
(1974) 09 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 4 of 1971

State of Haryana and Another	Vs	APPELLANT
Lt. Col. Balbir Singh Hooda		RESPONDENT

Date of Decision : 26-09-1974

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1975) ACJ 1

Hon'ble Judges : Pritam Singh Pattar, J

Bench : Single Bench

Advocate : Lakhinder Bir Singh, for the Appellant; J.S. Malik, for the Respondent

Final Decision : Allowed

Judgement

Pritam Singh Pattar, J.—By this judgment the following four first appeals, which are directed against the order dated 28.8.1970 of the Motor Accidents Claims Tribunal, Rohtak, will be decided:

1. F.A.O. No. 4 of 1971 : State of Haryana v. Lt. Col. Balbir Singh.
 2. F.A.O. No. 3 of 1971 : State of Haryana v. Mrs. Harbans Kaur.
 3. F.A.O. No. 2 of 1971 : State of Haryana v. Muni Devi.
 4. F.A.O. No. 191 of 1970 : State of Haryana v. Harbans Kaur and Ors. (legal representatives of Mrs. Prem Kaur)
2. Briefly stated, the facts of this case are that on 18.12.1967, Lt. Col. Balbir Singh, Respondent was traveling in car No. DLJ-7679 from Hissar to Delhi along with his family members consisting of his wife Harbans Kaur, his mother-in-law Prem Kaur and Miss Bimla and the car was driven by the driver Jagdish Parshad. Lt. Col. Balbir Singh was sitting on the front seat by the side of the driver while his wife Harbans Kaur, his mother-in-law Prem Kaur and Miss Bimla were sitting on the back seat of the car. They started from Hissar at about 11.15 a.m. and when they reached near village Sankhol in Rohtak District at about 3.30 p.m.,

bus No. HRR 4224 belonging to the State of Haryana driven by Surat Singh driver came from the side of Delhi at a high speed. A girl of about 5 years age, who was crossing the road, was run over by the bus and the driver of the bus lost complete control over the bus, which swerved towards the right side of the road and dashed against their car at a distance of 15 to 20 yards after striking against the girl. At that time, the car was on the extreme left side of the road. The width of the metalled road at that place was about 30 feet. As a result of this accident, Jagdish Parshad driver of the car, Lt. Col. Balbir Singh, his wife Harbans Kaur and his mother-in-law Prem Kaur received injuries. Lt. Col. Balbir Singh became unconscious as a result of those injuries and he regained consciousness after some time when the persons, who gathered there, were trying to take him out of the car. The driver Jagdish Parshad was jammed in the seat. All these injured persons were taken to the Bahadurgarh dispensary, where they were given first aid and thereafter they were taken to the Military Hospital, Delhi Cantt. Lt. Col. Balbir Singh remained under treatment in the Military Hospital, Delhi up to 9th October, 1968. Jagdish Parshad, the driver, died a short time after his reaching the Military Hospital.

3. Lt. Col. Balbir Singh filed claim application u/s 110-A of the Motor Vehicles Act against the State of Haryana, Surat Singh driver and the General Manager, Haryana Roadways, for recovery of Rs. 1,25,000/- as compensation. Harbans Kaur wife of Lt. Col. Balbir Singh filed a separate application u/s 110-A of the Act for the recovery of Rs. 75,000/- against the State of Haryana and others regarding the injuries sustained by her in the same accident. Prem Kaur wife of Shri Kishna Chand, Advocate, Delhi, filed a separate application against the State of Haryana and others for the recovery of Rs. 75,000/- by way of compensation. Muni Devi, the widow of Jagdish Parshad driver and the children of Jagdish Parshad filed a separate petition for the recovery of Rs. 60,000/- as compensation against the State of Haryana and others.

4. Notices in all these petitions were issued to the Respondents. Surat Singh driver did not file any written statement. The State of Haryana and the General Manager, Haryana Roadways filed a joint written statement, wherein they admitted the factum of the accident. However, they pleaded that Surat Singh driver of the bus was driving the bus at a low speed and near the place of occurrence, he took the bus on the right side of the road to save a minor girl, who was crossing the road on this point, but she struck against the rear part of the bus and died and the driver stopped the bus on the right side of the road and that in the meantime the car in question came from the opposite direction at a high speed and struck against the standing bus and the accident took place due to the rash and negligent driving of the car by its driver. These allegations were denied by the Petitioners in their replications.

5. The proceedings in all these four claim petitions were consolidated and recorded in Case No 6 of 1968 Re: Lt. Col. Balbir Singh v. Surat Singh and Ors. because these petitions arose out of the same accident and common questions of

law and fact were involved. On these pleadings of the parties, the following issues were framed by the Motor Accidents Claims Tribunal:

- (1) Whether the accident took place due to rash and negligent driving of Surat Singh, the driver ?
- (2) In case of proof of issue No. 1 to what amount the applicant is entitled as compensation and from whom ?
- (3) Relief.

The learned Claims Tribunal held that the accident took place as a result of the rash and negligent driving of the bus by its driver, Surat Singh and decided issue No. 1 in favour of the Petitioners. On issue No. 2, it was held that the Petitioners of the four petitions were entitled to compensation as follows:

- (1) Lt. Col. Balbir Singh, Petitioner of petition No. 6 of 1968 Rs. 68,955.00
- (2) Mrs. Harbans Kaur, Petitioner of petition No. 5 of 1968 Rs. 5,970.25
- (3) Prem Kaur (now her legal representatives Harbans Kaur and others) Petitioner of petition No. 7 of 1968. Rs. 21,770.00
- (4) Munni Devi and others, Petitioners of petition No. 4 of 1968. Rs. 22,000.00

6. As a result, the Tribunal awarded the above-mentioned amounts as compensation to the Petitioners in all these four petitions. Feeling dissatisfied the State of Haryana and Surat Singh, driver filed these four appeals, alleging that the decision of the Claims Tribunal is wrong and incorrect and it may be set aside and the petitions filed by the Petitioners may be dismissed.

7. Mr. Lakhinder Bir Singh, the learned Counsel for the Appellants did not contest the decision of the Claims Tribunal on issue No. 1. He only contested the decision of the Tribunal on issue No. 2 regarding the amount of compensation awarded to the Respondents in these appeals. The factum of the accident and also the fact that Surat Singh driver of the Haryana Roadways Bus was guilty of negligence and carelessness as a result of which the accident took place were admitted. As regards issues No. 2, I shall take each appeal separately.

8. In Appeal No. 3 of 1971, State of Haryana v. Harbans Kaur, the learned Claims Tribunal awarded Rs. 5,970.25 as compensation to Harbans Kaur wife of Lt. Col. Balbir Singh for the injuries received and the expenses incurred by her on her treatment and the mental and physical strain and agony suffered by her. The learned Counsel for the Appellant-Haryana State did not contest the amount of compensation awarded to Harbans Kaur. He conceded that the amount awarded to her as compensation is not excessive and did not press this appeal. Therefore this Appeal No. 3 of 1971 State of Haryana v. Harbans Kaur is dismissed and there will be no order as to costs.

9. Now, I proceed to deal with the amount awarded in Appeal No. 2 of 1971 State of Haryana v. Munni Devi and Ors. Jagdish Parshad, the husband of Munni

Devi Respondent No. 1 was the driver of Car No. DLJ-7679, which met with the accident on 13.12.1967 and Jagdish Parshad later died the same day in the Military Hospital, Delhi Cantt. The petition for compensation u/s 110-A of the Motor Vehicles Act was filed by his widow Munni Devi, his minor son Roshan Lai aged 6 years and his minor daughter Lali Bai aged 2 years, residents of village Ajitpura Post Office Kot Putli, District Jaipur, Rajasthan for the recovery of Rs. 60,000/-. It is undisputed that Jagdish Parshad at the time of his death was 27 years of age. The Tribunal awarded Rs. 22,000/- to these Petitioners as compensation. In the petition made by Munni Devi and others, it is mentioned that Jagdish Parshad was an employee as driver of Messrs. Jawahar Lai Jain and Company, 3615 Chowri Bazar, Delhi and he was drawing Rs. 180/- per mensem. Besides this, he was getting free boarding, lodging and clothing. To the same effect is the statement of Munni Devi, Respondent as A. W. 12. However, no written documentary evidence was produced to prove the total emoluments of the deceased Jagdish Parshad. The Tribunal held that some employee of Messrs. Jawahar Lai Jain and Company should have been examined to prove the total emoluments of Jagdish Parshad and this was not done. The Tribunal also remarked that there "was no rebuttal evidence to the bald statement of Munni Devi Petitioner regarding the salary of Rs. 180/- per mensem and that this amount of Rs. 180/- was quite reasonable for a car driver in those days. It held that the monthly emoluments of the deceased Jagdish Parshad were Rs. 180/- per mensem only.

10. The Tribunal further held that from the evidence on the file it was established that he was a non-smoker and that after paying Rs. 30/- per mensem as rent of his house at Delhi and incurring his personal expenses, he was paying Rs. 110/- per mensem to his family and this finding was not contested in appeal. However, it held that the average expectancy of life in India was about 65 years, but strangely enough it calculated the total amount payable to the Petitioners for a period of 23 years only. According to him, at the rate of Rs. 110/- per mensem, the Petitioners were entitled to Rs. 1320/- per annum and thus the amount for 23 years comes to Rs. 30,360/-. Since this amount was to be paid in lump sum, the Tribunal allowed a deduction of 20% (per cent) out of this amount and fixed the amount of Rs. 24,288/-. The interest on this amount at the rate of Re. 1/- per cent was calculated at Rs. 260/- per mensem. Since this amount would exceed the rate of Rs. 110/- per mensem, he, therefore, reduced this amount to Rs. 22,000/-. Mr. Lakhinder Bir Singh, the learned Counsel for the Appellant contended that since the rate of interest has now been increased to 10 per cent therefore, the capitalized value of Rs. 22, 000/- would be much more than Rs. 110/- per mensem. This contention cannot be accepted as the prices of all the necessities of life has increased more than double the prices prevalent in 1967, when the accident took place. Moreover, the salary of Jagdish Parshad, who was a driver, would have been much more than Rs. 180/- per mensem, if he had been alive today. If we have to fix the compensation amount according to the salary of the deceased etc. at the time of the accident, then the rate of interest

on the amount of compensation must also be calculated according to the rates prevalent at that time. The amount of compensation allowed to Munni Devi and other legal representatives of Jagdish Parshad deceased is quite reasonable and proper and there is no scope for reducing the same. There is no substance in Appeal No. 2 of 1971 and the same is dismissed with no order as to costs.

11. The injuries on the person of Lt. Col. Battnr Singh were examined on 18.12.1967 by Dr. Major K. M. George A. W. 1, who was doctor incharge of Orthopedic cases in the Army Hospital, Delhi Cantt. He found the following injuries on his person:

- (1) Comminuted fracture of both bones of both legs in the upper third.
- (2) Fracture of medial condyle of left femur.
- (3) Dislocation of both hip joint.
- (4) There was a fracture of humerus bone right side.
- (5) Rupture of extensor tendon of right little finger.

To the same effect is the statement of Lt, Col. Balbir Singh Petitioner as A. W. 8. He further deposed that after the accident he and his wife his mother-in-law and Jagdish Parshad driver were taken to the Military Hospital, Delhi Cantt. and as his condition was serious, he was taken to the Emergency Ward and he was kept on oxygen and blood transfusion was given to him for three days. He went on to state that from the date of accident till 9th October, 1968, he remained in the Military Hospital at Delhi and was then transferred to the Military Hospital, Lucknow for special treatment of skin grafting and that till 31st May, 1969, when his statement was recorded in Court, he had undergone nine major operations under general anesthesia and five operations were done only for skin grafting. His whole body remained under plaster for five months except his left arm and face. In para No. 21 of his petition, he claimed Rs. 1,25,000/- as compensation and this para reads as follows:

The amount of compensation claimed Rs. 1.25,000/-. This compensation is for financial loss to the applicant, as well as the bodily and mental pain suffered by him and the incapacities by which he will suffer all his life because of the injuries received by him. The Petitioner will not be able to get promotions because of the effect of the injuries received by him.

However, when he appeared as his own witness as A. W. 8, he put in the details of the compensation etc. claimed by him in the statement Exhibit A. W. 8/1, wherein he claimed Rs. 1,65,823.00 as compensation. The Tribunal awarded him Rs. 68,955/- as compensation under the various heads as follows:

- (i) Expenses incurred by him during his stay in the hospital Rs. 1,533.00
- (ii) Loss of pay during the time he remained in the Hospital till he retired on 7.1.1970 at the age of 50 years. Rs. 15,433.00

(iii) Loss incurred by him on account of re-employment upto the age of 55 years Rs. 1400/- per mensem Rs. 28,560.00

(iv) Compensation for agony and mental and physical pain. Rs. 10,000.00

(v) Compensation for permanent disability and salary of an attendant to be engaged by him. Rs. 15,000.00

12. The learned Counsel for the Appellant did not contest the amounts of compensation awarded to Lt. Col. Balbir Singh at items Nos. (i), (ii), (iv) and (v). However, he contested the sum of Rs. 28,560/- awarded to him for the loss incurred by him on account of re-employment after his retirement from Military service. The allegation of the Petitioner is that if he had not sustained these injuries and incurred permanent disability, he would have remained in the Army till he attained the age of 55 years. He also mentioned that he lost good opportunity for re-employment in public/private sectors, where he could have better prospects. For all these he claimed Rs. 84,000/- as compensation at serial No. 3 of his statement of account, Exhibit A.W. 8/1. The learned Tribunal, however, held that the maximum period for which he could be re-employed after his retirement at the age of 50 years was two years and this period could be extended to five years and, therefore, he allowed him compensation for re-employment for two years only at the rate of Rs. 1400/- per mensem. The total emoluments for two years of Lt. Col. Balbir Singh were worked out at Rs. 33,600/-. Since this amount was to be paid in lump sum, therefore, it was reduced by 15 per cent and that is how the sum of Rs. 28,560/- was worked out. It is true that Military officers are given re-employment by the Government for a period of two years and this period may be extended to five years, but this re-employment could not be claimed as a matter of right. He could have obtained some employment in some public sector or private concern for five years and since he was permanently disabled, therefore, he cannot get any private service or business nor he can manage his property. Therefore, the decision of the Tribunal permitting him compensation regarding salary for two years at the rate of Rs. 1,400/- per mensem cannot be said to be illegal. However, the learned Tribunal failed to take notice of the fact that from 7.1.1970, the date of his retirement, Lt. Col. Balbir Singh also started getting pension at the rate of Rs. 640/- per mensem as stated by Mr. J.S. Malik his counsel. Consequently, the additional benefit, which could be allowed to him for two years after 7.1.1970 could only be at the rate of Rs. 760/- per mensem and not Rs. 1400/- per mensem. Therefore, the compensation for the period of two years at the rate of Rs. 760/- per mensem after making a deduction of 15 per cent on account of lump sum payment, works out to Rs. 15,504/-. I, therefore, reduce this sum of Rs. 28,560/- as compensation allowed to him under this item to Rs. 15,504/- only. Thus, the total amount due to Lt. Col. Balbir Singh as compensation comes to Rs. 1,533/-, plus Rs. 15,435/- plus Rs. 15,504/- plus Rs. 10,000/- plus Rs. 15,000/- = Rs. 57,472/-. This appeal is, therefore, partly accepted and the award granted by the Tribunal is modified to this extent and the amount of compensation is

reduced to Rs. 57,472/-.

13. Prem Kaur claimant had filed petition No. 7 of 1968 u/s 110-A of the Motor Vehicles Act claiming Rs. 75,000/- as compensation from the Haryana State, the owner of the bus involved in the accident, the General Manager, Haryana Roadways, Rohtak and Surat Singh, driver of the bus. The claim for this amount as mentioned in para No. 21 of her petition is as follows:

The amount of compensation claimed is Rs. 75,000/-. This compensation is for the financial loss to the applicant, as well as the bodily and mental pain suffered by her and the incapacities by which she will suffer for all her life because of the injuries received by her. The Petitioner will not be able to look after the lands and other immovable property because of the injuries which has been received by her.

In the petition, the break-up of this compensation amount under the various items was not given. Prem Kaur died on 19.12.1969 and at that time her age was 50 years. The names of Mr. Kishan Chand Advocate, Delhi, her husband, Harbans Kaur her daughter and Rajiv Chaudhry her minor son, were brought on the record as her legal representatives. Dr. Major K M. George A.W. 1, of the Army Hospital, Delhi Cantt. examined her on 18.12.1967 and found the following injuries on her person:

- (1) There was fracture of both the bones of left leg in its middle third.
- (2) There was a compound fracture of middle third of right thigh bone.
- (3) There was a lacerated wound on the left side of forehead 2 1/2 x 1/2" and bone deep.

Dr. Captain P.S. Attawal, Assistant Registrar, Army Hospital, Delhi Cantt. as A.W.2 stated on 19.10.1968 before the Claims Tribunal that Prem Kaur was still in Hospital and till then Rs. 3,660/- had been spent on her treatment and this amount had been realised from her. He further deposed that Prem Kaur had also employed a private Aya from their approved panel at the rate of Rs. 5/- per day and that the receipts Exhibits A.1 to A.8 are signed by that Aya, named Shrimat Bhaga.

14. Mrs. Prem Kaur appeared as her own witness as A.W.9 before the Motor Accidents Claims Tribunal on 23.6.1969. She testified that after the accident she became unconscious and that she regained consciousness after three days, but during that period she occasionally regained consciousness. According to her she was kept in the Emergency Ward Military Hospital, Delhi Cantt. and that she remained there in the Hospital upto 28th February, 1968 as indoor patient and during this period, she remained in plaster. She deposed that she lost almost the eyesight of her left eye, which had been operated upon thrice. The bones of her right thigh did not join properly and she cannot bend her right knee and that the left leg also cannot bear the weight and she had become permanently disabled and could not walk and that she could walk with the help of crutches and support of two persons, one on either side. Exhibit A.W.9/1 is the statement submitted by

her pertaining to the amounts claimed by her. In Exhibit A.W.9/J, under the various heads, the total amount claimed is Rs. 1,03,184/-, but in the petition as mentioned above, she had claimed only Rs. 75,000/- as compensation. The learned Claims Tribunal allowed her the following amounts of compensation under the various items:

(i) Charges for stay in the Hospital, Delhi Cantt. at the rate of Rs. 12/- per day for the period from 18. 12. 1967 to 28. 10. 1968 and from 28. 1. 1969 to 14.2. 1969, besides interest on this amount. Rs. 4,497.00

(ii) Charges for Aya during the period she stayed in the Hospital. Rs. 3,060.00

(iii) Charges for special diet during the period she stayed in the Hospital and also taxi charges for going to the Delhi Cantt. from the house of her husband, Shri Kishan Chand, Advocate. Rs. 3,000.00

(iv) Loss of her services to her husband, Shri Kishan Chand, Advocate and to her children and loss of marital company to her husband, Shri Kishan Chand. Rs. 14,400.00

15. In her statement of accounts, Exhibit A.W.9/1, she had claimed Rs. 25, 000/- as compensation for permanent physical disability and loss of one eye, Rs. 20,000/- due to loss of income from her land for 20 years, which she could not look after, Rs. 24,000/- as compensation for dependency on attendant for 20 years and Rs. 20,000/- for mental and physical strain and agony. All these amounts were disallowed by the learned Tribunal, because she expired and the amount under these items could not be awarded to her legal representatives. As a result, the total amount of compensation allowed to her is Rs. 21,770/-.

16. The learned Counsel for the Appellant did not contest the amount of compensation awarded to the legal representatives of Prem Kaur under items (i), (ii) and (iii) mentioned above. The total amount of these three items comes to Rs. 10,557/-. However, he contested the sum of Rs. 14,400/- allowed to the Respondents, Mr. Kishan Chand and others, on account of loss of her services to them and the loss of marital company to Mr. Kishan Chand. There is no proof on the file excepting the bald statement of Shri Kishan Chand A.W.14, the husband of Prem Kaur deceased that her death took place on 19.12.1969 as a result of the injuries sustained by her on 15. 12.1967 in the accident. Mr. Kishan Chand, Respondent as A.W.14 simply stated that she remained ailing upto her death on 19.12 1969 and she died due to injuries received by her on the head in the accident and also due to haemorrhage. It is clear from the evidence of the Respondents and also from the statement, Exhibit A.W.9/1, filed by Prem Kaur deceased herself that she remained as indoor patient in the Army Hospital from 18.12.1967 to 28.10.1968 and from 28.1. 1969 to 14.2.1969. She appeared as her own witness before the Claims Tribunal on 23.6.1969. There is no proof on the file that how her death took place and where she died and what was the cause of her death. No medical report of the cause of death of Prem Kaur has been placed on the file. The learned Tribunal erred in holding that she died as a

result of the injuries sustained by her in the accident which took place about two years prior to her death. No medical certificate to prove this fact has been placed on the file. The bald and self-serving statement of her husband Mr. Kishan Chand as A.W.14 on this point cannot be accepted as correct. The non-production of the medical certificate about the cause of her death, which was the best available evidence, is not explained. Therefore, the decision on this point of the Tribunal that she died as a result of the injuries sustained by her about two years prior to her death cannot be sustained and the same is set aside.

17. It is well settled law that a legal representative can continue the litigation on the cause of action sued upon and cannot set up a plea open to him personally. In other words, the Respondents, in this appeal, who are the legal representatives of Prem Kaur deceased, could continue the petition for grounds mentioned in the petition and could not claim compensation for any personal ground. However, they could claim compensation on personal grounds if her death had taken place as a result of the injuries received at the time of the accident. As mentioned above, there is no proof on the file that her death took place on 19.12.1969 about two years after the accident as a result of the injuries sustained by her at the time of the accident. If the Respondents had to claim compensation on personal grounds, they should have amended the petition so that the opposite side could know their allegations and meet the same.

It is well settled law that no amount of evidence can be looked at on a plea, which is not in the pleadings of the parties. Even the statement of Mr. Kishan Chand, Advocate as A.W.14 is silent regarding the compensation awarded to them by the Claims Tribunal on account of the loss of services of Prem Kaur to the Respondents and also for loss of marital company to him (Mr. Kishan Chand). The learned Tribunal has made altogether a new case for awarding this sum of Rs. 14,400/- as compensation to the Respondents, which they had neither claimed in the pleadings nor there was any evidence on the file to prove the same. As stated above, the Tribunal had disallowed the amounts claimed in Exhibit A.W.9/1 for items Nos. 4, 5, 6 and 7 for permanent physical disability and loss of one eye of Prem Kaur, for loss of supervision of property and for mental and physical strain and agony etc. simply on the ground that Prem Kaur had expired and, therefore, the claim regarding all these items could not be taken into consideration. No appeal against this decision has been preferred by the Respondents. It may be mentioned there that in paras Nos. 1 and 6 of the petition, Prem Kaur had pleaded that she was looking after her own land and the land of her husband and besides this, she was managing her entire immovable property and that her monthly income from agricultural land and landed property was about Rs. 1,600/-. No proof whether she owned any land and other immovable property and its valuation and the income therefrom was adduced by the Respondents, the legal representatives of the deceased, or by the Haryana State.

18. For all these reasons, the sum of Rs. 14,400/- allowed by the Claims Tribunal

for loss of services of the deceased to the Respondents and for marital company to her husband is disallowed. For the above reasons, the amount of compensation awarded to the Respondents, Mr. Kishan Chand and others, is reduced to Rs. 10,557/- in F.A.O. No. 191 of 1970.

19. For the reasons given above, appeal No. 191 of 1970 is partially accepted and the award of the Claims Tribunal awarding Rs. 21,770/- as compensation to the Respondents, Mr. Kishan Chand and others, is set aside and instead an award for Rs. 10,557/- is passed in favour of Mr. Kishan Chand, Harbans Kaur and Rajiv Chaudhary legal representatives of Prem Kaur against the State of Haryana. The parties are left to bear their own costs.