

(1988) 08 P&H CK 0120
In the Punjab And Haryana At Chandigarh

Shakunt and Others

APPELLANT

Vs

Lal Singh and Others

RESPONDENT

Date of Decision : 19-08-1988

Acts Referred:

Citation : (1989) 1 ACC 288 : (1989) ACJ 983

Hon'ble Judges : Manmohan Singh Liberhan, J

Bench : Single Bench

Judgement

Manmohan Singh Liberhan, J.—This appeal arises out of the award of the Motor Accident Claims Tribunal, Bhiwani. The claimants i.e. widow, two minor sons and a minor daughter claimed Rs. 2,00,000/- for the death caused by Lal Singh driver of bus No. HRF 5185 on account of his rash and negligent driving of the said vehicle. He was the employee of the respondent State.

Briefly the facts are:

2. That the deceased Ranjit Singh, aged about 36 years, was working as a Junior Engineer in Haryana State Electricity Board and was drawing a salary of Rs. 1338.50. He was travelling in the bus standing near the window on 7-5-1982. The bus was going from Hissar towards Delhi. When it reached near Mundhal, a tanker came from the opposite direction, while the bus was behind a tractor going ahead of it. The bus driver attempted to over take the tractor by swerving the bus towards right side. In order to attain the said object, he speeded up the bus. On seeing the tanker coming from the opposite direction, the driver suddenly applied brakes to the bus which was going at high speed, resultantly the window opened, as it did not bear the jerk. As a consequence of it, the deceased fell down from the bus and was crushed under the rear wheel of the bus.

3. The defendants admitted the accident, but contended that the death of the deceased had been caused on account of his own act, as he jumped from the running bus. There was no negligence on the part of the driver of the bus. The

Tribunal on appraisal of evidence, concluded that the death was caused due to the rash and the negligent act of the driver. Occular statement of PW 3 Udey Singh and PW 4 Giani Ram were relied upon. It was found that the statements found corroboration from admission made by RW 2 Baru Ram, who in his cross-examination accepted "the bus suffered the jerk on account of sudden application of brakes and the window suddenly opened up. The deceased fell down on account of the opening of the window as a result of the jerk." The Tribunal further disbelieved the evidence of the respondents witnesses i.e. the conductor who was on the back seat of the bus and RW 3. Mahabir who was working on water works near the place of accident.

4. Neither any criticism worth the name has been advanced by the learned Counsel for the State with respect to reasoning adopted by the Tribunal nor any fact was brought to my notice for disbelieving the witnesses of the claimants. The statements are convincing, natural and untainted. The witnesses did not have any interest in the deceased. Having read the transcript of evidence of claimants and respondent, I find no error in the finding arrived at by the tribunal with respect to the death having been caused, due to rash and negligent Act or driving of the driver. The defendants evidence lacks in necessary supporting evidence as well as the circumstances. RW 2 contradicts RW 3 on the material aspect i.e. that the deceased Jumped from a running bus which is the defence taken in the written statement. RW 3 possibly could not have observed the fact of the application of brakes.

5. Even otherwise, if the vehicle could have been within the control of the driver, it would have stopped at the spot and the deceased would have not been crushed under the rear wheel of the bus. Thus the facts and the circumstances supported by the oral evidence speaks that the death of the deceased had been caused on account of the rash and negligence driving of driver Lal Singh. This affirms the findings of the tribunal with respect to negligence and rash driving of the respondent resulting in the death of the deceased.

6. It is not disputed that the driver was serving under the respondent throughout who is liable for his rash and negligent act vicariously.

7. Learned Tribunal while disposing issue No. 2 which is with respect to quantum of damages observed that the deceased was getting salary of Rs. 1378.50 np. and the deceased was 42 years of age at the time of death. The claimant widow was found to be of 34 years of age with three minor children including a daughter. Admittedly, all of them were dependent on the deceased. It was further observed that there was saving of Rs. 300/- to Rs. 400/- per month out of the carry home salary amounting to Rs. 1100/- paid to the deceased. The Tribunal further affirmed that in view of the aforesaid saving out of Rs. 1100/- cash brought by the deceased as net salary to home only Rs. 700/- were being spent on the deceased himself and the claimants and by applying a further cut of 1/3rd, being the expenditure on the deceased, the tribunal computed the contribution of Rs. 466.66 np. per month towards the amount spent on the

claimants. Taking the age of the deceased into consideration and expectancy of life the Tribunal applied the multiplier of 12 and thus awarded Rs. 67,200/-.

8. Learned Counsel, for the appellants mounted criticism against the reasoning adopted with respect to amount of dependency and the multiplier applied. It is contended that the deductions made are arbitrary. No reason was pointed out by learned Counsel for the State as to why only the carry home salary is to be considered as income. Therefore the income shall be deemed to be the salary drawn by the deceased at the time of his death i.e. Rs. 1378 50 np. I find no plausible reason, to reduce the spending to Rs. 700/- out of the carry home salary by further deducting the saving of Rs. 400/- out of it. It is well settled by now by judicial pronouncements that while assessing the dependency, the benefit of pension, provident fund etc. derived by a person is not to be considered and no deduction on that account can be made while assessing the compensation. The Tribunal's reasoning that deduction of saving has to be made from the salary of the deceased are unsupportable and fallacious. Learned Counsel for the appellant further relied upon 1988 ACJ 281, 1985 SCJ 645 and 1988 ACJ 348. There can be no quarrel about the principle laid down in the judgments cited by the learned Counsel for the appellant. Deductions with respect to spending on the deceased himself is to be made, if at all from his total income. Taking into the totality of the evidence produced into consideration, the facts and the circumstances and the total income as last drawn salary, I am of the considered view that the dependency of the appellants cannot be reduced beyond Rs. 1000/- p.m.

9. Taking into consideration the age of the deceased who was hardly of 42 years and working as a Junior Engineer with the Electricity Board and the age of the claimants who include minor children, the longevity of the life, inflation etc., in my opinion, the conventional multiplier of 16 is a reasonable multiplier.

10. In view of my above observations, I find that the claimants are entitled to Rs. 1.92,000/- as compensation on account of the death caused by Lal Singh of the deceased on account of his rash and negligent driving. The claimants shall further be entitled to interest at the rate of 12% from the date of application till the date of payment. Thus the appeal is allowed. The award of the Tribunal is modified as observed above. The appeal is accepted with costs. Costs Rs. 500/-.