
(2008) 12 P&H CK 0138
In the Punjab And Haryana At Chandigarh

Smt. Jaitauni and Others	Vs	APPELLANT
Kapoor Singh and Others		RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Citation : (2009) 154 PLR 237 : (2009) 3 RCR(Civil) 530

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Judgement

Mahesh Grover, J.—This order will dispose of two appeals i.e. FAO Nos. 927 of 1988 and 926 of 1988.

2. These appeals are directed against the award of the Motor Accident Claims Tribunal, Gurgaon, dated 12.5.1988.

3. In FAO No. 927 of 1988 appellants are widow, three children and parents of deceased Rashid who lost his life in a vehicular accident which took place on 12.7.1986. Tribunal assessed income of the deceased as Rs. 500/- per month and assessed dependency as Rs. 300/- per month and 50% on account of finding of the Tribunal to the effect that the deceased was guilty of causing the accident to the extent of 50%.

4. In FAO No. 926 of 1989, appellant Nasir was injured and he was awarded a sum of Rs. 1,000/- as compensation.

5. Dissatisfied with the award, both sets of claimants are in appeal.

6. Learned Counsel for the appellant assailed the award of the Tribunal on the issue of contributory negligence and on the issue of quantum of compensation.

7. After hearing learned Counsel for the appellants and perusing the award, I am of the considered opinion that finding on the issue of contributory negligence does not warrant any interference in view of the testimony of Kapoor Singh, RW6 driver of the second vehicle involved in the accident and Nasir PW4 who is an eye

witness. RW6 has stated that he was going from Tarou to Dharuhera when a truck bearing No. HRG-5270 came from the opposite side at a high speed and was being driven at a wrong side and there were 32-35 passengers sitting in it. He said to have signaled with the light and with the horn but the truck dashed against the truck in a wrong way. PW4 Nasir conductor of truck bearing No. 5270 stated that the truck bearing No. 4412 came and struck from the opposite side and that this was due to contributory negligence of both the drivers. There is no evidence to suggest that there was any other factor which intervened as a result of which collusion took place implying thereby that the question of negligence has to be determined by applying the principle of *res ipsa loquitur*" which leaves no room for doubt that both the vehicles were guilty of having caused the accident and having contributed to the same and therefore the finding of contributory negligence to the extent of 50% each as recorded by the learned Tribunal is affirmed. There is no site plan or any photograph or any other material on record which could support the contention of the learned Counsel for the appellants who pleaded that the negligence was of the truck coming from the opposite side. There being no material to the contrary, the finding recorded by the Tribunal is correct and is affirmed.

8. In so far as compensation is concerned, award of the Tribunal deserves to be modified. Deceased Rashid was stated to be earning Rs. 1,000/- per month. However, the Tribunal assessed his income as Rs. 500/- per month. In the year 1985 even if the deceased is assessed as a labourer, his income would not be less than Rs. 1,000/- per month. Therefore, the claim of the appellants is not exaggerated by looking at it from different angles and income of the deceased is assessed as Rs. 1,000/- per month. However, keeping in view the large number of dependents, the appropriate course to be adopted while assessing the compensation would be unit system. The family consists of 7 persons and the principle is to deduct two units on account of personal expenses for each adult member. In this case, each unit comes to Rs. 142/- i.e. Rs. 284/- has to be deducted on account of personal expenses and dependency in this manner comes to Rs. 716/- which is rounded off to Rs. 720/- per month. The deceased was aged 25 years. Therefore, a multiplier of 17 would be just and appropriate in the given set of circumstances which is also in accordance with Schedule to Motor Vehicles Act, which is the guiding factor. In this manner, compensation comes to Rs. 1,46,880/-. However, this amount of compensation is slashed by 50% on account of contributory negligent attributed to the deceased to the extent of 50%, which comes to Rs. 73,440/-. An amount of Rs. 10,000/- is awarded on account of funeral expenses and another sum of Rs. 10,000/- for loss of estate etc. In this manner, total compensation comes to Rs. 93,440/-.

9. The enhanced amount of compensation shall be paid alongwith interest at the rate of 9% per annum from the date of filing of the petition till the date of its realization.

10. The enhanced amount of compensation shall be paid to the widow of the

deceased i.e. Appellant No. 1. In the event of her death, the enhanced amount of compensation shall be apportioned amongst the remaining appellants in equal shares.

11. The liability to satisfy the award remain the same as has been determined by the Tribunal.

12. In FAO No. 926 of 1988, appellant is Nasir who had said to have suffered injury in the said accident. There is no evidence of any permanent disability. Therefore, it would be safe to direct that he will be entitled to a total sum of Rs. 20,000/- which also includes compensation for pain and suffering.

13. The enhanced amount of compensation shall be paid alongwith interest at the rate of 9% per annum from the date of filing of the petition till the date of its realization.

14. The liability to satisfy the award shall remain the same as has been determined by the Tribunal.

15. With the aforesaid modifications, both the appeals stand allowed.