
(1973) 09 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 121 of 1973

Smt. Parsani Devi

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 13-09-1973

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1973) ACJ 531

Hon'ble Judges : Prem Chand Jain, J; Harbans Singh, J

Bench : Division Bench

Advocate : L.M. Suri with Mr. R.M. Suri and Mr. S.C. Sibal, for the Appellant;
J.N. Kaushal with Mr. Ashok Bhan, S.P. Goyal for Respondent No. 4 and Mr.
Muneshwar Pari, for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh, C.J.—This order will dispose of L.P.A. 121 of 1973 and the connected L.P.As. 122 and 145 to 156 of 1973 which have arisen out of the same judgment of the learned Single Judge.

2. On 17th June, 1968 there was a collision between Haryana Government Roadways Bus No. HRA-1246 with a private jeep No. PNC-1557 travelling in the opposite direction on Kaithal-Narwana road at a short distance from village Kalayat. The jeep, which belonged to one Raj Kumar and was being driven by one Amar Singh, had been given, out of friendship, to Shri Chiranji Lal Bansal, a Superintendent in the Punjab and Haryana High Court, who, alongwith his wife, Smt. Bhagwanti, and two sons, Suresh Chander and Subhash Chander, was travelling in it together with Gora Lal, father of the owner of the jeep, and Prem Chand said to be a partner with Gora Lal in his business for running a liquor-vend. As a result of the collision the occupants of the jeep fared very badly, Chiranji Lal, Smt. Bhagwanti, Suresh Chander and Prem Chand, besides the driver, Amar Singh, died while Subhash Chander escaped with some injuries. No Claim was made for compensation on behalf of Amar Singh, the jeep driver. For

the deaths of Chiranji Lal, Smt Bhawagnti and Suresh Chander, the surviving sons of Chiranji Lal, namely Mangat Ram, aged 23 years, Ramesh Chander, aged 19 years, and Subhash Chander, aged 17 years, put in claim separately. A separate claim was put in by Subash Chander in respect of the injuries received by him. Smt. Parsani Devi, mother of Prem Chand, filed the fifth claim.

3. The Motor Accidents Claims Tribunal, Rohtak, came to the conclusion that both the bus driver and the jeep driver were negligent and they were held responsible for the accident in the ratio of 60 : 40. It was also held that the owner of the jeep had lent the vehicle free of any charges out of his friendship with Chiranji Lal deceased. No clear finding was given by the Tribunal holding the owner vicariously liable for the negligence of the jeep driver, but apparently the was assumed by the Tribunal, because it was held that the Life Insurance Corporation, the insurer of the jeep against third party risk, was liable to pay 40 per cent of the compensation awarded to the claimants. The total compensation awarded in respect of the death of Chiranji Lal was Rs. 73,873/-, in respect of the death of Smt. Bhagwanti was Rs. 14,280/- and in respect of the death of Suresh Chander was 10,000. Subhash Chander was awarded a sum of Rs. 8300/- after deducting the amount which had already been paid to him by the Haryana Government. Smt. Parsani Devi, mother of Prem Chand, was awarded a compensation of Rs. 19,200/-. It was further directed by the Tribunal that 60 per cent of the amount of compensation was payable by the State of Haryana while 10 per cent was payable by the Life Insurance Corporation of India.

4. Fourteen appeals were filed against the order of the Tribunal. Out of them, five appeals (FAOs. 87 to 91 of 1971) were filed by the Life Insurance Corporation of India contending that it was not liable to the passengers travelling in the jeep, because such a liability was not covered by the policy of Insurance. Another set of five appeals (F.A Os. 101 to 105 of 1971) was filed by the State of Haryana challenging its liability or the extent thereof in respect of the compensation awarded by the Tribunal. Four appeals (F.A Os. 67 to 69 and 76 of 1971) were filed by the claimant excepting Smt. Parsani Devi. All these appeals were disposed of by the Learned Single Judge by one and the same judgment.

5. The learned Single Judge held that the Life Insurance Corporation of India is not liable to pay any compensation in respect of the death or injuries caused to the persons travelling in the jeep, because they were travelling as gratuitous passengers and had been given the vehicle for use out of friendship by the owner. The five appeals filed by the State of Haryana were also partly allowed and it was held that the bus and the jeep drivers were equally liable to the extent of 50:50 and further in respect of Chiranji Lal, the compensation should have been Rs. 36,000/-, in respect of Smt. Bhagwanti and Suresh Chander Rs. 5,000/- each, in respect of the injuries to Subhash Chander Rs. 2,000/- and in respect of the death of Prem Chand Rs. 5,000/-. It was further directed that the State of Haryana will be liable to pay compensation to the extent of one half of the amount awarded by the learned Single Judge.

6. Fourteen appeals under Clause 10 of Letters Patent have been filed by the claimants against the order of the Lamed Single Judge. Though the learned counsel for the appellants argued for a long time that the Life Insurance Corporation of India was liable to pay compensation, yet, at the end he conceded that, in view of the terms of the Insurance policy, the Life Insurance Corporation of India was not liable to the claimants. The appeals filed against the Life Insurance Corporation of India, viz. L.P.As. 148, 150, 152 and 153 of 1973 are consequently, dismissed.

7. As regards the other appeals filed by the claimants against the order of the learned Single Judge reducing the amount of compensation and limiting the liability of the State of Haryana, the main argument of the learned counsel for the appellants was that the drivers of one bus and the jeep have both been held to be joint tortfeasors and it was due to "composite negligence" of both these persons that the accident took place. He urged that, so far as the aggrieved person is concerned, he can even (sic) an action under common law against one of the tortfeasors and recover "the whole of the compensation" due to him and that it would be open to the tortfeasor from whom the amount has been recovered, to take steps to recover the contribution from his joint tortfeasor. In this connection the learned counsel referred to pages 632 and 633 of "Salmond on the Law of Torts" fourteenth edition, where joint tortfeasors are defined as follows :--

Where the same damage is caused to a person by two or more wrongdoers those wrongdoers may be either joint or independent tortfeasors. Persons are to be deemed joint tortfeasors within the meaning of this rule whenever they are responsible for the same tort that is to say, whenever the law for any reason imputes the commission of the same wrongful act to two or more persons at once.

* * *

At page 633 of the book it is stated as under :--

If a number of persons, jointly participate in the commission of a tort, each is responsible, jointly with each and all of the others, and also severally, for the whole amount of the damage caused by the tort, irrespective of the extent of his participation.

* * *

8. Reference in this respect was also made to *Manjula Devi Bhuta and Another Vs. Manjusri Saha and Others*, where a Division Bench of the Madhya Pradesh High Court observed as follows:--

Where a person is injured without any negligence on his part but as a combined effect of the negligence of two other persons, it is not a case of contributory negligence but is a case of what is styled as composite negligence". If due to the negligence of "A" and "B" and "Z" has been injured, "Z" can sue both "A" and

"B" for the whole damage. * *

Reliance was placed by the Bench on a statement of law in Pollock on Tort, page 362, which was to the following effect:--

Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analyses to find out whom he can sue. He is entitled, of course, within the limits set by the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between those persons though in any case he cannot recover in the whole more than his whole damage.

See also in this respect two Single Bench judgments of this Court in Jagan Nath v. Ved Parkash F.A.O. 179 of 1965, F.A.O. 179 of 1965, decided on 27th August, 1971, by Dhillon J., and National Insurance Company Ltd. v. Smt Ram Bat Bajaj (1972) 74 P.L.R. 878, where it was held "that in case accident is on account of the negligence of the drivers of the vehicles involved in the accident and the passengers have suffered injuries, the Tribunal can award the damages against all of them jointly".

8. On this occasion, it was urged that admittedly here the damage has been done as a result of the negligence of both the drivers and it is open to the claimants to claim either from both or one of them and that the State of Haryana cannot be heard to say that only one-half of the compensation awarded should be recovered from it and the remaining amount should be recovered from the other person. It was, therefore, contended that whatever amount may be adjudged as a proper compensation to be paid to the claimants, no order can be passed that only one-half should be recovered from the State of Haryana and the other half from the other driver or, by vicarious liability, from the owner, because that is a matter between the joint tortfeasors themselves.

9. The learned counsel for the State of Haryana did not seriously contest this. He stated that if the owner can be held to be liable, then the State Government and the owner of the jeep would be jointly and severally liable for paying the compensation that may be awarded. It is not necessary for us to say whether the owner is liable. One thing is clear that the drivers were negligent and, therefore, it is a "composite negligence" of the drivers of both the vehicles and the affected claimants can recover the compensation from either or both of them. The State of Haryana has not disputed its vicarious liability for the negligence of its driver.

10. The learned counsel for the State of Haryana, however, vehemently urged that the driver of the bus, in fact, was not negligent and that there is no evidence on the record to show that there was any negligence on the part of the driver. He took us through the evidence and we feel that there is ample evidence on the record on the basis of which the Tribunal as well as the learned single Judge could have properly come to the conclusion that both the drivers were negligent. This is a finding of fact and we are not called upon to reappraise the

evidence in Letters Patent appeal. It is, therefore, held that both the drivers being composite or joint tortfeasors, the liability of payment of the compensation by the State of Haryana as the owner of the bus extends to the whole of the amount that may be awarded, it being left open to the State of Haryana to seek such contribution from such persons as it may deem fit.

11. Now we come to the question of quantum. In the present case, the three sons of Chiranji Lal are the legal representatives who are entitled to the estate of the three deceased persons, namely, Chiranji Lal, Smt. Bhagwati and Suresh Chander, being their father, mother and brother respectively. It has been established on the record that at the time of his death, Chiranji Lal was drawing Rs. 675/- per mensem. He had 43 months to go before his retirement. Taking into consideration the increments that he should have earned, his average salary per mensem had been calculated by the Tribunal as Rs. 700/- and this was not disputed before us. The learned Single Judge deducted Rs. 100/- out of this amount towards the house-rent that he must have paid for the accommodation and towards the contribution to the Provident Fund. Out of the remaining Rs. 600/-, he deducted Rs. 200/- towards the expenses that the deceased must be spending on himself. The balance of Rs. 400/-, it was concluded was being spent on the family and this would represent the monthly pecuniary loss to the members of the family for the period of four years that the deceased was to continue in service. The Learned Judge, without going into any calculations, felt that Rs. 30,000/- would be the proper compensation amount qua the death of Chiranji Lal.

12. It is now well settled that u/s 110-A of the Motor Vehicles Act, 1939, compensation can be allowed under both the heads that are covered under sections 1 and 2 of the Fatal Accidents Act, 1855. In Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, it was observed as follows:--

The cause of action u/s 1 and that u/s 2 (of the Fatal Accidents Act) are different. While u/s 1 damages are recoverable for the benefit of the persons mentioned therein, u/s 2, compensation goes to the benefit of the estate, whereas u/s 1 damages are payable in respect of loss sustained by the persons mentioned therein, u/s 2 damages can be claimed inter alia for loss of expectation of life

* * *

* * *

If a person taking benefit under both the sections is the same, he can not be permitted to recover twice over for the same loss. In awarding damages under both the heads, there shall not be duplication of the same claim, that is, if any part of the compensation representing the loss to the estate goes into the calculation of the personal loss under section 1 that portion shall be excluded in giving compensation u/s 2 and vice versa.

13. In paragraph 11, at page 8 of the report an illustration given makes the

matter quite clear and it is in these words :--

An illustration may clarify the position "X" is the income of the estate of the deceased, "Y" is the yearly expenditure incurred by him on his dependants (we will ignore the other expenditure incurred by him). "X"--"Y", i.e., "Z" is the amount he saves every year. The capitalised value of the income spent on the dependants subject to relevant deductions, is the pecuniary loss sustained by the members of his family through his death. The capitalised value of his income, subject to relevant deductions would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the entire loss caused to the estate, they cannot, claim again under the head of personal loss the capitalised income that might have been spent on them if the deceased were alive. Conversely, if they got compensation u/s 1 representing the amount that the deceased would have spent on them, if alive, to that extent there should be deduction in their claim u/s 2 of the Act in respect of compensation for the loss caused to the estate. To put it differently if u/s 1 they get capitalised value of "Y", u/s 2 they could get only the capitalised value of "Z" for the capitalised value of "Y" + "Z", i.e., "X" would be the capitalised value of his entire income.

14. While dealing with the case in hand this is what was observed by the Supreme Court in paragraph 13 of the judgment :--

In the instant case, u/s 1 of the Act both the courts gave compensation to plaintiffs 2 to 7 in a sum of Rs. 25,000/-. This sum was arrived at by taking into consideration, inter alia, the reasonable provision the deceased, if alive, would have made for them. u/s 2 both the courts awarded damages for the loss to the estate in a sum of Rs. 5,000/- That figure represents the damages for the mental agony, suffering and loss of expectation of life. There was no duplication in awarding damages under both the heads. * *

14. Now, in the present case, out of Rs. 700/- Chiranji Lal would have paid 10 per cent, i.e. Rs. 70/- per mensem towards the house, rent. Both the counsel agree that it may be taken that he was paying Rs. 30/- per mensem as his contribution to the provident fund. This left a figure of Rs. 600/- which he received net. It was urged by the learned counsel for the appellants that out of this amount it was unreasonable to expect that he would have spent one third on himself. There were six members of the family and he would be expected to spend on himself only a proportionate amount. We feel that there is a great deal of force in this contention and we hold that he could not be spending more than Rs. 100/- on himself. Consequently, there was a sum of Rs. 500/- per mensem available to him which he would have spent on his family. There is also the loss of contribution to the provident fund which is a loss to the estate and so is the amount of Rs. 70/- which was paid as monthly rent. Therefore, the total loss both to the members of the family and to the estate comes to Rs. 600/- per mensem. It is not necessary to split up the amount indicating what was the loss to the estate and what was the loss to the individuals, because the claimants are

the same. Taking Rs. 600/- as the monthly loss to the entire estate and the dependents, for 45 months, for which Chiranji Lal was still to serve, the amount comes to Rs. 27,000/-.

15. After retirement, Chiranji Lal would have received a pension of Rs. 270/- per mensem. In addition, it was urged that it was quite reasonable to expect that he would have got some sort of re-employment. Leaving this out of consideration as there is no evidence on the point and taking that he would have spent about Rs. 70/- per mensem on himself, there is a loss of Rs. 200/- per mensem to the estate after his retirement. The expectancy of life has been taken as 12 years after his retirement which is not unreasonable. For these 12 years the loss to the estate and to the dependants would be Rs. 28,800/-. Thus the total loss to the estate and to dependent comes to Rs. 27,000/- + 28,800/- = 55,800/-. To this amount we add a sum of Rs. 5,000/- towards the compensation for mental agony, which obviously must have resulted in physical agony also to the dependants for the loss of their father. The amount under this head was considered to be properly awarded in Gobald Motor Service case (Supra) and also in two Bench decisions of this Court in *M/s. Punjab Transport Cooperative Society Ltd v. Shri Sukhdip Singh and others* L.P.A. 586 of 1971, L.P.A. 586 of 1971, decided on 25th September, 1972 and *Smt. Ind Kaur v. Mohinder Singh* L.P.A. 345 of 1971, L.P.A. 345 of 1971, decided on 9th May, 1973. So we enhance the amount of compensation to Rs. 60,800/-.

16. Taking the case of Smt. Bhagwanti next, there is ample evidence on the record to show that she was cooking for the family and otherwise looking after the house and, after her demise, the claimants had to engage a servant for which the family had to spend Rs. 70/- per mensem. On the basis of this the Tribunal calculated compensation at Rs. 14,280/- which amount has been reduced by the Tribunal to Rs. 5,000/-. While reducing the amount this is what was stated by the learned Single Judge:--

Some of the claimants are expected to get married in the near future and there would be some one to look after the home. Keeping mind the fact that compensation is not to be awarded as a mere solatium, a sum of Rs. 5,000/- as damages for Smt. Bhagwanti's death may appear to be very liberal assessment.

On behalf of the appellants it was urged that Smt. Bhagwanti was aged 48 years and she was expected to live a useful life till the age of 65. Irrespective of the fact whether some of the claimants do or do not get married, the question will still remain that the claimants have been deprived of the services of their mother by her death. Taking her expectation of life up to the age of 65 years, the estate has suffered a pecuniary loss of deprivation of her services for this period apart from the question of mental agony that the claimants have suffered. At the rate of Rs. 70/- per mensem, for 17 years the amount of loss suffered comes to Rs. 14,280/-. Consequently, we fix the amount of compensation in respect of the death of Smt. Bhagwanti at Rs. 14,280/- as awarded by the Tribunal.

17. So far as the death of Suresh Chander is concerned, he was only 13 years of age. It is extremely doubtful if he would have given any pecuniary help to the claimants. A sum of Rs. 5,000/- has been awarded as compensation by the learned Single Judge and we feel that this is a reasonable amount for the mental agony and loss of love and affection and also for covering any remote chances of his contributing anything to the claimants.

18. This brings us to Subhash Chander's case. He is the injured person. The Tribunal awarded a sum of Rs. 10,000/- for his pain and suffering end for the injuries received by him no particular reasons have been given by the learned Single Judge for reducing this amount. Besides a fracture of the nose for which Subhash Chander remained in the Hospital for seven days, he had a number of other injuries on his person, Rs. 10,000/- cannot be said to be a very excessive amount which required interference in appeal. It is also on the record that he did very well in B.A. (Part I) and got first division but in B.A (Part II) he secured only third division. This may be partly due to the loss of love and affection of his parents by their death and it may be partly due to the pain and shock which he must have received on account of these injuries. In addition, the Tribunal awarded Rs. 1,108/- for medical expenses which has not been challenged and, after deducting Rs. 2808/- already received by Subhash Chander from the State Government, the Tribunal arrived at a figure of Rs. 8,300/-, and we restore the same.

19. Now with regard to Prem Chand's death, his mother, Smt. Parsani Devi, was awarded a sum of Rs. 19,200/-. This amount has been reduced to Rs. 5,000/- by the Learned Single Judge, Prem Chand was aged 25 years. Apart from other things, the learned Single Judge felt that he was likely to marry in the near future and thereafter he would not have been able to contribute much to the maintenance of his mother. One thing is clear that a person, even if he is a labourer, can earn something like Rs. 200 a month. Earlier Prem Chand was working as a partner with Gora Lal. Though there is no definite material on the record to arrive at the conclusion as to how much he was actually earning, the Tribunal ascertained that he would have been contributing, at least, Rs. 100/- per mensem for the maintenance of his mother. This is the minimum amount that is necessary for the maintenance of any person. Taking the life expectancy of the mother for 16 years, the Tribunal arrived at a figure of Rs. 19,200/-. Prem Chand was unmarried at the age of 25 and it is reasonable to expect that he would have continued to maintain his mother. The evidence on the record does show that he was capable of doing something as previously also he had joined hands with Gora Lal in a liquor vend. Though the net profits of the venture may not have been much, but the fact that he was actually working at the vend would also yield him some income. No cogent reasons have been advanced by the learned Single Judge for reducing the amount of compensation awarded by the Tribunal. It is now well settled that unless there are strong reasons for interference with the figure arrived at by the Tribunal, the same should not be normally interfered with. We, therefore, restore the compensation amount

awarded by the Tribunal to Smt. Parsani Devi.

20. In view of the above, all these appeals are accepted, as stated above, and we hold that, as the accident took place due to the "composite negligence" of the drivers of both the vehicles, the entire amount of compensation awarded to the claimants can be recovered from the State of Haryana as being one of the persons vicariously liable for the negligence of the bus driver. We enhance the compensation amount to be paid to the three sons of Chiranji Lal in respect of the death of Chiranji Lal to Rs. 60,800/- and in respect of the death of their mother Smt. Bhagwanti to Rs. 14.280/-. The compensation amount of Rs. 5,000/- awarded by the learned single Judge in respect of the death of Suresh Chander is maintained. So far as the compensation to Subhash Chander for the injuries received by him is concerned, the order of the learned Single Judge is set aside while that of the Tribunal, fixing the amount at Rs. 8,300/- is restored. Similarly, so far as the appeal of Smt. Parsani Devi is concerned, the compensation is restored to Rs. 19,200/- as awarded by the Tribunal. In the peculiar circumstances of the case, there will be no order as to costs.