
(2006) 07 P&H CK 0078
In the Punjab And Haryana At Chandigarh

State of Haryana and Others

APPELLANT

Vs

Sukhpal and Others

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 158, 166

Citation : (2006) 4 ACC 690 : (2008) ACJ 158

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Judgement

M.M. Kumar, J.—The State of Haryana has filed the instant appeal u/s HOD of the Motor Vehicles Act, 1939 challenging the award dated 13.11.1987 passed by the Motor Accident Claims Tribunal, Jind. One Sukhpal had suffered injuries and the original claim petition was filed by him. However, during the trial, Sukhpal died and his widow Smt. Kamla, mother Smt. Sarti and his seven children were impleaded as his legal representatives.

2. On 9.1.1987 Sukhpal boarded Bus No. HYA 7859 from his village Khanda in order to visit village Igrah. A truck bearing No. HRJ 1009 driven by one Raj Singh, respondent No. 10, came from Jind side when the Bus bearing No. HYA 7859 had reached near the village Igrah. The offending truck was being driven in the middle of the road in a rash and negligent manner which collided with the driver side of the bus resulting into multiple injuries to deceased Sukhpal and some others. The case of the appellants is that the accident was caused on account of rash and negligent driving of Raj Singh, truck driver, respondent No. 10.

3. The stand of the appellants is that the claim petition was time barred having been filed after a period of one year, two months and twelve days of the accident. It was further asserted that the Sub-Divisional Engineer appellant No. 2 is a juristic person and no petition was competent against it. It was further asserted by respondent No. 10 in a separate written statement that the accident was caused due to rash and negligent driving of the bus by its driver. The

maintainability of the petition was disputed by setting up the plea that the driver of the bus was a necessary party and in his absence it could not be pursued. It was also the plea of the appellants that deceased Sukhpal had died his natural death and there was no connection with the injuries suffered by him in the accident.

4. On the issue whether the deceased Sukhpal had sustained injuries due to rash and negligent driving of the truck driver Raj Singh, respondent No. 10, the Tribunal has concluded as under:

It is held, thus that the petitioners had been able to prove that the deceased Sukhpal sustained injuries due to rash and negligent driving of the truck No. HRJ 1009 by respondent No. 3. This issue shall stand disposed of, thus, in favour of the petitioners and against the respondents.

5. On the other issue as to whether the petitioner has died his natural death or on account of the injuries suffered by him in the accident, the Tribunal has held as under:

The learned Counsel for the respondents argued that the deceased had died after about six months of his discharge from the hospital and it could not, thus be said that he had died as a result of the injuries received in the accident.

The argument is oblivious to the extent of disability found by the Medical Officers on the person of Sukhpal. There is evidence on the file (it is asserted in the petition itself) that he was 55 years of age. That is not such age where it could be said that the deceased had died a natural death. There is no material on the file to prove that any other injury or ailment intervened the impugned accident and the death of Sukhpal. In the circumstances of the case, only inference is that he died as a result of the injuries received in the impugned accident. This issue shall stand, thus disposed of in favour of the petitioners and against the respondents.

6 In view of the categorical findings, the Tribunal proceeded to ascertain the income of the deceased and the dependency of the claimant-respondents. On the basis of the statement made by Ms. Kamla, PW2, widow of the deceased Sukhpal, the Tribunal reached the conclusion that her husband was earning Rs. 1,000 p.m. and the finding is based on the fact that he was owner of 3 kharas of land which was not controverted by the appellants. The deceased was 55 years of old and monthly dependency was worked out to be Rs. 800 p.m. A multiplier of 15 was applied and an amount of Rs. 1,44,000 was worked out. However, on account of the claim made by the claimant-respondents to the tune of Rs. 1,40,000, the same was awarded to them, as is evident from the following observations of the Tribunal:

...As per assertion in the petition itself, the deceased was aged 55 years. The average life span has been held to be about 70 years in a number of judicial pronouncements. That would leave the petitioners with a period of about 15

years, for the purpose of counting the compensation. It may be reasonably assumed that the deceased was spending about Rs. 200 on his personal expenditure. It may be reasonably expected that the deceased was handing over the balance to Mrs. Kamla, petitioner to maintain a large number of family which, at that time, consisted of Mst. Kamla and seven other members including three sons and four daughters. That would prove that monthly dependency of the petitioners on the deceased was Rs. 800 yearly dependency shall, thus, come to Rs. 9,600. If multiplied by 15, entitlement of the petitioners shall come to Rs. 1,44,000. However, the petitioner shall only be entitled to what they had claimed in the claim petition. Out of the petitioners, petitioner, Umesh is out because he is married and he has a separate family. Tulsan petitioner is also out of the race because she is married and has become a member of another family. The petitioners shall be entitled to a sum of Rs. 1,40,000 from the respondents. This issue shall stand, thus disposed of in favour of the petitioners and against the respondents.

7. However, no apportionment was given to Umesh and Tulsan. The liability was joint and several against appellant No. 1 and respondent No. 10. The Tribunal also awarded interest @ 12 percent p.a. from the date of death and at the rate of 6 percent p.a. from the date of the filing of the petition till death. The Tribunal also rejected the plea of limitation by granting condonation of delay.

8. Mr. Harish Rathee, learned State Counsel has argued that a period of 7 months had intervened between the date of discharge and date of death and therefore there is no proximity between the injury and death. According to the learned Counsel, the petitioner was admitted in the hospital on 9.1.1984 and was discharged on 26.10.1984. He has maintained that he was again admitted in paraplegia ward of the hospital on 16.11.1984 and discharged on 30.12.1984 when he had recovered. He died on 4.8.1985 which shows that there was a gap of seven months between the date of discharge and the date of death. Learned State Counsel has also submitted that in such a situation, the Court must hold that Sukhpal had died his natural death and not on account of the injuries suffered by him in the accident. He has thus argued that the annual income of Rs. 1,000 has been assessed merely on the basis of the oral statement made by the widow of the deceased which cannot constitute the basis for working out the dependency as well as applying a multiplier of fifteen. Mr. Rathee has concluded by submitting that the claim petition is barred by time and therefore was not maintainable.

9. Mr. Yoginder Nagpal, learned Counsel for the claimant-respondent has drawn my attention to the medical record of the deceased Sukhpal and the statement made by Dr. Vinod Kumar, PW 1 who had found that the deceased had suffered fracture of spine and he had become paraplegia when he was brought to the hospital on 9.1.1984. He has also drawn my attention to the statement of Dr. N.S. Chandha, Professor and Head of Orthopedics Department, Medical College, Rohtak who proved the fact that Sukhpal was admitted to paraplegia unit under

his charge on 4.8.1984 and he was discharged on 26.10.1984. The Doctor has further stated that on account of fracture of the spine, the deceased was rendered 100 percent disabled. Mr. Nagpal has asserted that the amount of Rs. 1,40,000 awarded to the claimants is in fact on the lower side and it could have been easily doubled. He has pointed out that no compensation has been awarded for the pain and suffering, expenses on medicine and loss of income during the period the deceased was confined to bed. Therefore, he has prayed that the appeal is wholly misconceived and is liable to be dismissed.

10. Having heard the learned Counsel for the parties and perusal of the record, I am of the considered view that there is no merit in this appeal. The finding recorded on issue No. 1 as to whether Sukhpal had sustained injuries due to rash and negligent driving of the truck H/U-1009 by respondent No. 10 are amply supported by the ocular version given by PW 3 Inder. His version has been further supported by PW4 Nihal who was the driver of the bus in which Sukhpal, deceased was travelling. These witnesses were subjected to a close cross-examination but nothing contrary could be elicited from them. Respondent No. 10 Raj Singh, driver of the offending truck has been identified. There is further corroboration by the investigation made by the police which found that the offending truck was being driven rashly and negligently by Raj Singh, respondent No. 10 and it has caused accident. The Tribunal has rightly pointed out to the culpability of respondent No. 1 by relying on his statement where he had stated that he did not file any complaint against the driver of the bus for the accident nor he filled any claim for compensation against him or the owner whereas the claimant-respondents had lodged an FIR in which bus driver was exonerated from any liability and the whole role for causing accident was imputed to Raj Singh, respondent No. 10 suffer from any illegality. Therefore, it cannot be concluded that the finding on issue No. 1 that Sukhpal sustained injuries due to rash and negligent driving of the offending truck by Raj Singh, respondent No. 10. Similarly, on issue No. 2 it can also not be disputed that Sukhpal, deceased, had died on account of the severe injuries which were in the nature of fracture of the spine with paraplegia. The statement of Dr. Vinod Kumar, PW 1 proves the afore-mentioned fact. The statement of Mr. N.S. Chandha, Supervisor and Head of Orthopedics Department, Medical College, Rohtak further corroborates the aforementioned version. Sukhpal was 100 percent disabled and eventually discharged from the Hospital on 30.12.1984. It shows that Sukhpal remained admitted in the hospital for almost one year and thereafter he died on 4.8.1985. A gap of about 7 months does not suggest that he had died on account of natural death. There is no evidence brought on the record by the appellants that he had suffered any other injury or ailment like heart disease or stroke. In the absence of any mitigating circumstance having been pointed out, the findings deserve to be upheld.

11. The controversy with regard to the application of amended provision retrospectively has been put to rest by the Supreme Court in the case of Dhannalal Vs. D.P. Vijayvargiya and Others, , holding that the Tribunal has to

entertain a claim petition without taking note of the date on which accident had taken place. After referring to Section 158(6) of the Act and noticing the duties enjoined upon the officer in charge of the police station, Their Lordships observed asunder:

In view of Sub-section (6) of Section 158 of the Act the officer in charge of the police station is enjoined to forward a copy of information/report regarding the accident to the Tribunal having jurisdiction. A copy thereof has also be forwarded to the insurer concerned. It also requires that where a copy is made available to the owner of the vehicle, he shall within thirty days of receipt of such copy forward the same to the Claims Tribunal and insurer. In this background, the deletion of Sub-section (3) from Section 166 should be given full effect so that the object of deletion of the said Section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, the High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from the Tribunal to this Court. His right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14.11.1994 in respect of the accident which took place on 4.12.1990, in view of the amending Act he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued up to this Court cannot be thrown out on the ground of limitation.

(Emphasis added)

12. It has been concluded in the aforementioned judgment that the only exception would be where the claim petition has been dismissed as time-barred and such an order has attained finality. The aforementioned judgment has been followed in the case of *The New India Assurance Co. Ltd. Vs. C. Padma and Another*, . Therefore, there is no substance in the argument and the same is hereby rejected.

13. I am further of the view that the amount of Rs. 10,000 awarded to the claimant-respondents is on the lower side, although the Tribunal had computed the compensation to Rs. 1,44,000. In the facts and circumstances of the case no further benefit could be given to the claimant respondents as they had claimed only Rs. 1,40,000. But all the same the amount claimed and awarded is modest and by no stretch of imagination it could be said that it is excessive. The deceased is survived by a widow, a mother and seven children, therefore, no interference by this Court is warranted.

14. For the reasons mentioned above this appeal is dismissed.