(1986) 04 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Satish Nath Sharma and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 28-04-1986

Acts Referred:

Citation : (1988) 2 ACC 156 : (1987) 91 PLR 282

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

Bench : Single Bench

Judgement

S.S. Sodhi, J.—Several passengers travelling in the Haryana Roadways Bus HYA-2274 were injured and a few of them died too when it hit into a stationary oil tanker parked on the road side. This happened near Shahbad on August 7, 1979 at about 4 A.M. on the Grand Trunk Road between Karnal and Ambala. It was the finding of the Tribunal that the bus-driver was wholly to blame for the accident. A sum of Rs. 80,000/-was awarded as compensation to Usha Rani, the widow of Ashok Kumar-one of the persons killed in this accident; Rs. 56,600/- to the parents of the other deceased Bandi Venketswara Swarni and Rs 30,000/- were awarded to the claimant Satish Nath Sharma, for the injuries sustained by him in this accident.

2. The claim in appeal here is for enhanced compensation.

3. Taking up the claim of Usha Rani, the widow of Ashok Kumar deceased, the evidence on record shows that Ashok Kumar was only 28 years of age at the time of his death and his widow Usha Rani was about three years younger. Ashok Kumar was a graduate having done his B. Com. He was the sole proprietor of Palace Beauth Brassiers. According to PW 9 Usha Rani, her husband Ashok Kumar had an income of about Rs. 1,000/- to Rs. 1,200/- per month when they were married in 1975. This income bad gone upto about Rs. 2,000/- per month by the time of his death.

4. A reference to the evidence on record would show that during the year 1976-77, out of a gross profit of Rs. 26,744.50-p, the deceased had a net profit

of Rs. 5,038.12-p; in the following year 1977-78, the gross profits were Rs. 37,162.17 paise. The Tribunal, taking net profits to be about 1/5th of the gross profits as in the previous year, assessed the net profits for this year to be Rs. 7,500/-. Allowing for a gradual increase in the income in the years to come, the annual income of the deceased was taken to be Rs. 10,000/- per annum or slightly more than Rs. 800/- per month. The dependency of the deceased on this basis was assessed at Rs. 400/- per month. Here Mr. L.M. Suri, counsel for the claimants contended that even if it be taken that the income of the deceased was as assessed by the Tri bunal, namely, Rs. 10,000/- per annum the dependency deserved to be assessed at a considerably higher figure than Rs. 400/- per month, keeping in view the fact that there are certain fixed expenses of the household, like house-rent, water and electricity charges, furnishing and the like, which remain constant whether the household has someone coming in or going out. No exception can indeed be taken to this line of reasoning.

5. Compensation payable in such cases is to be assessed in keeping with the principles laid down by Full Bench in Lachhman Singh v. Gurmit Kaur 1979 P.L.R. 1. The special feature to bear in mind, in the present ease is the fact that the claimant Usha Rani is a young widow being only about 25 years of age at the time when her husband died. There was no child from this marriage. Some allowance has to be made to the possibility of remarriage of the widow, even though she had deposed that she had no intention of re-marry and that there was no custom of re-marriage in their family.

6. Taking an over-all view of the circumstances of the claimant and the deceased, in the context of the relevant factors as set forth in Lachhman Singh''s case (supra), the dependency deserves to be taken at around Rs. 750/- per mensem with the multiplier of ''16''. So computed, the compensation payable to the claimant would work out to Rs. 1,44,000/-. To this may be added another Rs. 3,000/- as the estimated funeral expenses of the deceased. The total compensation payable to Usha Rani thus works out to Rs. 1,47,000/- (Rs. One lac forty-seven thousand only), which may be rounded off to Rs. 1,50,000/- (Rs. one lac and fifty thousand only).

7. As regards the case of the other claimants, namely; the parents of Bandi Venktesawara Swami and the injured Satish Nath Sharma, the only assistance rendered by their counsel-Mr. Maharaj Baksh Singh was his mere presence in court, he otherwise being wholly unaware of the material on record, placing thereby the entire burden of examining the record upon the court.

8. Bandi Ventkesawara Swami was only 21 years of age when he was killed in this accident. He had joined a course in Master in Personnel Management and Industrial Relations at the Punjab University in July 1979. this was a two-years course. Earlier, he had obtained a Degree of Bachelor in Mechanical Technology from the College of Engineering at Kaki Nada. It has come on record that in June, 1979, he had got an appointment as a probationer Junior Engineer with Ram Das Motors Transport Limited, Kaki Nada in the grade of Rs. 750-1500 with other

allowances. The total emoluments of this post worked out to Rs 1600/- per month. The deceased, had, however, declined this offer and joined the course in Chandigarh. According to PW 27 Sunil Kumar, who had joiaed this course with the deceased, on completion, he could have been expected to have got a starting salary of Rs. 1600/- per month. He deposed in this behalf that he himself had joined as Personnel Officer with Jagaijit Cotton Textile Mills at a starting salary of Rs. 1600/- per month.

9. PW 23-B.L.N. Murti, father of the deceased deposed that he expected that after completing his course, the deceased would have been earning around Rs. 2,000/- per month and he would have provided financial support to his parents to the extent of Rs. 500/- to Rs. 700/- per month. It was on this basis that enhanced compensation was sought.

10. There can be no manner of doubt that the deceased was a bright young student having sound prospects of good and lucrative employ ment in the near future. He was, however, unmarried and it is to be expected therefore that had he lived, he would have got married and raised a family and his family expenses would thus have been a prior claim upon his earnings. This, in turn, would have correspondingly reduced the financial assistance that the deceased could be expected to have provided to his parents. It would also be relevant to note here that the deceased had two other brothers; both of them were employed and according to his father, they were both supporting the parents. The father is employed with the Police at a salary of Rs. 1200/- per mensem. Considering thus the circum stances of the claimants and the deceased, there is clearly no warrant for awarding any enhanced amount to the claimants here. The Tribunal rightly assessed the compensation payable to them at Rs. 56,600/-.

11. The claim in the case of Satish Nath Sharma, is in respect of the injuries sustained by him in this accident. According to the claimant, PW 3 Satish Nath Sharma, he suffered a fracture of his right leg resulting in a shortening thereof by about one inch. On account of this injury, he stated that he could not walk properly nor could he drive a car or scooter. Further, it was his statement that he could walk only on crutches till November, 1980, that is, till about 15 months after the accident. During this period, it was his statement, that he also suffered a heavy loss of business. He stated in this behalf that his earnings used to be about Rs. 5,000/- per month from Daulat Ram Industries of which he was the sole proprietor. This industry was involved in the manufacturing of equipment for Bharat Heavy Electricals. Due to the accident he could not attend the office till January 1981 and for this reason Bharat Heavy Electricals refused to give him any further orders.

12. A claim was also made by the claimant for the medical expenses incurred by him on his treatment. Exhibit PW 8/1 being the statement of expenses prepared by him for this purpose. Admittedly, none of the items mentioned in this statements, is supported by any receipt and it was for this reason that the Tribunal gave no credence to it.

13. As regards the injuries, there is the testimony of PW 12, Dr. O.P. Nagi, Head of Department of Orthopaedic at Post Graduate Medical Institute, Chandigarh, who deposed that the injuries suffered by this claimant were "closed transverse fracture both bones right led middle one-third". Further, he stated that according to X-ray, there was a fracture of the tibia of the communated variety with a butterfly fragment. The claimant, he stated, had a shortening of the right leg of 3/4th of an inch. In addition, the X-ray of the pelvis showed subleuSation of the right joint with digenerated changes. He assessed the disability of the lower leg at 30 per cent which he stated would be a permanent disability on account of which he would have a persistent limp. Further, that he would require pain killers throughout his life and would be handicapped in his daily routine work.

14. To prove loss of income, the claimant examined PW 13 Thakar Das, the Accountant of the firm and PW 19, C.B. Sharma his brother, who deposed that he looked after the business during the incapacity of Satish Nath Sharma.

15. A careful reading of the oral and documentary evidence led by the claimant to show loss of income resulting from his accident, would reveal that it does not really establish any such loss as could be attributed to this accident alone. It will be seen that the Income Tax Assessments for the years 1978-79 and 1979-80 had been completed, but they were not produced on record. The main loss was sought to be on account of the non-fulfilment by the due date of the orders placed upon the claimant, but it will be seen that they related to the period prior to this accident, meaning thereby that the date of delivery was prior to the accident. Such delay could by no means be attributed to this accident. None of the orders placed upon this firm by Bharat Heavy Electricals were produced on record. As for PW 19, C.B. Sharma, who was looking after the business in the absence of the claimant, he admitted that he had not looked into the accounts of the firm There is thus no material on the basis of which the precise extent of the loss of business suffered by the claimant, on account of this accident, could be computed.

16. Be that as it may, there can be no manner of doubt that Satish Nath Sharma did indeed suffer serious injuries which have now left him with a permanent disability. He is undoubtedly entitled to compensation for the % pain and suffering caused to him by this accident and the consequent loss of enjoyment of amenities of life in the years ahead. Some amount must also have been spent by him on his medical treatment which would include not only the coat of hospitalization and medicines, but also special diet and travel to and from the specialists that he consulted. Besides this, he must also have suffered some loss of income too during the period that he could not attend to his work. In the situation, however, as has arisen in this case, such loss can, at best be an approximation only in the context of the overall view of the total circumstances of the claimant. So considered, the claimant must indeed be held entitled to a total sum of Rs. 75,000/- under all these heads.

17. The compensation payable to the claimant-Usha Rani is conse quently hereby

enhanced to Rs. 1,50,000/- (Rs. One lac and fifty thousand only), to Satish Nath Sharma Rs. 75,000/- (Rs. Seventy-five thousand only). While that awarded to the parents of Bandi Venkateswara Swami is affirmed. The claimants shall be entitled to the amounts awarded along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded.

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

19. In the result, the appeals filed by Usha Rani and Satish Nath Sharma are hereby accepted while that of the parents of Bandi Venketswara Swami is dismissed. Usha Rani shall be entitled to her costs in this appeal. There will be no order as to costs in the other appeals.

