truck after the accident. He also admitted that Arjan Singh, clearner was sitting at the back of the truck and he raised raula (Alarm) and asked that the truck be stopped. Volummons evidence has been brought on the record to prove that the front left side of the truck hit the scooter of the deceased who was dragged for several feet and due to dragging the scooterist received multiple and grievous injuries on the head, abdomen and lets and died at the spot. If on the alarm raised by the clearner, the driver had stopped the truck, may be, that the life of the scooterist could be saved who was a young man of 25 years and was running a shop for the sale of utensils in Sector 20, Chandigarh, having monthly income of Rs. 1100/- at the time of accident. So far five years and nine months have passed and his widow has not re-married and at the time of accident he would not be able to complete his schooling. Hence multiplier of 20 years deserves to be applied in this case.

12. While the counsel for the owners and driver urged that the dependency of Rs. 600/- per month is on the higher side, in support of cross-objections filed by the claimants, the argument raised is that the dependency has been assessed at a higher inadequate amount. This Court has taken the view that 1/5th to 1/4th is retained by the bread earner and the remaining amount is taken as the dependency. Applying the aforesaid formula, I fix the monthly dependency at Rs. 800/-. On this basis, the annual dependency would be Rs. 9600/- and after applying the multiplier of 20 years, the compensation payable would come to Rs. 1,92,000/-.

13. For the reasons recorded above, while all the appeals are dismissed as being without any merit, the cross-objections filed by the claimants i.e. widow and minor son are allowed and it is ordered that they would be entitled to compensation of Rs. 1,92,000/- with interest at the rate of 12 per cent per annum from the date of filing of the claim application till payment thereof. The award of the Court below stands modified accordingly. Out of the awarded amount, Rs. 70,000/- alongwith interest thereon would be deposited in special F.D.R. for a period of 10 years. By then the minor would be about to enter college education. The amount which would fall due under the FDR would again be put in such fresh FDR for a period of 5 years so that monthly or quarterly interest, as is desired, is paid for the education and bringing up of the minor. The balance of Rs. 1,22,000/-would be payable to the widow alongwith interest thereon. I am informed that the widow has been paid compensation due under the award of the Court below. Whatever amount, which would become due to her under this judgment, would be deposited in special FDR for a period of 5 years to

be renewed for another 5 years. During this period the sum of Rs. 94,000/- alongwith 6 per cent interest would be sufficient for her and her son''s maintenance and bringing up. However, the parties are left to bear their own costs.

