
(2013) 05 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 1675, 1676 and 1677 of 1995 (O and M)

Seema

APPELLANT

Vs

Sat Pal and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2014) ACJ 986 : (2014) 1 PLR 61 : (2013) 171 PLR 210

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Arvind Singh, for the Appellant; Vinod Gupta for Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The appeals are against the orders dismissing the claim petitions. Of the three cases, FAO No. 1677 of 1995 relates to death of a person, by name Bansi Lal, aged 26 years and the claimants were the widow, two minor children and parents. FAO No. 1675 of 1995 was a claim for injuries for minor Seema, aged 2 years, who had fracture in her leg. FAO No. 1676 of 1995 was a claim for injuries by a 27 years old woman, who had multiple injuries. The claimants had a common case that when they were travelling in an auto-rickshaw (three wheeler), owned by one Rakesh Kumar and driven by a person by name Pawan Kumar, who was a hirer of the vehicle, it dashed against a four wheeler coming on the opposite direction that was owned by one Raghbir Singh. The accident was spoken to by PW2-Balvinder Kaur, who was said to be travelling along with the daughter-Seema, who was injured and other family members and the accident took place when a four wheeler coming from the opposite side being driven rashly dashed against the three wheeler that capsized the three wheeler and caused extensive injuries to some and fatal injuries to some. Bansi Lal, who died, was the brother of PW2. PW2 gave evidence to the effect that treatment expenses, which, according to her, cost her about Rs. 25,000/-for herself and about Rs. 10,000/- to Rs. 12,000/- for the treatment of her daughter. The

person, who was said to be the driver-Pawan Kumar, was also examined on the petitioner's side itself, who contended as PW6 that he had taken the vehicle on hire from Rakesh Kumar and at the relevant time when he was driving the three wheeler, the four wheeler coming from the opposite direction, dashed against the three wheeler and that the front type of other vehicle came off" and dashed against a tree and remained immobilized at a distance of about 30 yards. The owner of the four wheeler denied the collision but merely contended that he was trying to avoid hitting a cow which was crossing and dashed against a tree and the vehicle stopped. The contention, therefore, was that there had been no collision at all with the four wheeler.

2. The Tribunal found that in a criminal case, the police investigation revealed that yet another person by name Raghbir Dass was named as the driver of the three wheeler. Evidently, it was a situation where the investigation could not really find who the driver of the three wheeler was. With an inconsistent evidence about the person, who was driving the three wheeler, the Tribunal held that the accident itself has not proved in the manner alleged and therefore proceeded to dismiss the petitions.

3. The approach of the Tribunal was wholly erroneous. The deceased and the claimants were travelling in a three wheeler and was admitted by all persons, who were contesting the case. The issue was whether there had been a collision with the four wheeler. The collision was spoken to by PW6-Pawan Kumar, left lingering doubt that was still possible, especially when police investigation revealed yet another person to be driving the three wheeler. The evidence of PW6 was that he dashed against the four wheeler and it was not believed. Even if the evidence of PW6 did not evoke confidence, the involvement of the three wheeler itself could not have been denied. The vehicle turned turtle and it had been seriously damaged. PW2-the claimant had given cogent evidence about the fact that she was travelling in the three wheeler. I have, therefore, no doubt in my mind that even if the collision with the four wheeler had not been established, the Tribunal ought to have found that whoever was driving the three wheeler was himself responsible and ought to have granted compensation against the driver/owner of the three wheeler.

4. The issue of fixing liability with the insurer was dependent on whether the driver of the vehicle had a driving licence. Pawan Kumar, who claimed that he was the driver, was unable to produce the driving licence and he contended that he had lost the same. On a suggestion to him that he never had a driving licence, that he merely stated that he had taken the driving licence from the DTO, Delhi but he had not even taken a duplicate for the driving licence. The inability on the part of the person claiming to be a driver in spite of a suggestion by the Insurance Company that he did not have a driving licence must be taken as discharging the liability of the insurer that the driver did not have a driving licence and if he had one, he would have produced the same or at least the copy of the driving licence and when he was actually facing a claim for damages for

injuries and death. I will, therefore, hold that Pawan Kumar as person, who was the hirer of the vehicle as he claimed, was responsible for the accident and the New India Insurance Company as the insurer of the vehicle shall be jointly liable to answer the claim for compensation. However, in view of the fact that the driver of the three wheeler was not shown to have had a driving licence, the liability of the Insurance Company shall be only to pay the amount as claimed and recover the same against Pawan Kumar.

5. I, therefore, set aside the finding of the Court below dismissing the proceedings and hold the above persons as liable for the compensation.

6. In FAO No. 1677 of 1995, the death was of a person, aged 26 years. The widow stated that her husband was a Mason, earning about Rs. 100/- to 125/- per day. The suggestion was that he was merely a labourer and his income was not more than Rs. 600/- per month. The learned counsel for the Insurance Company states that the accident had taken place on 06.11.1993 and during the relevant time, the income could not have been Rs. 3,000/- per month as contended by the learned counsel for the appellants. I take the average income per month accepting his status as a Mason to be Rs. 2,500/-, apply a deduction of 1/4th considering the fact that he had to support a family of widow, two children and parents, take the multiplier of 18 and find the loss of dependency at Rs. 4,05,000/-. I will add Rs. 5,000/- as loss of consortium and Rs. 5,000/- as loss of love and affection for the minor child and also provide for an additional amount of Rs. 5,000/- towards loss to estate and funeral expenses and hold the amount of Rs. 4,20,000/- as payable to the claimants. The liability shall be on the New India Insurance Company as the insurer for the three wheeler and it will have a right of recovery against Pawan Kumar. The entitlement of the claimants shall be apportioned amongst the widow, child and parents in the ratio of 2:2:1:1. The said amount shall also attract interest at 7.5% from the date of petition till date of payment.

7. As regards the claim for compensation in FAO No. 1675 of 1995, the claimant was a 2 years old girl, who had a fracture in her leg. The mother gave evidence to the effect that she had spent about Rs. 10,000/- to Rs. 12,000/-. I take the medical expenses to be Rs. 5,000/- and provide for additional amount of Rs. 5,000/- for pain and suffering and hold that the claimant to be entitled to Rs. 10,000/-.

8. As regards the claim in FAO No. 1676 of 1995, it was in relation to multiple injuries said to have been suffered by PW2 and her contention was that she had spent about Rs. 25,000/-. In the absence of any documentary evidence, I will provide a similar compensation of Rs. 10,000/- for pain and suffering, medical expenses, transportation and for attendant charges. The liability shall be similarly on the New India Insurance Company and with the right of recovery from Pawan Kumar after satisfying the claim. All the appeals are allowed to the above extent.