

(1990) 08 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 742 of 1984 and Cross Objection No. 6 of 1984

Shrimati Sharda Devi and Others

APPELLANT

Vs

Shri Bahadur Singh and Others

RESPONDENT

Date of Decision : 07-08-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1990) 98 PLR 663

Hon'ble Judges : J.V. Gupta, C.J;R.S. Mongia, J

Bench : Division Bench

Advocate : H.S. Sawhney, for the Appellant; L.M. Suri and Arun Kumar, for the Respondent

Judgement

R.S. Mongia, J.—This Judgment shall dispose of letter patent Appeal No. 742 of 1984, filed on behalf of the claimants-Shrimati Sharda Devi-mother, Shri Shamsher Singh Brother, and Miss Indu Rani daughter (Minor) sister, of the deceased, respectively as well as Cross-Objections No. 6 of 1984 filed by New India Assurance Co., Ltd. respondent No. 2, against the Judgment of the learned Single Judge in F.A.O. No. 344 of 1978 dated 23rd March, 1984, by which the learned Single Judge had awarded Rs. 15,000/-to the claimant along with interest at the rate of 12 per cent per annum from the date of the application. The claimants have claimed in the appeal that the compensation should be enhanced, whereas in the Cross-Objection the objector has prayed for the dismissal of the First Appeal from Order.

2. Briefly, the facts giving rise to this appeal are that on 2nd January, 1975 at about 11 PM. there was a head on collision between a car and a scooter, resulting in the death of Sangram Singh and injuries to Amarjit Singh Mankoo who were both on the scooter. This accident occurred on the road entering into Sector 6 from the side of Sector 17 just short of the crossing near House No. 5(sic)0 in Sector 16, Chandigarh.

3. The above said claimants claimed compensation on account of the death of Sangram Singh before the Motor Accident Claims Tribunal. The tribunal came to a finding that the accident had been caused by the rash and negligent driving of both the car and the scooter involved in the accident, and, consequently, the deceased Sangram Singh who was driving the scooter was equally liable for the accident and the claimants were not entitled to any compensation. It may be mentioned that in a separate claim petition filed by Amarjit Singh Mankoo, the injured, Rs. 5,000/- were awarded to him as a compensation for the injuries suffered by him in the accident.

4. After discussing the evidence at length, the learned Single Judge also came to the conclusion that having regard to the totality of the circumstances of the case and in the light of the evidence on record there is no escape from the conclusion that this was a case of contributory negligence with both the car driver and the driver of the scooter being equally to blame.

5. It will be interesting to note that in the claim application Sangram Singh deceased was named as the driver of the scooter, but when Amarjit Singh Mankoo came into the witness box as P.W. 7., he deposed that it was he who was driving the scooter and not Sangram Singh. The learned Single Judge rightly observed that such a variation in evidence and pleadings cannot be permitted nor indeed would it be safe to accept. Therefore, it was held that it was Sangram Singh who was driving the scooter at the time of accident.

6. The learned Single Judge also noticed that both Sangram Singh as also Amarjit Singh Mankoo were under the influence of liquor at the time of the accident. Dr. M.M. Goel who appeared as P.W.1 and who had conducted the post-mortem examination on the dead body of Sangram Singh deceased, clearly stated that there was smell of alcohol in the thorax, the lungs as also from the contents of the abdomen and the deceased has, therefore, clearly taken liquor in sufficient quantity too. Similarly, in the medical examination of Amarjit Singh Mankoo, there is a note that his breath smell of liquor and that he had been talking irrelevantly when he was examined in the hospital.

7. It was only the claim on behalf of the mother of the deceased, namely Shrimati Sharda Devi which was pressed in appeal before the learned Single Judge. At the time of the death of deceased she was only 43 years of age. Sangram Singh, according to the evidence on record, was about 21 years of age at the time of his death. He is employed with the Punjab and Sind Bank, Chandigarh as an apprentice with a stipend of Rs. 125/- per month. It has further come in evidence that after about six months he would have started getting salary of Rs. 500/- per month. While working as an apprentice, he was studying for his M. A. After taking into consideration all these facts that the deceased was already employed and a career in banking and taking into consideration further fact that the deceased if had lived would get married in due course and raised a family and the amount that he would have had available to support his mother would have been reduced further. After applying the principle

as laid down in a Full Bench case *Lachman Singh and Ors. v. Gurmit Kaur* 1981 P.L.R. 1, the learned Single Judge assessed the loss to the mother at Rs. 1,800/- per annum and applied 16 as the multiplier and the compensation calculated in this manner rounded to Rs 30,000/-. Since it has been found that it was a case of contributory negligence, the mother was held entitled to compensation of Rs. 15,000/- alongwith interest as stated in the opening paragraph of the Judgment.

8. The learned counsel for the appellants submitted that in times to come the deceased would have earned much more in his service carrer and would have also spent much more on the mother and would nor have just spent Rs. 150/- per month as found by the learned Single Judge. According to him, the multiplier of atleast 20 should have been applied and the dependability of the mother would not be less than Rs. 300 per month. The learned counsel cited *Mrs. Birinder Kaur Manhahia and Anr. v. The Haryana Urban Development Authority and Ors.* 1989 95 P.L.R. 88 and *Kanta Kathiala and Anr. v. Haryana Roadways, Chandigarh* 1989 (2) A.C.C. 211 and 1971 D.T.C. and *Anr. v Rattan Chand and Ors.* 1989 (2) A.C.J. 593 and *Om Parkash Bhatia and Anr. v. Jagir Singh and Ors.* 1989 (1) A.C.J. 68, *Arjan Singh and Anr. v. Mitter Paul Khanna & Co. and Ors.* 1989 (1) A.C.J. 487 and *Rajendra Kumari and Anr. v. Shanti Trivedi and Ors.* 1989 (1) A.C.J. 517, to contend that future prospects should have been taken into consideration as well as a higher multiplier than 16 should have been applied.

9. All the above mentioned cases have been decided on facts and circumstances of each case and no parallel can be drawn with the facts of the present case. We cannot lose sight of the fact that the deceased was under the influence of liquor when the accident was caused. It has been found to be a case of contributory, negligence. It has further to be noticed that the deceased has left a brother and sister who also in normal circumstances would look after their widowed mother. Taking all these facts into consideration, we find nothing wrong in the Judgment of the learned Single Judge in awarding the compensation as mentioned in the opening paragraph of the Judgment.

10. In view of what has been stated above, the Letter Patent appeal as well as Cross objections and dismissed. However, the parties are left to bear their own costs.