
(1999) 10 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 3098 of 1999

State of Haryana and Another

APPELLANT

Vs

Naresh Kumari and Others

RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2000) ACJ 1394 : (2000) 124 PLR 614 : (2000) 2 RCR(Civil) 209

Hon'ble Judges : S.S. Sudhalkar, J;J.S. Khehar, J

Bench : Division Bench

Advocate : Raghubir Chaudhary, D.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Sudhalkar, J.—Respondent Nos. 1 to 6 had filed a claim petition under the Motor Vehicles Act, 1988 with the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as "the Tribunal") against appellants and respondent No. 7. The claim petition arose because of a vehicular accident which took place on 6.7.1998 at about 5.30 p.m. near Bus Stand, Kurukshetra in front of the petrol pump of village Ratgal, on Pipli-Kurukshetra Road, Shankar Das husband of respondent No. 1, father of respondents No. 4, 5 and 6 and son of respondent No. 2 and 3 received fatal injuries in the said accident. The deceased was going on his scooter when he was dashed by the bus driven by respondent No. 7 and owned by appellants. It is the case of the claimant-respondents that the deceased was driving his scooter at a slow speed and on the correct side of the road and when he reached the place of accident, a bus came from behind the bus was run in a rash and negligent manner. Because of this, the bus dashed against the scooter driven by the deceased which caused multiple injuries to the deceased.

2. The claimant-respondents contended that the deceased was 36 years of age and was drawing a monthly salary of Rs. 13,000/- excluding overtime and other allowances and since he had a large family to support, the claimant -

respondents had claimed Rs. 35 lakhs as compensation.

3. The respondents have contended that driver of the bus was not negligent. It is contended that the deceased had given a signal to the driver of the bus for overtaking his scooter but suddenly he turned his scooter towards the wrong side without giving any signal and hence the said accident was caused. The quantum of compensation has also been challenged. The Tribunal found that the bus driver was in a rash and negligent manner while driving his bus and awarded a sum of Rs. 15,45,000/- with costs and interest at the rate of 12% per annum to the claimants. Being aggrieved by the award of the Tribunal, the appellants have filed this appeal before this court.

4. I have heard learned counsel for the appellants.

5. The first point taken by the learned counsel for the appellant is that the Tribunal has erred in holding that the driver of the bus was rash and negligent. The Tribunal has relied on the deposition of PW2 Anil Dhawan who is Senior Manager, Punjab National Bank, Thanesar. He is an eye witness to the accident. According to his version, referred to by the learned Tribunal, he was going on the fateful day on a scooter from his Branch Office, Thanesar to his Regional office in Kurukshetra and the deceased was driving his own scooter from the Branch office to the Regional Office, a little ahead of him. The deceased was driving his scooter at a normal speed and on the correct side of the road and when the deceased reached at the place of accident, the bus came from behind being driven in a rash and negligent manner. The bus driver dashed his bus into the scooter of the deceased from behind and then dragged him to some distance and because of the same the deceased fell down and suffered multiple injuries. The deceased was shifted to the hospital at Kurukshetra and then to the P.G.I., Chandigarh. However, on 13.7.98 the deceased succumbed to his injuries suffered in the accident. This witness also lodged his report before the police and on the basis of that report the FIR in this case was recorded.

6. The respondents have examined respondent No. 7 who was driver of the bus. His version before the Tribunal, as it appears from the award, is that the driver of the bus wanted to overtake the scooter which was being driven by the deceased ahead of his bus and he gave a signal to the scooterist to this effect. The deceased then permitted him to overtake and when still he was in the process of overtaking the scooterist suddenly turned towards his right side and hence the accident took place. These are the two versions of witnesses from both sides.

7. Learned counsel for the appellant argued that the deceased was working in the Punjab National Bank, Thanesar and the eye witness was also working in the same bank and, therefore, there is no evidence except the evidence of the interested witness. However, the same proposition may apply to the evidence of respondent No. 7 also. The court has to consider which version is correct, or what should be the correct fact which can emerge from the total evidence on record. The fact that the bus was overtaking the scooterist has been put forth by

the respondents themselves. The question is whether the driver of the scooter who was given a signal to overtake would suddenly taken the scooter to the right. It is not argued before us that there was some need for the scooterist to deviate from his earlier position and hence suddenly turned towards right. This could have happened if there was some other obstacle on the road which required the scooterist to divert his direction. There is no such argument from the appellants side. This being so, it cannot be accepted that the scooterist abruptly turned his scooter towards wrong side when he was conscious that a heavy vehicle was overtaking him. Therefore, it cannot be held that the Tribunal has erred in deciding issue of rash and negligent driving against the driver of the bus.

8. This takes us to the question of quantum. The learned counsel for the appellants argued that except the verbal version, there is nothing to show what the deceased was earning. However, from the award passed by the Tribunal it can be found that PW2 Anil Dhawan has stated that the deceased was an employee of the Punjab National Bank on a monthly salary of Rs. 12,072/- and he has also produced the salary certificate Ex. PA. The Tribunal has considered the dependency of the petitioner-respondents at Rs. 8,000/- per month. Learned counsel for the appellants argued that this figure is on the higher side. However, we cannot except this argument, firstly, because the deceased had so many members to support and secondly because the Tribunal had not gone into the question of future prospects of rise in the income and fall in the price of money. Considering all these aspects together, we find that the Tribunal cannot be said to have exorbitated on the amount of dependency. We are, therefore, not in a position to accept the argument of learned counsel for the appellants.

9. The deceased was 35-36 years of age. This statement regarding age is not shown to be wrong and when this is the position, multiplier of 16 years also cannot be disturbed. This being the position, the total amount of compensation calculated with the multiplier of 16 i.e. Rs. 15,46,000/- cannot be said to be on the higher side.

10. We may mention that the deceased did not die immediately and though the Tribunal has awarded Rs. 10,000/- for the period of hospitalisation it has not awarded any amount under non pecuniary, head, such as pain shock and suffering. No amount is awarded for loss of expectation of life or loss of consortium. The amount awarded on account of expenses of treatment also cannot be said to be exorbitant in the circumstances where the person spending the amount has the only goal i.e. to see that the injured recovers.

11. In view of the above. We find that this appeal is without merit and deserves to be dismissed in limine and the same is dismissed as such.