

(1984) 10 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 466 of 1979

Samitra Dhawan and Others

APPELLANT

Vs

Jaswant Singh and Another

RESPONDENT

Date of Decision : 11-10-1984

Acts Referred:

Citation : (1985) 2 ACC 463 : (1986) ACJ 530 : AIR 1985 P&H 177

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

Bench : Single Bench

Judgement

1. Kharaiti Lal Dhawan, while crossing the road was run over and killed by the Chandigarh Transport Undertaking Bus CHW-3519. This happened on Dec. 12, 1977 at about 8.45 p.m. on the road between Sector 22 and the Bus Stand in Sector 17, Chandigarh.

2. The road where the accident took place is one of the busiest in Chandigarh with buses coming on this road for entering into the Bus Stand every two minutes. Besides this, there is other traffic too. The accident took place at night time and in the centre of the road. This is a rather wide road with its width being about 50 feet. The evidence on record also shows that the bus stopped at a distance of 40 to 50 feet from the place where the accident occurred.

3. It was the finding of the Tribunal that this was a case of contributory negligence with 40 per cent of the negligence being apportioned to the deceased and 60 per cent as being that of the bus-driver. A sum of Rs. 25,920/- was awarded as compensation to the claimants they being the widow, five children of Kharaiti Lal Dhawan--deceased.

4. The controversy in appeal now is with regard to the quantum of compensation payable to the claimants.

5. Mr. Hemant Kumar counsel for the claimants in the first instance sought to assail the finding of contributory negligence. The contention raised being that as

the accident had taken place in the centre of the road, this was evidence by itself of the fault being wholly that of the bus-driver. Reliance here being placed upon Delhi Transport Corporation Vs. Harbans Kaur and Others, , where it was observed: "----The hitting of the pedestrian in the centre of the road is in itself evidence of rash and negligent act on the part of the driver. The driver ought to have noticed the pedestrians crossing the congested road and ought to have stopped the bus well within time to avoid the accident. The pedestrians cannot be made responsible or cannot be said to be negligent unless they started crossing the road suddenly.----"

6. It is well-established rule of caution rendered imperative by considerations of safety that before entering upon a road, to cross it, the pedestrian must look to both sides of the road and to proceed to cross it only with the reasonable certainty of being able to do so without causing any danger thereby to himself or to any other road-user. There is, of course, at the same time a constant and ever present duty of care upon drivers of all vehicles to avoid harm or injury to road users even if they happen to be in the wrong. In other words, if a pedestrian proceeds to go across a busy road without bothering about the state of traffic on it, at that time, he, no doubt, does so at his peril, but this provides no licence for harm being caused to him. If, however, he enters upon the road in such manner that an accident with him is rendered unavoidable, he cannot stand absolved from blame merely on the ground that the accident had taken place in the centre of the road. Seen in this light, the bus-driver, cannot in the present case, be held to have been wholly to blame for the accident here.

7. In dealing with this aspect of the case, it would be pertinent to note that all the three eye-witnesses to the occurrence deposed that their attention was diverted to the deceased only when the accident took place and not earlier. The bus-driver, on the other hand, was categorical in saying that the accident occurred, when the deceased came there running all of a sudden and struck against the right side of the bus. In other words, this was a case of a pedestrian suddenly coming in front of a bus leaving no time or opportunity to the bus-driver to avoid the accident.

8. As regards the Delhi Transport Corporation Vs. Harbans Kaur and Others, , it deserves mention that in that case, neither the bus-driver nor the conductor had appeared in the witness-box. The evidence led did not show that the accident was of such a nature that the driver of the offending vehicle could not have avoided it.

9. In the circumstances, as emerge, in this case, no exception can be taken to the finding of contributory negligence recorded by the Tribunal.

10. Turning to the issue of compensation, the Tribunal assessed the income of the deceased at Rs. 650/- per mensem. Counsel for the claimants could point to no evidence on record to warrant any different finding on this point. Where, however, the Tribunal fell in error was in calculating the dependency of the

claimants and in the multiplier to be applied in this case. Considering the circumstances of the claimants and the deceased, in the context of the principles laid down by the Full Bench in Lachhman Singh and Others Vs. Gurmit Kaur and Others, the dependency of the claimants must be taken to have been Rs. 500/- per mensem. After making an allowance for the contributory negligence of the deceased, this would come down to Rs. 300/- per mensem. The deceased being only 45 years of age, "16" would clearly be the appropriate multiplier to be applied. This works out to Rs. 57,600/- which may be rounded off to Rs. 60,000/-.

11. The compensation payable to the claimants is accordingly hereby enhanced to Rs. 60,000/-. Half the amount shall be payable to the widow of the deceased and the balance, in equal share to his five children. The amount payable to the minor claimants shall be paid to them in such manner as the Tribunal may deem to be in their best interest.

12. The respondents shall be jointly and severally liable for the compensation awarded.

13. This appeal is accordingly hereby accepted with costs. Counsel fee Rs. 300/-

14. Order accordingly.