

(2005) 10 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 1043 of 1986

Smt. Kulwant Kaur and Others

APPELLANT

Vs

Maninder Singh and Others

RESPONDENT

Date of Decision : 19-10-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 92A

Citation : (2006) 2 ACC 328 : (2006) 142 PLR 811 : (2006) 2 RCR(Civil) 419

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : Mr. Ashok Aggarwal and Piyush Bansal, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Mohunta, J.—The widow, mother and the minor children of Gurdial Singh deceased have filed this appeal to challenge the judgment dated 31.7.1986 passed by Motor Accident Claims Tribunal, Jalandhar (for short "the Tribunal"), whereby the claimants have been awarded a meager sum of Rs. 15,000/- as compensation on account of the death of Gurdial Singh.

2. Succinctly, the facts giving rise, to this appeal are that on 4.9.1983 at about 8.30 p.m. Gurdial Singh aged 35 years, while riding a bicycle was run over by the truck bearing Registration No. PBJ-9669 near Manvir Chowk, Kapurthala. At that time Jaswant Singh was accompanying him on a separate cycle. After crushing Gurdial Singh under the wheels of the truck, the driver thereof sped it away. The occurrence was witnessed by Harbans Singh PW2-a rickshaw puller and Constable Surinder Singh PW4, who chased the offending vehicle in a private car and the truck was made to halt after firing. After stopping the truck, the driver thereof ran away. However, owner of the truck Maninder Singh (respondent No. 1) came forward and the claimants came to know that Gursharanjit Singh was driving the truck at the relevant time. Gursharanjit Singh driver was acquitted by the Criminal Court after giving him the benefit of doubt.

The claimants, i.e, the widow, mother, two minor sons and two minor daughters of the deceased filed claim application wherein it was alleged by them that deceased Gurdial Singh was a cycle repairer and was doing the business of cycle spare-parts. In this way, he was earning about Rs. 1200/- per month. The Tribunal while deciding the claim petition, held that though it stood proved that the accident was caused by the truck bearing Registration No. PBJ-9669 but the eyewitnesses had failed to fasten the liability for rash and negligent driving of the truck on Gursharanjit Singh, respondent No. 2, as he could not be identified by them at the time of occurrence in the circumstances narrated by them. In these circumstances after applying the provisions of Section 92-A of the old Motor Vehicles Act, the Tribunal awarded a lump sum of Rs. 15,000/- as compensation to the claimants and the liability for payment of the amount of compensation was fixed on the owner-respondent No. 1. The claimants have filed this appeal in order to challenge the judgment of the Tribunal.

3. It has been contended by the learned Counsel for the appellants that the Tribunal erred in holding that eyewitnesses had failed to identify the driver of the offending vehicle. He contends that when it stood proved that the truck bearing Registration No. PBJ-9669 was involved in the accident and Gurdial Singh deceased was crushed to death under its wheels, then it was but natural that its driver at the steering wheel was at fault and it was for the owner of the truck to tell as to who was driving the vehicle at the relevant time. It was further contended that Gurdial Singh deceased was the sole breadwinner of the family and the claimants were solely dependent upon him. Without taking into consideration the fact and circumstances of the case, the Tribunal awarded a consolidated sum of Rs. 15,000/- as compensation to the claimants by applying the provisions of Section 92-A of the old Motor Vehicles Act.

4. No one has put in appearance on behalf of the respondents despite service.

5. After hearing the learned Counsel for the appellants, I find merit in the contentions raised by the learned Counsel appearing on behalf of the appellants. There is no dispute to the fact that the truck bearing Registration No. PBJ-9669 was involved in the accident and Gurdial Singh was crushed to death under its wheels. There is also contradiction in the statements of the eyewitnesses that the truck was being driven at a high speed, rashly and negligently. The witnesses have also stated that the truck was chased by Surinder Singh, PW4-a Police Constable in a private car. After the truck was overtaken by the car, the driver of the truck ran away from the scene after leaving the truck on the road. The truck was impounded and Maninder Singh, respondent No. 1, claimed ownership thereof. Though Maninder Singh, respondent "No. 1, has stated before the Court that his truck was not involved in the accident, but in view of unshakable independent evidence adduced by the claimants, the Tribunal came to the conclusion that the truck bearing Registration No. PBJ-9669 was involved in the accident and Gurdial Singh has been crushed to death under its wheels. In view of this unchallenged findings of the Tribunal, there remains no doubt that Gurdial

Singh was killed because of rash and negligent driving of the truck bearing Registration No. PBJ-9669 and the claim petition filed by the claimants u/s 110-A of the Motor Vehicles Act deserves to be allowed. Merely because Gursharanjit Singh, respondent No. 2, who was allegedly driving the truck at the relevant time, was acquitted by the Criminal Court, the owner cannot escape his liability to compensate the claimants for the loss suffered by them on account of the death of Gurdial Singh.

6. As per the evidence adduced on record by the claimants, Gurdial Singh deceased was 35 years of age and was earning about Rs. 1200/- per month as he was involved in the cycle repair and spare parts business at the time of the accident. Though no evidence in contradiction thereof has been adduced either on behalf of the owner of the truck or the Insurance Company, yet I determine the monthly income of Gurdial Singh deceased, who was doing cycle repair and spare parts business at the time of the accident which took place in the year 1983 as Rs. 900/-. After deducting one-third as personal expenses of the deceased, the total dependency is assessed at Rs. 600/- per mensem or Rs. 7200/- per annum. The deceased was 35 years of age at the relevant time. Accordingly, the multiplier of "17" is to be applied as per the Second Schedule appended to the Motor Vehicles Act, 1988. After multiplying the annual dependency of Rs. 7200/- with 17, the total amount comes to Rs. 1,22,400/-. I also award Rs. 10,000/- for consortium and funeral expenses. Thus, the total amount of compensation to be paid to the claimants comes to Rs. 1,32,400/-. The claimants are also entitled to the grant of interest at the rate of 9% per annum from the date of the claim petition till realization. In case the amount of Rs. 15,000/- as awarded by the Tribunal has been received by the claimants, then the said amount shall be deducted from the amount of compensation to be paid to the claimants. The owner of the vehicle, i.e., respondent No. 1, and the Insurance Company, respondent No. 3, are held jointly and severally liable to pay the amount of compensation to the claimants.

7. In the present case, the accident had taken place in the year 1983. At that time claimant-appellant Nos. 2 to 5, who are children of Gurdial Singh deceased, were minor. By this time, all of them might have been quite grown up and settled in life in their own way. Thus, no share out of the amount of compensation is required to be given to them. Appellant No. 6 Smt. Kartar Kaur is the old mother of the deceased. Out of the amount of compensation, an amount of Rs. 25,000/- shall be given to her in lump sum. The rest of the amount of compensation shall be paid to claimant-appellant No. 1 Smt. Kulwant Kaur, widow of Gurdial Singh. In case Smt. Kartar Kaur, mother of the deceased, is not alive by this time, then the entire amount of compensation would be paid to the widow Smt. Kulwant Kaur.

8. The appeal is, accordingly, allowed. The judgment of the Tribunal is modified to the above extent.