
(1997) 03 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 747 of 1984

Smt. Manju Devi and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Motor Vehicles Act, 1939 — Section 110A, 95
Motor Vehicles Act, 1988 — Section 147

Citation : (1998) ACJ 747 : (1997) 117 PLR 86 : (1997) 4 RCR(Civil) 32 :
(1997) 3 RCR(Civil) 528

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : Gopal Mittal, Mani Ram and Jaswant Jain, for the Appellant; S.K. Mittal, for the Respondent Nos. 5 to 8, for the Respondent

Final Decision : Allowed

Judgement

H.S. Bedi, J.—This is an appeal at the instance of the claimants. It arises out of the following facts.

2. The deceased Krishan Kumar aged 28 was travelling in Haryana Roadways Bus No. HRO 4420 being driven by Khajan Singh respondent. The bus reached village Palri Panihar and after dropping two passengers resumed its journey towards Dadri. When it was at a distance of 1. or 1-1/2 furlongs from village Palri, an oil taker bearing registration No. HRM 984 driven by Daya Ram respondent came from the opposite direction. On seeing the oil tanker the driver of the bus diverted his vehicle on the left side in order to avoid a collision, but the truck being driven rashly and negligently came and hit the bus on its right side near the driver seat and grazed the entire right side of the bus from front to the rear end. The driver of the bus and several passengers were badly injured whereas Sub Inspector Munna Lal who was sitting on the third seat behind the driver died at the spot while Krishan Kumar sustained multiple serious injuries and became

unconscious. Krishan Kumar was admitted to the Civil Hospital Mohindergarh and thereafter shifted as an indoor patient to the Medical College Hospital Rohtak where he remained from 18th August, 1982 to 27th September, 1982 and was then shifted to Tirath Ram Shah Hospital Delhi and remained there as an indoor patient from 27th September, 1982 to 15th October, 1982. After discharge from the latter hospital he remained under the care of Dr. Hem Raj of Dadri from 15th October, 1982 till he died of the injuries suffered by him on 12th January, 1983. On the above facts two claim petitions were filed - one by the heirs of Sub Inspector Munna Lal and the second by the heirs of Krishan Kumar deceased. The heirs of Krishan Kumar have filed the present appeal claiming that as he was a government contractor earning 20 to 25 thousand rupees per year and as his relatives had spent Rs. 40,000/- on his treatment, a total compensation of Rs. 3 lacs was due. Both the petitions i.e. one filed by the heirs of Munna Lal Sub Inspector and the present one were consolidated and heard together. The owner and the driver of the oil tanker took the plea that the accident was inevitable as it had occurred on account of the sudden bursting of the front tyre of the oil-tanker. It was further stated that as the oil tanker had been insured with the National Insurance Company it was the insurer that was liable to satisfy the award, if any. The Insurance Company filed a separate reply and pleaded that its liability was limited to Rs. 50,000/- under the policy that had been issued to the owners of the oil tanker.

3. On the basis of the pleadings in the two claim petitions the following issues were framed by the Tribunal:

1. Whether the petitioners in the two claim petitions are LRs of Munna Lal and Krishan Kumar deceased respectively?
2. Whether Munna Lal and Krishan Kumar died as a result of rash or negligent driving of oil tanker HRM 984 by Daya Ram respondent?
3. Whether Munna Lal and Krishan Kumar died as a result of rash or negligent driving of bus HRO 4420 by Khazan Singh respondent?
4. Whether the front tyre of the oil tanker HRM 984 was new and the same got burst suddenly and the accident became inevitable as pleaded by Daya Ram respondent?
5. Whether Munna Lal and/or Krishan Kumar was leaning out of the bus HRO 4420 immediately before the accident and if so whether by so doing they contributed to the occurrence of their death., if so its effect?
6. In case the accident occurred because of contributory negligence of drivers of the two vehicles, what was the extent of their liability in causing the accident?
7. To what amount of compensation are the petitioners in the two claim petitions entitled as just compensation?
8. Whether the liability of the Insurance Company is limited to Rs. 50,000/- in

the whole?

9. Whether Daya Ram respondent No. 1 held a valid driving licence, if not, its effect on the liability of the Insurance Company?

10. Whether respondent Nos. 1 to 3 in claim petition No. 2 of 1983 (Rukmani Devi and Ors. v. Daya Ram and Ors. have colluded with the petitioners in the petition? If, so, its effect on the liability of the Insurance Co.?

11. Whether State of Haryana was a necessary party to the petition No. 2 of 1983? If so the effect of its non-joinder.

12. Whether the claim petitions or either of them are barred by limitation?

13. Whether the petitioners in claim petition No. 14 (Smt. Manju Devi and Ors. v. State of Haryana and Ors. spent Rs. 40,000/- or any part thereof on the treatment of Krishan Kumar deceased as alleged in para 43 of the claim?

On issue No. 1 the Tribunal held that the claimants were the legal representatives of the two deceased. On issue Nos. 2 to 6 the Tribunal gave a positive finding that the accident had occurred on account of the rash and negligent driving by the driver of the oil tanker and the respondents' version that it took place because of the bursting of the front right tyre of the oil tanker was not proved. Under these issues the Tribunal also held that the counsel for the respondents (owner and driver of the oil tanker) had made a statement that they would not press the plea with regard to the defence taken by them in case the claim was reduced to Rs. 50,000/- each by the two sets of claimants and that this offer had been accepted by the learned counsel for the claimants as well. While deciding issue Nos. 7 and 13 the Tribunal determined that whereas the dependency was somewhat higher but as the counsel for the two sets of claimants had confined their claims up to Rs. 50,000/- only, no other amount could be awarded to them. The Tribunal nevertheless granted a sum of Rs. 15,000/- in addition spent on account of the medical treatment suffered by the deceased, Krishan Kumar. The Tribunal further found under issue No. 8 that the learned counsel for the parties were agreed that the extent of liability of the Insurance Company extended to Rs. 50,000/- with regard to each of the two deaths. The other issues being non-material, need not be referred to. It appears that the heirs of Sub Inspector Munna Lal accepted the award of the Tribunal, but the heirs of Krishan Kumar have filed the present appeal.

4. It transpires from the record that while the appeal remained pending here some efforts had been made for effecting a compromise between the contesting parties though without success. This appeal is accordingly being disposed of on merits.

5. Mr. Mani Ram and Mr. Jaswant Jain the learned counsel for the appellants have urged that the compensation awarded by the Tribunal was wholly inadequate and that despite the undertaking having been given by the counsel before the Tribunal, this Court was entitled to enhance the compensation beyond Rs.

50,000/-. In this connection they have cited Byram Pestonji Gariwala Vs. Union Bank of India and others, to contend that whereas the claimants who were of the age of majority at the time when the statement was made before the Tribunal limiting their claim to the question of compensation, were bound by their statements but the claimants who were minors at that time could not be so bound. The Supreme Court while categorically laying down that a duly authorised counsel had an authority to bind his client on the issues that arose in the suit and that the client's consent before such a statement was made was not required. An exception, was, however carved out by the Supreme Court itself in the following manner:

Counsel's consent in certain circumstances such as duress or mistake may not bind the client.

"If counsel's consent is given under duress, the client will not be bound, as when counsel, acting for a client alleged to be of unsound mind but believing him to be of sound mind, consented to certain terms for the withdrawal of court of protection proceedings against the client because of his fear of the inconvenience and ill-health likely to arise to the client from confinement.

A compromise or order made by consent by counsel for the minor or other person under disability is not binding on the client, unless it is sanctioned by the court as being for the benefit of the client. The court cannot, however, enforce a compromise on a minor against the opinion of his counsel."

To my mind, the significant words are "unless it is sanctioned by the court as being for the benefit of the client". In other words, if the court comes to a finding that the compromise or order being made as a result of the statement of the counsel is for the benefit of the minor, the minor can then be bound by the statement. It is the admitted position herein that no such finding has been recorded by the Tribunal, As a matter of fact, from the evidence that had come on record it is evident that the claimants were entitled to a much higher compensation than what has actually been awarded to them.

6. Mr. S.K. Mittal, the learned counsel for the private respondents has however Urged that even assuming for a moment that the finding on the question of law raised was against him, yet it would be evident from the record that the liability of the Insurance Company was not limited to Rs. 50,000/- as had been found by the Tribunal but was as a matter of fact un-limited on account of the higher premium that had been paid by his party. I am, however of the opinion that this argument is not open to the learned counsel as while deciding issue No. 8, it had been decided on agreement of all the parties present in the case that the extent of liability of the Insurance Company extended to Rs. 50,000/- only, and in that situation, once an order had been made on consent the ratio of the judgment cited above would actually bind the Insurance Company as well.

7. Having once found that the claimants in the present appeal who were minors at the time of the accident were not bound by the consent limiting their claim to

compensation given by their counsel before the Tribunal a question now arises as to what compensation has to be awarded to them. In this connection, it has been highlighted by the learned counsel for the appellants that in the year 1979-80 the deceased had shown his income as Rs. 21,000/- and even if 1/3rd was deducted as his personal expenses it would leave a sum of Rs. 14,000/- for the benefit of the heirs. They have further urged that the multiplier of 20 should have been applied in such cases on account of the minority of the children and the young age of the widow. It has also been argued that Krishan Kumar had been in the hospital as an indoor patient continuously from 18th August, 1982 to 15th October, 1982 and thereafter as an outdoor patient under the care of Dr. Hem Raj of Dadri from 15th October, 1982 till his death on 12th January, 1983 and that the paltry amount of Rs. 15,000/- given by the Tribunal for medical treatment for almost five months was wholly inadequate. As against this, Mr. S.K. Mittal has urged that no enhanced compensation was liable to be paid.

8. After hearing the learned counsel for the parties, I am of the opinion that a substantial increase on the quantum of compensation is called for. Accepting the plea raised by the learned counsel for the appellants, I determine the annual dependency of the claimants at Rs. 14,000/- but confine myself to the multiplier of 16 as held by the Supreme Court and having so held, determine the compensation at Rs. 2,24,000/-. It is also clarified that it is only the two minor claimants i.e. appellant Nos. 2 and 3 who would be entitled to enhancement in their share of the compensation, meaning thereby they would be entitled to a total compensation of Rs. 1,12,000/- and after deducting a sum of Rs. 25,000/- already paid to them from the amount, the balance along would be payable.

9. I am also of the opinion that a of Rs. 15,000/- given towards medical treatment to Krishan Kumar is wholly inadequate. Judicial notice can be taken of the fact that he was admitted in the hospital continuously for almost three months and under treatment as an outdoor patient for about-two months thereafter. To say therefore that a sum of Rs. 15,000/- was adequate, is wholly unacceptable. It is true as has been held by the Tribunal that bills for only Rs. 6000/- produced in evidence but it cannot be lost sight off that where a relative lies dying on account of the injuries suffered in an accident, the anxiety of the relatives would be to save his life and not to collect evidence in support of compensation on account of his likely demise. I am, therefore, of the opinion that the two claimants would also be entitled to the payment of Rs. 30,000/- towards the medical expenses of Krishan Kumar and this amount would also be equally shared between the two. It is further clarified that the aforesaid amounts would be recovered from respondent Nos. 5 to 8, the owners of the oil tanker as the liability of the Insurance Company has been limited to Rs. 50,000/ it is also clarified that the interest would be payable as per the order of the Tribunal.

10. This appeal is allowed in the above terms.