

(1988) 09 P&H CK 0128
In the Punjab And Haryana At Chandigarh

Sahi Ram and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-09-1988

Acts Referred:

Citation : (1989) 2 ACC 49

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Judgement

A.L. Bahri, J.—On November 6, 1982, Mahipal was involved In an accident with bus No. HYB 1878, belonging to Haryana Roadways, driven by Kanwal Singh. On the following day, Mahipal died. Sahi Ram and Smt. Dodi Devi parents of Mahipal claimed a sum of one lac as compensation, on account of the death of their son Mahipal. According to them, the accident took place due to rash and negligent driving of the bus by Kanwal Singh. State of Haryana and General Manager, Haryana Roadways, were also in pleaded as respondents along with Kanwal Singh. The claim was disputed by the State of Haryana and the General Manager, on the plea that the accident did not take place due to the rash and negligent driving of the bus by Kanwal Singh. The front leaf of the right side spring (Kamani) of the bus broke down with the result that the bus was pushed towards wrong side. In spite of the best efforts made by the driver of the bus, it struck against a cyclist. Kanwal Singh respondent denied the accident. According to him, the cyclist on noticing that the bus was going on the wrong side further diverted his cycle towards its left hand side and it hit a tree. On the pleadings of the parties, several issues were framed by the Tribunal. It was held that the accident took place due to rash and negligent driving of the bus by Kanwal Singh, which resulted in causing the death of Mahipal. It was further held that Mahipal was a student of Pre-Medical, in Government College, Narnaul and that he was not rendering any service to his family to the extent of Rs. 300/- per mensem for looking after the cattle. The appellants were not entitled to a specific sum of Rs. 800/- alleged to have been spent on medicines, during the period Mahipal remained in the hospital on November 6 and 7, 1982. Taking into

consideration that Mahipal was having a moderately, brilliant academic career dependency of the appellants parents was determined at Rs. 150/- per mensem. Applying 15 as multiplier, compensation was determined at Rs. 27,000/- with 6 per cent interest with effect from 14-12-1982 date of the application till realisation. The appellants have come up in appeal.

2. The only question debated at the time of arguments is with respect to the quantum of compensation determined by the Tribunal. The contention of the counsel for the appellants is that at least a sum of Rs. 200/- per mensem ought to have been fixed as dependency of the appellants upon the deceased who was having meritorious record and was student of Premedical and Shri Ram appellant wanted him to be admitted in the M B.B.S. Course, and multiplier should have been 20 instead of 15. PW 1 Sahi Ram, no doubt, stated that he wanted to get his son admitted in the M.B.B.S. Course. However, taking into consideration the percentage of marks obtained by Mahipal it was difficult to get admission in the M.B.B.S. Course, Ex. PD is the Pre-University Examination certificate. This shows that Mahipal secured 402 marks out of 900 marks and was placed in third division. Much importance cannot be attached to a Matriculation Certificate wherein Mahipal had secured slightly more marks as is apparent from Exhibit PD. Mahipal also secured 63 per cent marks in the Annual General Knowledge Test, conducted by All India Board of General knowledge. Exhibit PB is the certificate in this regard. From Exhibit PC, it is apparent that Mahipal used to play Basket Ball. Exhibits PF and PG are the two certificates showing that Mahipal had donated the blood. Sahi Ram PW 1 deposed about good physique of Mahipal. PW 2 Ghisa Ram also stated that Mahipal was healthy and tall 5 feet 6 inches. From this material, it is apparent that Mahipal was a moderate student and was expected to continue his studies. However, it was difficult for him to secure admission in the M.B.B.S Course. Earning capacity of Mahipal was considered at Rs. 500/- per mensem. Sahi Ram also gave his own salary at Rs. 500/- per mensem. There was evidence of life expectancy up to 85/90 years in the family as stated by Sahi Ram PW 1. When Sahi Ram gave his salary at Rs. 500/- per mensem he further stated that this amount was after deduction of General Provident Fund and ration money at center as he was employed in Border Security Force. Thus, taking into consideration the aforesaid material, it could reasonably be held that the earning capacity of Mahipal would have been Rs. 600/- per mensem and dependency of the appellants at Rs. 200/- per mensem and further taking into consideration the age of Mahipal at the time of his death that is 19 years and of Sahi Ram aged about 46 years, the multiplier in this case should have been fixed at 20.

3. In *New India Assurance Co. Ltd. and Anr. v. Ram Dayal and Ors.* 1986 ACJ 464, the deceased was aged about 18 years. and a student in a Higher Secondary Class who had secured third position in the merit list of Higher Secondary Examination. The appellants, his parents, were aged about 51 and 47 years respectively and the compensation was allowed at the rate of Rs. 2400/- per year for 20 years by the Rajasthan High Court. The Bombay High Court in *Tehmina P. Jasawalla v. Mahadeo Sitaram Ghadi and Ors.* 1983 ACJ 666, in the

case of a student of 16 years. who had been educated in a convent school and had sports credit and passed I.C.S.C. examination, was held to have supported his parents, to the tune of Rs. 300/- per mensem considering his income at Rs. 400/- per mensem and the compensation allowed was Rs. 50,000/- taking 15, as a multiplier. In *Bhisham Dev Dhawan and Anr. v. Indo German Agricultural Milk Project* 1987 (2) PLR 454, Gokal Chand Mital, J. allowed compensation of Rs. 40,000/- to the father aged about 48 years, on account of the death of his boy aged about 20 years who was B. Sc. final Year Student. In the same case similar amount was awarded on account of the death of qualified electrician from I.T.I. aged about 25 years whose father was aged about 22 years

4. On facts, no judicial decision can be followed as a precedent. Each case has to be considered on merits of its own. However, ratio of the judicial decisions, in the matter of fixing compensation and multiplier can be considered. Taking into consideration all the facts and circumstances of the present case, as already observed above, the loss of the appellants on account of the death of Mahipal is considered at Rs. 200/- per mensem as after getting education Mahipal would have been married and his liabilities would have increased and further taking into consideration the uncertainties of the life. The annual loss of the appellants thus, would be Rs. 2400/-Applying the multiplier of 20 the amount of compensation would come to Rs. 48,000/-.

5. For the reasons recorded above, this appeal is accepted. The award of the Tribunal is modified holding the appellants to be entitled to Rs. 48,000/- in equal shares from the respondents who would be liable to pay the same, severally and jointly. The appellants would also be entitled to interest at the rate of 12% per annum on the amount of compensation from the date of the application till realisation. The appellants will get costs of this appeal. Counsel's fee is fixed at Rs. 500/-.