
(2001) 02 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 838 of 1985

Smt. Sumitra

APPELLANT

Vs

Haryana Roadways, Jind Depot

RESPONDENT

Date of Decision : 24-02-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2001) 3 RCR(Civil) 676

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Mr. Harsh Kinra, for the Appellant; Mr. J.P. Dhull, Assistant A.G., for the Respondent

Final Decision : Partly Allowed

Judgement

Mehtab S. Gill, J.—The appellants have prayed that the quantum of compensation awarded to them, vide judgment dated June 7, 1985, is far less in comparison to what they have suffered.

2. The accident occurred on April 27, 1984 at the Bus Stand, Bhiwani, when a Haryana Roadways bus ran over the deceased Om Parkash, who was employed in front of the Bus Stand, Bhiwani in a Coffee House by the name of Lovely Coffee House. The deceased was going towards Bhiwani City on a cycle when the Haryana Roadways bus bearing No. HRJ-2823 driven by respondent No. 3, i.e. Dhajja Ram, coming from the Bus Stand, Bhiwani, at a fast speed, went out of control and ran over the deceased. In that accident, on the fateful day, apart from the deceased Om Parkash, two other persons also, who were rickshaw pullers, died on the spot. Several others were injured. This occurrence was witnessed by passers-by and one Shri Ramesh Ku-mar. First Information Report was lodged by Shri Ramesh Kumar in the police station. The appellants claimed compensation of Rs. 90,000/-

3. From the evidence, it has come out that the deceased Om Parkash was

employed as a servant in Lovely Coffee House, Bhiwani, and was drawing a salary of Rs. 280/- per month and along with this, he was getting food, clothes and lodging etc. at the expenses of the owner of Lovely Coffee House. All the appellants were dependants upon him at that time.

4. Learned counsel for the appellants filed Civil Miscellaneous Application No. 16715-CII of 2000 in F.A.O. No. 838 of 1985 stating that appellant No. 2, i.e., Jai Chand has since died. Vide order dated November 28, 2000, appellant Nos. 1, 3 and 4 were appointed as legal heirs of the deceased Jai Chand, who are already available in the Memo of Parties. Vide order dated November 28, 2000 passed in Civil Miscellaneous Application No. 16714-CII of 2000 in F.A.O. No. 838 of 1985, appellant No. 1-Sumitra Devi wife of Jai Chand was relieved to act as a guardian of the minors (applicant Nos. 3 and 4) as they have now become majors.

5. Going through the evidence of Dhajja Ram RW-1, he has admitted that he was driving the bus No. HRJ-2823, but at the same time, he has stated that when he reached the Bus Stand, Bhiwani, another bus came out of the Bus Stand and as it had come right in the road, all that he could do, though he was at a slow speed, was to put on his brakes, but in trying to stop the bus, he saw that the brakes had failed. He tried his level best to divert the bus, but could not do so and thus, the accident took place. He denied the suggestion that he was driving the bus rashly and negligently.

6. On the pleadings of the parties the following issues were framed :-

1. Whether Om Parkash died in an accident on account of rash and negligent driving of bus No. HRJ-2823 by respondent No. 3 Dhajja Ram ?

2. To what amount of compensation the petitioner are entitled and if so from whom ?

3. Whether the petition is not maintainable in the present form ? OPR

4. Whether the petitioners have no locus standi and cause of action to file this petition ?

5. Whether the petition is bad on account of mis-joinder and non- joinder of necessary parties ? OPP

6. Whether the petition merits dismissal for want of complete particulars ?

7. Whether the claim petition has not been properly valued for the purposes of court fee ?

8. Relief.

Shri Ramesh Kumar, an eye witness, came into the witness box as PW-5, and stated that he was standing near the bus stand, Bhiwani, he saw the whole accident which took place and also saw the driver of bus No. HRJ-2823 driving the bus in a rash and negligent manner. Rattan Lal (PW-6) supported his version. The witnesses produced by the respondents were - respondent No. 3 Dhajja

Ram, a driver of the bus, who came into the witness box as RW-1 along with Partap Singh, Conductor, RW-3, and another witness Mange Ram as RW-2. All these witnesses have reiterated that the accident had occurred due to failure of brakes. Mohinder Kumar, RW-4, a Mechanic, stated that the accident had occurred due to failure of brakes of the bus. Post Mortem Report was put on the file as Exhibit P-1.

7. I have gone through the statements of witnesses in detail and it is clear that the bus was being driven in a rash and negligent manner. Respondent No. 3-Dhajja Ram, a driver of the bus, was not careful, as he was driving the bus in a crowded place, without taking into consideration the consequences, that could follow.

8. Coming to the quantum of compensation, the deceased-Om Parkash was earning Rs. 280/- per month as stated by the witnesses, but at the same time, he was also getting free lodging, food and clothes from the owner of the Lovely Coffee House. The learned Tribunal has erred in stating that the deceased was spending Rs. 100/- per month on himself. As all his needs were being fulfilled by the owner of Lovely Coffee House, at the most, one can say that he might be keeping Rs. 30/- with him and giving Rs. 250/- to his old parents and his minor brothers to look after themselves.

9. Learned Tribunal has awarded Rs. 150/- per month for a period of 12 years which amount total comes to Rs. 21,600/-. I do not agree with this calculation. As already stated above, the amount which the appellants must be getting, would be Rs. 250/- per month. Even taking the monetary benefit that the appellants would have gained for a period of 12 years, the amount would have increased to Rs. 14,400/- plus Rs. 21,600/- which the learned Tribunal had already awarded. But calculating it in such a manner would not be a correct way since the deceased-Om Parkash was a young man of 20 years and taking his income to be Rs. 250/- per month after deducting Rs. 30/- on account of his personal expenses, the annual dependency towards his dependants would work out to Rs. 3000/- and applying a multiplier of 18 the compensation payable to the claimants would work out to Rs. 54,000/-.

10. In view of the above discussion, this appeal is partly allowed. The quantum of compensation is enhanced from Rs. 21,600/- to Rs. 54,000/- along with interest at the rate of 12% per annum from the date of the claim petition till the payment is made. The amount of compensation shall be payable by the respondents jointly and severally. Only appellant No. 1 Smt. Sumitra Devi mother of the deceased Om Parkash, would be entitled to get the amount of compensation to the tune of Rs. 54,000/-. The amount of compensation of Rs. 21,600/- which the learned Tribunal has awarded, if already paid, shall be deducted from the enhanced amount of compensation.

The award of the learned Tribunal is modified in the manner indicated above.

11. Appeal partly allowed.