
(2013) 04 P&H CK 0178

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 3789 of 2010 (O and M)

Rupinder Sharma @ Komal Sharma and Others

APPELLANT

Vs

Spr. Basant Kumar and Another

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Citation : (2014) 3 ACC 48 : (2014) ACJ 869 : (2013) 171 PLR 658

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; Jagjot Singh for Mr. Kunal Dawar, for the Respondent

Judgement

K. Kannan, J.—The appeal is for enhancement of claim for compensation for death of a male, aged 35 years. He was said to be a typist, making a living at the Tehsil Complex. He died leaving behind his widow and 2 sons, both of whom were minor children of 8 and 5 years. The Tribunal took the income at Rs. 3,000/- per month, made a deduction of Rs. 1,000/- for his personal expenditure and applied a multiplier of 17 for assessing the loss of dependence at Rs. 4,08,000/- inclusive all the conventional heads. The Tribunal, however, found that he had contributed to his own death by not wearing helmet, made a deduction of 20% for contributory negligence. The learned counsel states that he supported his family of 3 persons and considering-the fact that he died only in 2008, the Court must have accepted the evidence also through two witnesses who spoken to the fact that they have known him as a typist working in Tehsil Complex and used to earn Rs. 9,000/- per month. The counsel for the Union states that with no documentary evidence available, the Tribunal was justified in taking the income at Rs. 3,000/- and determined the compensation. He would also contend that the deceased had himself contributed to the accident in not wearing helmet and, therefore, deduction made was appropriate.

2. I cannot look for any documentary evidence for a person, who was self-employed. He must be taken as a semi-skilled and if the wife was giving

evidence that her husband was earning Rs. 9,000/-, I would at least believe that over a period of time, he would have improved his income. Typing skill could have definitely fetched an average income of at least Rs. 6,000/- per month. I would apply a deduction of 1/3 and take the monthly contribution to be Rs. 4,000/- per month. The appropriate multiplier must have been 16 instead of 17 as taken by the Tribunal and I will find the loss of dependence at Rs. 7,68,000/-.

3. The Tribunal was in error in finding that 20% deduction must be made for contributory negligence. Contributory negligence must be attributed to how the accident itself had taken place and not how he exposed himself to a danger of death. The concept is wrongly understood by the Judge in assuming that by not wearing helmet, he was guilty of contributory negligence. The contributory factor must be to the extent of collision and if he was not wearing helmet, he could not be stated to be a negligent "in causing the accident". He could be stated to be only negligent in not wearing helmet that "caused his death". I will not taking this to be the component for reduction of the damage assessed.

4. The deceased left behind a young widow and two children and I will assess the loss of consortium for the wife and loss of love and affection for the children at Rs. 15,000/-; loss to estate at Rs. 5,000/- and funeral expenses at Rs. 5,000/- and find the total loss of compensation as Rs. 7,93,000/-. The amount in excess of what has been awarded already by the Tribunal will attract interest at 7.5% from the date of petition till date of payment. The entitlement shall be shared equally amongst the widow and the children. The award stands modified and the appeal is allowed to the above extent.