

(1973) 05 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 69 of 1970

Sood (Sud) and Company Kulu

APPELLANT

Vs

Surjit Kaur and others

RESPONDENT

Date of Decision : 30-05-1973

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A

Citation : (1973) 05 P&H CK 0011

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : M.L. Sarin with Mr. H.L. Sarin, for the Appellant; Laxmi Grover and Sh. V.P. Gandhi and Sh. H.S. Sawhney, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—Gurpal Singh deceased was run over on a public road at 4.45 p.m. on 11th March, 1967 by a petrol tanker No. PNN 830 driven by Lachhman Singh and he died instantaneously on the spot.

2. The wife of the deceased on her behalf as also on behalf of her two minor sons and one daughter from the loins of the deceased through Claim Petition No. 18 Add. I of 1968, claimed Rs. 75,000/- from Sood and Company (respondent No. 1), the owners of the tanker; Lachhman Singh (Respondent No. 2) driver of the offending vehicle; and Oriental Fire and General Insurance Co. Ltd. (respondent) No. 3) with which the said tanker was insured, on account of the death of the deceased caused by Lachhman Singh driver by his rash and negligent driving of the offending vehicle.

3. The parents of Gurpal Singh deceased through a separate claim petition (Claim petition No. 19/Add. 1 of 1968) claimed Rs. 30,000/- from the abovesaid respondents on the basis of the same came of action.

4. The deceased was claimed to be 35 years old and drawing a salary of Rs. 264/- p.m. as mechanic in the Railways.

5. Respondents No. 1 and 3 resisted the claims, inter-alia, on the ground that the accident in which the deceased lost his life occurred as a result of his own negligence in that despite warning given by the driver by blowing the horn the deceased tried to cross the road behind the vehicle and while so doing slipped on the gravel lying on the road and came under the wheels and died.

6. The Tribunal consolidated both the petitions and the evidence, which was common, was received only in one petition and it disposed both of them by one order.

7. The Tribunal held that the accident occurred as a result of rash and negligent driving of Lachhman Singh, respondent No. 2 (the driver of the offending vehicle). The plea regarding limitation was not pressed and the contention on behalf of the insurance Company respondent No. 3, that the insurance policy did not cover the vehicle as the accident did not take place on a public road was negatived. The Tribunal assessed Rs. 80,000/- as the compensation amount which it apportioned amongst the claimants as follows:

Rs. 7,500/- for father;

Rs. 7,500/- for mother;

Rs. 16,250/- for each claimant in the other petition i.e., the widow and her three children.

The over-all liability of the insurance Company i.e. respondent No. 3, was fixed at Rs. 20,000/- For the balance, the remaining respondents were made jointly and severally liable.

Respondent No. 1, i.e., the owner of the offending vehicle, has challenged the said award in this Court, by two separate appeals (FAOs 69 and 70 of 1970) which will be disposed of by this judgment.

8. The learned counsel for the appellant-Company primarily addressed the Court regarding the quantum of compensation awarded and the principle that has been observed in determining the same, but the same time he did challenge, though faintly, the finding of the Tribunal regarding the issue of negligence as well. He urged that from the perusal of the order of the Tribunal it appears that it wrongly placed the onus on the respondents to establish that the accident did not occur on account of rash and negligent driving by Lachhman Singh, respondent No. 2.

9. I am afraid I do not find myself in agreement with the interpretation that the learned counsel has sought to put on the award. The Tribunal has discussed the evidence of the witnesses, adduced by the claimants, who furnished the ocular version of the occurrence. One of them, i.e., Hem Raj had lodged the F.I.R. with the police. The Tribunal found their testimony as wholly reliable and accordingly placed reliance thereon.

10. The respondents examined six witnesses RW 5 and RW 6 did not support the respondents regarding the sequence of the accident. The testimony of other

witnesses was discarded on the ground of their being employees of respondent No. 1 and thus interested. In addition to that, their testimony stood materially contradicted by RW 5 and RW 6. The above assessment of the testimony of the witnesses adduced by both the sides, in my opinion, does not leave any room for an argument that the Tribunal has placed onus regarding the issue of negligence on the respondents. I entirely agree with the finding of the Tribunal and the reasoning thereof as also to its assessment of the testimony of the eyewitnesses and I affirm the same.

11. Now I turn to the question of compensation which has been hotly contested on behalf of the appellant

12. It has been contended by the learned counsel for the appellant that the quantum of compensation has to be determined with reference to the contribution that the deceased was likely to make for the maintenance of his dependents and the pecuniary future loss to the dependents as a result of the death of the deceased. It was sought to be argued that the claimants under the Motor Vehicles Act claimed compensation as dependents of the deceased and not as representatives of the deceased's estate and so it is the period of the dependency of the claimants that should be taken into consideration and not the period representing the remaining life expectancy of the deceased i.e., the compensation that each dependent is entitled to receive has to be calculated by capitalising their monthly dependency for the years of their dependence. The children, both male and female, asserts the learned counsel, be taken to be entitled to be maintained by the deceased only upto the age of 18 years and if that be so, then the compensation calculated on the basis of the period of their dependence would come to much less than the amount determined by the Tribunal by capitalising the monthly contribution of the deceased for the period representing the remainder of his life expectancy. The learned counsel sought support for the above mode of calculation of the compensation from the three decisions of the Delhi High Court reported in *Ishwari Devi v. Union of India* 1968 ACJ 141, *Chander Mohan and Others Vs. D.C. Kapur and Others*, *Ramji Das and Another Vs. Sham Singh and Others*, , and one decision of this High Court reported as *Parkash Vati and Others Vs. The Delhi Dayal Bagh Dairy Ltd.*,

13. The other line of argument that the learned counsel pursued to mitigate the damages was by claiming deductions on account of lump sum payment and for the uncertainty of life, as also by claiming deductions of the amount of gratuity and the provident fund received by the claimant from the amount of compensation so determined. He sought to draw (sic) for his above submission from *Joginder Nath and Another Vs. Shanti Devi and Others* , *Parkash Vati and Others Vs. The Delhi Dayal Bagh Dairy Ltd.*, and *Major Jagjit Singh v. Kartar Singh* (1973) 75 PLR 360.

14. From the first line of argument two propositions of law emerge for consideration (1) whether the relevant provisions of the Motor Vehicle Act envisage a norm of liability different from the one provided by the provisions of

sections 1-A and 2 of the Fatal Accidents Act and (2) in case the answer to the first proposition is in the affirmative, then whether the legal representatives claiming compensation under the Motor Vehicles Act can lay claim to compensation which, strictly speaking, is available to the estate of the deceased to which they become entitled only as its inheritors.

15. A Division Bench of this Court in Damyanti Devi and Others Vs. Sita Devi and Others had an occasion to consider questions almost *pari materia* with the ones posed by me above and it had held, as would be evident from the following observations appearing in that judgment, that sections 110-A to 110-F of the Motor Vehicles Act provide only the machinery and procedure for realising of compensation for injuries or death resulting from accidents involving motor vehicles and do not provide any, much less new, basis and the limit of the liability of the respondents. So far as the liability is concerned, it has been held that the basis for the same continues to be the one envisaged by the Fatal Accidents Act. Hence the claimants claiming compensation u/s 100-A of the Motor Vehicles Act are entitled to be compensated both with regard to the future pecuniary benefits that the death or the deceased deprived them of, as also the compensation available to the estate of the deceased On account of the span of life of the deceased being cut short as a result of the accident:

We have carefully gone through these judgments and have noted the arguments and we are of the opinion that section 110-B of the Motor Vehicles Act is comprehensive enough to include the claims for which provision is made in sections 1 A and 2 of the Fatal Accidents Act.....It is thus evident that the application for compensation u/s 110-A of the Motor Vehicles Act is for and on behalf of all the legal representatives of the deceased, that is, on behalf of the estate as represented by the legal representatives u/s 110-B. The amount of compensation to be awarded is not only confined to the loss resulting to each legal representative but such amount as appears to the Tribunal to be just.....The language of section 110B of the Motor Vehicles Act clearly leads to the conclusion that compensation has to be determined in the first instance and that compensation has to be apportioned amongst the legal representatives as the Tribunal may determine, that is, according to the dependency or necessity of each claimant.....Before the Tribunal, the whole estate of the deceased is represented by his legal representatives and the compensation is to be determined on the basis of the loss suffered by the estate which is to be distributed amongst the legal representatives. No separate amount has to be determined for the legal representatives and the estate.....I have already held above that according to section 110 B of the Motor Vehicles Act, the loss has to be determined to the estate and then apportioned amongst the legal representatives representing that estate according to the benefit that they were receiving or would have received from the deceased if he had not died. At the time of apportionment, the extent of dependency of each legal representative on

the deceased has to be taken into account.....

Now the question that arises for consideration is as to what should be the mode of calculation of the compensation. Whether determination thereof is to be dependent on the need of the dependents of the deceased or the likely contribution that the deceased was reasonably expected to make for the maintenance and benefits of his dependents and legal representatives.

16. By and large the Courts have determined the amount of compensation by capitalising the likely monthly contribution of the deceased for the maintenance of his family for the years by which his life expectancy was cut short as a result of the accident and it is while apportioning the said amount between the claimants, that the needs and requirements of the claimants enter into the calculations of the Court in deciding their respective shares.

17. In *Ramji Das and Another Vs. Sham Singh and Others*, one of the rulings relied upon by the appellant for holding that the compensation ought to have been determined on the basis of the dependency of the claimants on the deceased. Ansari J, although observed in passing that none out of the three claimants could be considered dependent on the deceased for his or her maintenance as the two daughters were married and were maintained by their husbands and the son was in Government service, yet the learned Judge allowed the compensation awarded by the Tribunal to stand though while doing so reduced the same to some extent but the reduction is referable not to the lack of dependency of the claimants but to the fact that the deceased from his meagre income of Rs. 180/- per month could save only Rs. 50/- per month and not Rs. 100/- as envisaged by the Tribunal and could have accordingly contributed that much for the claimants.

18. In the other case reported in *Ishwari Devi v. Union of India* 1968 ACJ 141, a Division Bench decision relied upon by the learned counsel, most of the children being over 18 years could not be strictly considered dependent upon the deceased father for their maintenance, yet the Court calculated the compensation for them not on the basis of their dependency but by capitalising their share in the likely monthly contribution by the deceased for the maintenance of the family for the years by which his life expectancy stood cut short by the accident.

19. In yet another case relied upon by the learned counsel in *Chander Mohan and Others Vs. D.C. Kapnr and Others*, the major children were denied compensation only because the compensation was claimed for the gratuitous service and company of the deceased mother. It was held that the sons who were major and were in service and were living away from the mother, could not be held to have suffered any loss on account of their being deprived of the services of their mother and her company. Hence this authority is also distinguishable on facts.

20. If one is to follow the mode of calculation of the compensation as suggested

on behalf of the appellant, then somewhat irrational and startling results are likely to follow. For instance, in a case where the only claimant happens to be the widow of the deceased of the same age, then she would be held entitled to claim whole of the income which her deceased husband, after deducting therefrom his personal expenditure, was to make available to her for her maintenance for the years that he would have lived if his life span had not been cut short by the accident. For the sake of argument, taking his such monthly contribution as Rs. 176/- and his life expectancy 30 years (as is the position in the present case) then the compensation available to the widow would have been Rs. 63,360/-, but in case the unfortunate man was to leave behind in addition to the widow two minor children of ages 6 and 17 years towards whom his liability for their maintenance, according to the learned counsel, would have come to an end on their attaining majority, i.e., on their becoming 18 years old, than the compensation which these claimants between themselves would get dividing the abovesaid amount of Rs. 176/- only, between them which roughly comes to Rs. 59/- per mensem each would come to Rs. 23,364/- Rs. 708/- to the minor aged 17 years, Rs. 1,416/- to the other minor aged 16 years, and Rs. 21,240/- to the widow. A comparison of the said amount of compensation as received by the latter set of claimant with that received by the former set, in the given hypothetical case, would bring into bold relief the inequity of the situation. Law can never be considered to sanction such blatant discrimination. In my opinion, there is no warrant for the contention that the dependency of the minor children on the deceased would come to an end on their becoming sue juris because the liability of the parents extends not only to their food and clothing but to the giving of good education and for arranging their marriages for which at times even their total life saving fails short. Hence the only just and at the same lime simple formula, bereft of any complication for determining the amount of compensation is by capitalising the monthly contribution of the deceased towards the maintenance of his family for years by which his life expectancy stood cut short by the accident and it is only while apportioning the said compensation amongst the claimants that their respective needs and requirements be taken into consideration by the Court.

21. I am strengthened in the view that I have taken by the following observations of Capoor, J. in *Kuldip Lal Bhandari and Others Vs. Umed Singh and Others* made by him while negating the contention that no provision need be made for the sons and the daughters after they become sue juris:--

The learned counsel for the respondents maintained that after the son (appellant No 2) attains the age of majority, he would probably start earning himself and the daughter (appellant No. 3) would also get married in due course, and he submitted that it was unnecessary to make provision for them for as many as 19 years after the date of the institution of the suit. However, an essential consideration, which has to be kept in mind in such cases, is of the financial benefit of which the family can reasonably be said to have been deprived by the span of the life of the deceased having been cut short on account of the fatal

accident. At the time of the institution of the suit the two children were of tender years and were under the guardianship of their father and we have to consider the claim of the family as a whole.....

22. In view of the above, I hold that the Tribunal had followed a correct course in the determination of the quantum of compensation.

23. Now coming to the various deductions claimed by the appellant, I first take the amount of gratuity and provident fund received by the claimants after the death of the deceased. In this regard the decisions relied upon by the learned counsel is Joginder Nath and Another Vs. Shanti Devi and Others and Parkash Vati and Others Vs. The Delhi Dayal Bagh Dairy Ltd., . In Joginder Nath and another's case, the learned Judge following an earlier Bench decision to which he was also a party reported in Dr. Ram Saran and Another Vs. Shrimati Shakuntala Rai and Others, held that the amount of provident fund received by the claimants ought to have been deducted by the Tribunal from the amount of compensation arrived at by it.

24. With respect to the learned Judge, I may point out that the ratio of the Bench decision to which he was a party in Dr. Ram Saran and another's case does not seem to have been correctly understood. In that case, this Court allowed addition of the amount of provident fund to the amount of compensation arrived at by the Tribunal, but in so doing the Court made the necessary cut from the amount of provident fund in order to make allowance for the future contribution towards the provident fund. So this decision is an authority for adding the likely provident fund amount to the amount of compensation arrived at by the Tribunal and not vice versa.

25. In Parkash Vati and Others Vs. The Delhi Dayal Bagh Dairy Ltd., a Bench of this Court disallowed any compensation to the widow on account of her having received two insurance policies of her deceased husband amounting to Rs. 19,804/1/-, which amount, according to the Bench, was more than off set her share of loss. Thus decision was explained and distinguished in a later Bench decision of this Court reported in Damyanti Devi and others v. Sita Devi and others, who delivered the Bench decision, after distinguishing the abovesaid ruling and after an exhaustive review of a number of decisions of the various High Courts, as also English decisions, laid down two criteria for determining as to whether a particular asset or benefit received by the claimant after the death of the deceased is to be deducted from the amount of compensation or not. It was held that :--

(1) the assets of which benefit was being taken by or was available to the family during his life time;

(2) or the assets which were being created by the deceased out of his savings to be utilised for the benefit of the members of the family on various occasions like marriage, higher education of the children etc. were to be kept out of consideration while determining the just compensation because such assets could

not be said to confer undue or untimely benefits on the legal representatives because of the death of the person on whom they were dependent.

Following the line of thinking the Bench held that the amount of life insurance received by the claimants can not be taken into consideration. Viewing the facts of the present case in the light of the above two criteria laid down by Tuli, J. in the abovesaid case, both gratuity and provident fund cannot be taken into consideration while determining the quantum of compensation. Because if the amount represented by the insurance policies payment of which is contingent on the event of occurrence of death cannot be taken into consideration while determining the amount of compensation, according to this Bench decision, then the question of the deduction of amount of gratuity and provident fund which the family was, in any case, to get whether the deceased was to die in an accident or of a natural death does not arise.

26. As for the deduction from the amount of compensation on account of lump sum payment and for uncertainty of life, the following observations of Tuli, J in *Damyanti Devi and others*" ease (supra) are instructive on the point:--

Some other judgments have been brought to our notice in which a deduction ranging between 15 per cent and 25 percent was made from the amount of damages as determined on account of the fact that the amount was being paid in lump sum whereas the benefit from the deceased would have accrued to the claimants month by month. Since we have determined the compensation payable to the appellants on the basis of the amount that was being contributed by Manohar Lal towards their maintenance on the date of his death, and have not taken into consideration the increase in that amount in the future years, according to the increase in his income, as is evident from the accounts produced on the record, nor have enhanced that compensation on account of the continued and continuing rise in the prices of all commodities which has been more than 20 per cent since 1966, we consider that no reduction from the amount of compensation can fairly be made on this account. It is true that the amount that will be received by the claimants can yield some income of prudently invested but that is no ground to reduce the amount of compensation in view of what has been stated above. Another reason for not making any reduction is that the claimants have already been deprived of the compensation due to them for nearly six years, which account for 25 per cent of the number of years, on the basis of which the compensation has been determined, and no interest for that period has been allowed. The needs of the appellants will also increase with the advancement of age which fact has not been taken into consideration while determining the just compensation and for that reason too no reduction is possible on this account.

The learned counsel, however, urged that the compensation has to be taxed down on account of lump sum payment and for uncertainty of life if the Tribunal while calculating the compensation takes into consideration the likely future increase in the income, as held in *Major Jagjit Singh and others v. Kartar Singh*

(1973) 75 PLR 360. In substantiating the submission that the likely increase in the income of the deceased had been taken into consideration in the present case it was pointed out that the compensation had been calculated by the Tribunal by capitalising the likely monthly contribution from salary of Rs. 264/- per month for a period of thirty years, the period by which his life expectancy, taken as 65 years, was cut short by the accident at the age of 35. The learned counsel further urged that as the deceased who was a Government servant was likely to serve in that position only upto the age of 58, so the period between 58 and 65 ought not to have been taken into consideration and to the extent the Tribunal took into consideration his monthly earnings for that period, it did so to make an allowance for his increased future income due to promotion etc.

27. So far as the decision in Major Ranjit Singh's case 6 is concerned, it is no doubt true that the very Bench which decided Damyanti Devi and others case (supra) held that where the Tribunal takes into consideration the likely future increase in the income, the lump sum payment and the uncertainty of life could be pleaded for the mitigation of compensation but from these observations it does not follow that the Bench bade farewell to other grounds delineated in their judgment in Damayanti Devi and other's case (supra), which were held to militate against allowing any such cut in the compensation amount. Hence the ruling in Damyanti Devi and others 1968 ACJ 141 case (supra) still covers the facts of the present case regarding this aspect of the matter, as in this case too the deceased who was the only bread earner in his family died on 11th March, 1967 and to date the claimants have not received a penny from the respondents Surely during all this period they could not have lived on air and water. To sustain themselves, they must have resorted to borrowings carrying interest. Besides this, one has to take into consideration the rapid erosion of the purchasing power of the money. In view of this, I am of the opinion that no case is made out for effecting any cut in the amount of compensation arrived at by the Tribunal.

28. For the reasons stated, there is no merit in this appeal which is dismissed with costs.