
(2013) 08 P&H CK 0942
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 2082 of 2012 O and M

Smt. Nanhi and Others

APPELLANT

Vs

Sukhwinder Singh and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2014) 2 ACC 63 : (2013) 172 PLR 487

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Advocate : Harsh Garg, for the Appellant; D.R. Bansal, for respondent No. 3-Insurance Company, for the Respondent

Judgement

Vijender Singh Malik, J.—This is an appeal of the claimants seeking enhancement of compensation. The claim petition had been brought u/s 166 of the Motor Vehicles Act, 1988 seeking compensation in a sum of Rs. 15.00 lakhs on the death of Raj Kumar alias Leela in a roadside accident that took place on 24.4.2010. Learned Motor Accidents Claims Tribunal, Kaithal (for short, "the Tribunal") allowed the claim petition and awarded a sum of Rs. 1,41,500/- as compensation. Learned Tribunal has though, assessed a sum of Rs. 2.83,000/- as compensation, but holding it as a case of contributory negligence where the deceased and respondent No. 1 contributed equally, held the claimants to be entitled to Rs. 1,41,500/- as compensation. On 24.4.2010 at about 7.00 PM, Raj Kumar alias Leela alongwith Pardeep Kumar was going in Tata-407 bearing registration No. HR-12C-0433. He was driving the said vehicle. At about 9.30 PM, when they crossed Nagla Pulia, a tractor-trolley loaded with fodder (wheat husk) came from opposite side. It was driven in a rash and negligent manner and it had hit Tata-407 from the front side. Raj Kumar deceased fell on the road and suffered multiple injuries. Tractor driver ran away. Raj Kumar alias Leela was brought to General Hospital, Kamal, where he could not survive. The deceased was 50 years old and was working as a driver and his monthly income is claimed to be Rs. 10,000/-.

2. The respondents have controverted the averments of the claim petition. They have denied the accident to have occurred in the manner alleged by the claimants. They have also denied the entitlement of the claimants to compensation.

3. Learned Tribunal took the income of the deceased at Rs. 3,500/- per month and arrived at a sum of Rs. 42,000/- as annual income of the deceased. Since the deceased was unmarried, half of this amount was taken as annual dependency of the claimants. Taking the age of the deceased at 50 years, the multiplier of 13 was applied and a sum of Rs. 2,73,000/- was found to have been lost by the claimants in the death of Raj Kumar. A sum of Rs. 10,000/- was added to it in the name of funeral expenses and, consequently, a sum of Rs. 2,83,000/- was assessed as compensation. As already said, taking it to be a case of contributory negligence where the deceased contributed equally, a sum of Rs. 1,41,500/- has been awarded as compensation.

4. Learned counsel for the appellants has contended that the deceased has been a driver of a Tata-407. According to him, in the year 2010, an unskilled labourer also used to earn more than Rs. 3,500/- per month which is taken by learned Tribunal as the income of the deceased. According to him, the finding of the Tribunal regarding contributory negligence is also not based on evidence. He has further submitted that even adequate amount has not been added under the conventional heads and the Tribunal has awarded just a sum of Rs. 10,000/- in the name of funeral expenses.

5. Learned counsel for respondent No. 3 has submitted, on the other hand, that learned Tribunal has assessed adequate and proper compensation. According to him, it is a head-on collision and in a head on collision, the negligence can be taken as contributory. He has, thus submitted that no increase in the amount of compensation is admissible in this case.

6. It is true that the two vehicles collided head-on. However, every head-on collision would not give rise to a presumption that it was a case of contributory negligence and the negligence of both the drivers had been equal. The evidence has come that the Tata-407 was going at its proper side. No evidence has come from the other side. If the head-on collision had taken place on that side of the road which was proper side for Tata-407, then it was a case of negligence on the part of tractor driver. Therefore, the finding of learned Tribunal to the effect (that the deceased and respondent No. 1 contributed negligence to the cause of the accident and their negligence was equal, cannot be sustained. The accident is, therefore, found to be an outcome of rash and negligent driving of the tractor.

7. It is true that even an unskilled labourer had been earning Rs. 3,500/- per month on the date of accident i.e. 24.4.2010. If it was so, then admittedly, it being a case of the deceased being a driver of Tata-407, his income should have been taken above the income of unskilled labourer. I, therefore, take the income of the deceased at Rs. 5,000/- per month.

8. It is a case of death of a bachelor. All the claimants are sisters of the deceased. Now, a question arises as to whether they are entitled to maintain a claim on the death of their brother. u/s 166(1)(c) of the Act, in case of a death, the claim petition has to be brought by all or any of the legal representatives of the deceased. The word "dependent" is not mentioned in this provision. The claimants being sisters of the deceased were his legal heirs and, therefore, representatives of his estate. Learned Tribunal has rightly held them entitled to compensation.

9. However, the deceased being a bachelor, the dependency of the claimants cannot exceed half of that income. The dependency of the claimants, therefore, comes to Rs. 2,500/- per month and when multiplied with 12, it comes to Rs. 30,000/- per annum. The deceased was 50 years of age and learned Tribunal has adopted the multiplier of 13 in this case. Learned counsel for the parties have no dispute to the selection of the multiplier by the Tribunal in this case. Multiplying the annual dependency with 13, I find the claimants to have lost a sum of Rs. 3,90,000/- in the death of Raj Kumar alias Leela. Adding to it a sum of Rs. 10,000/- under the conventional heads, I find a sum of Rs. 4,00,000/- as compensation payable to the claimants. Resultantly, the appeal succeeds and is allowed enhancing the compensation from Rs. 1,41,500/- to Rs. 4,00,000/- which shall be payable to the appellants by the respondents with interest and in the manner as allowed by learned Tribunal in the impugned award.