
(2011) 02 P&H CK 0324
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 59 of 1994

Smt. Balbir Kaur and Others

APPELLANT

Vs

Tarsem Singh and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Citation : (2011) 02 P&H CK 0324

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan J.—The appeal is against an award of dismissal of the claim in a case where the deceased, who was a Mason aged 39 years, was run over by the Respondent's bus. The fact of accident was admitted by the driver and the owner but contended that the accident had taken place only by the negligence of the cyclist. As regards the evidence by the Sarpanch Harjeet Singh, who spoke about the accident, the Court found that the negligence was established since the evidence of the eye-witness was unreliable. The further reasoning was that Harjeet Singh himself was not stated to be an eye-witness in the petition and therefore, the evidence could not be relied on. In the case of a collision between the motor cyclist and the cyclist, who were travelling on the road, I would place the issue of negligence to be established by the fact of death of the cyclist himself, for there ought to be a greater degree of care by the driver of the motor cycle. I will, therefore, set aside the finding of the Tribunal that the claimants had not established the issue of negligence. I would hold on the other hand that the driver of the motor cycle was responsible for the accident.

2. The deceased was a Mason and the evidence through AW-2, who was also a Mason, was that the deceased used to be earning Rs. 100/-per day. The Tribunal took the average income at Rs. 2800/-, made a deduction of 1/3rd and adopted a multiplier of 16 but chose to dismiss the claim petition on the ground that the negligence was not established. The counsel seeks for appraisal of compensation

in the manner laid down by the Hon''ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . I will take the income as taken by the Tribunal and re-work the compensation as per the formula given in the said decision. The total compensation is tabulated as under:

FATAL ACCIDENTS

Age

39years

Occupation

Mason

Claimants

Widow, 3 minor daughters and two minor sons

Heads of claim

Tribunal

High Court

Sl. No.

Amount (Rs.)

Amount (Rs.)

1

Income

2800

2800

2

Add, % of increase 30% / 50%

3

Average monthly income x 12

4

Deduction (1/2 , 1/3, 1/4, 1/5)

1/3rd

1/4th

FATAL ACCIDENTS

5

Multiplicand

2100

6

Multiplier

16

15

7

Loss of dependence

1,24,800

378000

8

Medical Expenses & Transportation

9

Loss of Consortium

17500

10

Loss to estate

5200

2500

11

Funeral expenses

2000

Total

1,30,000

4,00,000

3. The amount determined now shall also bear interest @7.5% from the date of the petition till the date of payment. The liability shall be against the Respondents jointly and severally and the insurance company shall be liable to indemnify the insured. The amount shall be distributed equally amongst the widow and the children.

4. The appeal is allowed to the above extent.