

(2000) 05 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 751 of 1985

Smt. Usha Dubey and Others

APPELLANT

Vs

Krishan Jeewan Jain and Others

RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2001) 1 ACC 608 : (2001) ACJ 984 : (2000) 126 PLR 567 : (2000) 4 RCR(Civil) 619

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Ashok Jindal, for the Appellant; L.M. Suri and Deepak Suri, for the Respondent No. 2 and M.C. Berry, for the Respondent

Judgement

Jawahar Lal Gupta, J.—On March 4, 1983, Sanjay Dubey - a Young man of 23 years was going from Sector 23 towards Sector 24 in Chandigarh. He was hit by Jeep No. Temp./MRB-232. He was got admitted in the PGI. Unfortunately, the injuries proved fatal. He succumbed to the injuries and passed away on the night intervening March 8/9, 1983. The parents and three minor children filed a claim petition u/s 110-A of the Motor Vehicles Act. Mr. Krishan Jeewan Jain who was then working as an Executive Engineer was alleged to be driving the jeep. The Director, Sutlej Yamuna Link Canal and the State of Punjab were impleaded as respondents.

2. The claim was controverted inter alia on the ground that Mr. Krishan Jeewan Jain was not driving the vehicle. In fact, the jeep was being driven by Ram Partap-Driver. Since the driver had not been impleaded as a party, the claim could not be sustained. It was further placed that Ram Partap had not caused any accident by his rash or negligent driving.

3. On behalf of respondent Nos. 2 and 3, a separate written statement was filed. It was inter alia averred that the jeep had dropped Mr. K.B. Bandu, Sr. Design Engineer at about 5.30 PM in Sector 23. It had struck against the hedge of a

Government quarter at a distance of about 100 Mtrs. Mr. Bandu had made entries in the Log Book and advised the driver to take the jeep back to the office. Mr. Krishan Jeewan Jain was at that time sitting on the front seat. The other allegations were denied for want of knowledge.

4. On the pleading of the parties, the following issues were framed:-

1. Whether Sanjay Dubey died in a motor vehicle accident on 4.3.1983 as a result of rash and negligent driving of jeep No. Temp MRB-232 by Krishan Jeevan respondent No. 1? If so, to what effect? OPP

2. If issue No. 1 is proved, to what amount of compensation are the claimants entitled to and if so, against whom? OPP

3. Whether claimants No. 3 to 5 are not entitled to claim compensation? OPR-1.

4. Relief.

5. On Issue No. 1, the Tribunal held that the accident had occurred on account of rash and negligent driving by Mr. Krishan Jeewen Jain-respondent No. 1. On Issue No. 2 the Tribunal found that the deceased was earning an amount of Rs. 800/- per month. After allowing an amount of Rs. 300/- per month for his personal expenses, it was observed that he could easily be expected to part with a sum of Rs. 500/- for the claimants by way of their assistance in running the household expenses." In this way, the annual dependency of the claimants was fixed at Rs. 6000/-. By applying a multiplier of 16, a compensation of Rs. 96,000/- was held to be due to the claimants. Issue No. 3 was decided in favour of the claimants. As a result, the claim petition was allowed. The claim ants were held entitled to an amount of Rs. 96,000/- from respondent Nos. 1 and 3 who were held responsible jointly and severally. The claimants were also awarded costs and interests @ 12% from the date of the filing of the claim petition viz August 3, 1983.

6. The claimants as also Mr. Krishan Jeewan Jain and the State of Punjab have filed separate appeals.

7. On behalf of the claimants, it has been asserted that the compensation as awarded by the Tribunal is grossly inadequate. On behalf of the State of Punjab, Mr. Berry has submitted that Mr. Krishan Jeewan Jain was unauthorisedly driving the vehicle. He is, thus, liable to pay the compensation and that the burden should not be placed on the State. On behalf of Mr. Krishan Jeewan Jain who has filed F.A.O. No. 721 of 1985, Mr Lalit Mohan Suri, learned counsel has vehemently contended that he was not driving the vehicle. The jeep was being actually driven by Ram Partap-Driver.

8. After considering the perspective submissions, the following two questions arise for consideration:-

(i) Who was driving the jeep?

(ii) Is the compensation awarded to the claimants inadequate?

9. Reg(i) Who was driving the jeep?

A perusal of the written statement filed by Mr. Krishan Jeewan Jain shows that he did not deny the fact that he was in the jeep. His claim was that the jeep was being driven by Ram Partap-Driver. He had further taken the plea that the driver had caused no accident. It was suggested that the deceased had come in front of the jeep due to his own negligence.

10. Ram Partap the alleged driver has appeared as a witness. He stated that he was on duty on March 4, 1983. He had left the office at 5.05 PM. He had to drop Mr. Krishan Jeewan Jain, Executive Engineer and Shri Bandu at their houses. On the way, Mr. Krishan Jeewan Jain had asked him to stop the jeep and told him that he would drive. He had refused to obey this order. On this, Jr. Jain had threatened him and said that he will be turned out of service. He was asked to sit on the back seat. This direction was obeyed. Thereafter, at a distance of 50-60 yards, Mr. Jain had caused the accident. He had struck against two pedestrians. One had fallen away. The other one was run over by the jeep. He also stated that Mr. Jain had not blown the horn. The testimony of this witness is fully corroborated by Baljinder Singh who appeared as PW4. He had categorically stated that the jeep was being driven by "Shri Krishan Jeewan Jain, Executive Engineer". Shri Jain had "fled away from the spot.....one Rakesh Kumar who was present nearby ran after Shri Krishan Jeewan Jain and caught hold of him and brought him to the spot." He has also described the manner in which the injured was taken to the Hospital. Nothing was brought out in cross-examination which may cause any doubt whatsoever regarding the truthfulness of the statement made by the witness. Still further, even Rakesh Kumar who had caught hold of Mr. Krishan Jeewan Jain has appeared as PW7. He has fully corroborated the testimony of the two witnesses referred to above. His presence at the spot is further corroborated by the fact that he had accompanied the injured to the PGI. His name finds mention in the record. Taking these facts cumulatively, it is clearly established that Mr. Krishan Jeewan Jain was driving the jeep. Still further, it is also established that he had hit the two pedestrians from behind. One of them was run over and had suffered serious injuries which had ultimately proved fatal. It is also clear that he had not even blown the horn.

11. Taking all the facts cumulatively, the answer to the first question has to be against the appellant viz. Mr. Krishan Jeewan Jain.

12. Reg (ii) Is the compensation awarded to the claimants, inadequate.

It has been found by the Tribunal that the deceased was earning an amount of Rs. 800/- per month. It is also the admitted position that besides the deceased there were five other members of the family. In this way, the share of each person would be about Rs. 135/-. Even if the deceased is allowed a little extra amount for his personal expenses, it would not be fair to deduct an amount of Rs. 300/- per month as his personal expenses. In my view, an amount of Rs.

150/- shall suffice as the personal expenses of the deceased. This would leave the dependency of the remaining members of the family at Rs. 650-00 P.M. or Rs. 7,8000/- per annum. The deceased was 23 years old. He was healthy. Applying a multiplier of 18, the amount of compensation would work out to Rs. 1,40,000/-. Some amount also deserves to be allowed on account of expenses in the Hospital and on the funeral. An amount of Rs. 4600/- is allowed on this account. As a result, the total compensation is fixed at Rs. 1,45,000/-.

13. Mr. Suri contends that the Executive Engineer is entitled to drive a Government vehicle. He submits that the amount should be paid by the Government to which the vehicle belonged. Mr. Berry submits that the jeep was being driven by Mr. Krishan Jeewan Jain. He had unauthorisedly taken the jeep from the driver. The burden for the default of the officer should not be passed on to the State Government or the tax payer.

14. The evidence on record clearly shows that Ram Partap the duly authorised driver was present. He was initially driving the vehicle. Mr. Krishan Jeewan Jain had forced him to sit at the back and had taken over the driving himself. This witness was cross examined at length by the counsel for Mr. Jain. However, nothing was brought out which may even remotely suggest that the witness was not telling the truth. The suggestion to the witness was that he had caused the accident and that he had fled away from the place with the Log Book. He had denied both the suggestions. Then it was put to the witness that he had not gone with the injured to the Hospital. He had denied even that. He had also denied the suggestion that Mr. Krishan Jeewan Jain was not driving the vehicle. His testimony is consistent and clear. It inspires confidence. I find no reason to doubt it. Still further, Mr. Krishan Jeewan Jain had appeared as RW1. He had stated that he did not "know the art of driving any vehicle."

15. In view of the above, it is held that the jeep was being unauthorisedly driven by appellant-Mr. Krishan Jeewan Jain. He should thus, bear the burden of paying the compensation. As a result, FAO No 751 of 1985 filed by the claimants is allowed. The compensation is enhanced to Rs. 1,45,000/-. They would also be entitled to interest as awarded by the Tribunal. The appeal filed by Mr. Krishan Jeewan Jain viz FAO No. 721 1985 is dismissed. In view of the findings recorded above, it may be open to the State to recover the money from Mr. Krishan Jeewan Jain. The liability to pay the compensation would be joint and several so far as the State and the officer are concerned.

All the three appeals are, accordingly, disposed of. No costs.