
(1999) 03 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from the Order No. 407 of 1986 and Civil Miscellaneous No. 6761-CII of 1997

Smt. Reshma and Others

APPELLANT

Vs

Shri Subhash Chander and Others

RESPONDENT

Date of Decision : 05-03-1999

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (2000) ACJ 782 : (1999) 122 PLR 114 : (1999) 3 RCR(Civil) 45

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : C.S. Pasricha, for the Appellant; R.M. Suri, for the Insurance Co., for the Respondent

Judgement

G.C. Garg, J.—On the night between September 9 and 10, 1983, Jagdish Lal was driving truck No. HRN 6137 on Hissar-Sirsa Road. At about 4 a.m. on September 10, 1983, another truck bearing registration No. HRH 7256 being driven by respondent Subhash rashly and negligently came from the opposite side and collided with the truck driven by Jagdish Lal. Jagdish Lal sustained multiple injuries and died. The widow, four minor children and the mother of the deceased filed a claim petition seeking compensation for the death of Jagdish Lal.

2. Claims Tribunal after appreciating the evidence led before it came to the conclusion that the accident took place due to composite negligence of the drivers of both the trucks. Claims Tribunal further came to the conclusion that the deceased at the time of the accident was aged 28 years and was earning Rs. 900/- per month as truck driver. Dependency of the claimants was assessed at Rs. 600/- per month after coming to the conclusion that the deceased might have been spending a sum of Rs. 300/- on himself. Claims Tribunal chose a multiplier of 16. On calculation, the amount would come to Rs. 1,15,200/-. Claims Tribunal, however, in view of its finding that the accident took place due to composite negligence of the drivers of both the trucks, reduced this amount

by half and awarded a sum of Rs. 57,600A with interest by award dated December 16, 1985. Hence, this appeal at the instance of the claimants seeking enhancement of compensation.

3. Learned counsel for the appellants by reference to a decision of this Court in F.A.O. No. 288 of 1986 (The United India Assurance Co. Ltd., v. Bimlesh and Ors., decided on June 8, 1990, wherein the respondent-Assurance Company had challenged the award dated December 16, 1985 of the Claims Tribunal in respect of the same accident, submitted that the deceased was not negligent in driving his truck and the finding recorded by the Claims Tribunal that the accident took place due to composite negligence of the drivers of both the trucks has been reversed by this Court in the abovesaid appeal. Learned counsel also submitted that the deceased left behind his widow, four children and an old age mother and thus having regard to the number of dependents, the Claims Tribunal was not justified in coming to the conclusion that the deceased might have been spending Rs. 300/- on himself. Submission of the learned counsel, in other words, is that the Claims Tribunal ought to have assessed the dependency of the claimants at a higher amount.

4. I have gone through the judgment relied upon by the learned counsel for the appellants. On a perusal thereof, I find that the finding of the Claims Tribunal that the accident took place due to composite negligence of the drivers of truck Nos. HRN 6137 and HRH-7256 has been modified and it has been held that the accident took place due to rash and negligent driving by the driver of truck No. HRH-7256 alone. The relevant portion of the order in that behalf deserves to be noticed thus:-

"As the position is quite clear that truck No. 7256 wherein buffaloes were loaded, had gone on the wrong side of the road and caused the accident, it was driver of the said truck upon whom the entire blame rests. Leaving the correct side of the road, and going towards extreme wrong side of the road per se would raise an inference of negligence on the part of the driver. From the evidence referred to above, it cannot be said that the collision took place in the middle of the road and thereafter position of the trucks changed that they were shown on the katcha portion of the road. The accident, in fact, took place due to entire negligence of the driver of truck No. 7256. The other truck No. 6136 was going on the correct side of the road and on seeing the approaching truck from the opposite direction which was coming towards wrong side, it swerved towards extreme left hand side on the katcha portion of the road, it was there that the truck coming from the opposite side collided. In such circumstances there could be no liability of the driver or owner of truck No. 6137 for causing the accident and it was Subhash driver of truck No. 7256 which was loaded with buffaloes who took the truck towards wrong side and caused the accident and is liable for the same. The Tribunal, thus, was not justified in holding drivers of both the trucks liable for causing the accident. Finding of the Tribunal is, therefore, modified as above on the question of negligence."

5. In that view of the matter contention of the learned counsel deserves to be accepted and, thus, it is held that the accident in question took place due to rash and negligent driving of the driver of truck No. HRH-7256 alone.

6. As regards the dependency, as noticed above, the deceased is survived by his widow, four minor children and mother. Having regard to the number of dependents left behind by the deceased, it cannot be expected that the deceased might have been spending a sum of Rs. 300/- out of his total income of Rs. 900/-, on himself. On a consideration of the matter, I hold that the deceased at the most would have been spending a sum of Rs. 200/- per month on himself and the claimants were dependents on him to the extent of Rs. 700/- per month. Once this is so concluded, the annual dependency would come to Rs. 8400/- and by applying a multiplier of 16 as was done by the Claims Tribunal, the compensation payable to the claimants will work out to Rs. 1,34,400/-.

7. Award of the Claims Tribunal is thus modified to the extent that the appellants shall be entitled to total compensation of Rs. 1,34,400/- with interest at the rate of 12% per annum from the date of filing of the claim petition till payment minus the amount if any, already received by them. Appeal is disposed of in these terms.