
(2008) 09 SHI CK 0028
In the High Court Of Himachal Pradesh

Surjeet Kaur

APPELLANT

Vs

Shamsher Singh and Others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) ACJ 1325

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—Award passed by the Motor Accidents Claims Tribunal-II, Solan, H.P. dated 24.5.2004 in M.A.C. Petition No. 26-NL/2 of 2001 titled as Surjeet Kaur v. Shamsher Singh, awarding a compensation of Rs. 2,02,000 along with interest at the rate of 9 per cent per annum, in favour of claimant No. 1, Surjeet Kaur, widow of the deceased is under challenge.

2. A petition u/s 166 of the Motor Vehicles Act, 1988 was filed seeking compensation of Rs. 6,00,000 on account of death of Darshan Singh, who died in an accident, which took place on 1.7.2001 due to rash and negligent driving of Parkash Chand, respondent No. 2 of vehicle No. HP 34-3815.

3. Shamsher Singh, respondent No. 1 owner and Parkash Chand, respondent No. 2 driver filed a joint written statement and National Insurance Co. Ltd. filed separate written statements.

4. Based on the pleadings of the parties the Tribunal framed the following issues:

(1) Whether on 1.7.2001 at about 7 p.m. at Kiratpur Sahib, Tehsil Anandpur Sahib, District Ropar, the petitioner's husband borne scooter No. HP 12-6801 was hit by truck No. HP 34-3815 driven by the respondent No. 2, who succumbed to his injuries at the spot as alleged?

OPP

(2) If issue No. 1 is proved, to what amount of compensation, the petitioner is entitled to and from whom?

OPP

(3) Whether the respondent No. 2 was rash and negligent in driving truck No. HP 34-3815 as alleged?

OPR

(4) Whether the truck driver was not having valid and effective driving licence at the time of the accident?

OPR3

(5) Whether truck driver was driving the truck in violation of policy conditions as alleged? If so, its effect?

OPR3

(6) Relief.

5. Appreciating the material on record, the Tribunal decided issue No. 1 in the affirmative holding that Darshan Singh, husband of claimant No. 1, died in a road accident as a result of rash and negligent driving of vehicle No. HP 34-3815 by respondent No. 2. Issue Nos. 4 and 5 were decided against the insurance company and it was held that the driver was having a valid and effective driving licence and there was no violation of the policy conditions.

6. On issue No. 2 pertaining to the compensation to be awarded to the claimants, the Tribunal held that claimant No. 1 alone was entitled to compensation and the deceased was having an income of Rs. 3,000 per month and dependency was worked out to be 2/3rd of the said amount. Considering the deceased to be of 52 years and claimant No. 1 to be of 50 years, a multiplier of "8" was applied and a sum of Rs. 1,92,000 was determined as compensation in addition to conventional charges of Rs. 10,000.

7. It is against this finding of fact that claimant No. 1 has filed the present appeal seeking enhancement of compensation. No appeal or cross-objection have been filed by any of respondents.

8. I have heard the learned Counsel for the parties and also perused the record.

9. The age of deceased and defendant-appellant is not in dispute. Surjeet Kaur, PW 1, has deposed that her husband was an agriculturist and a transporter and was owning two trucks. In cross-examination, she has admitted that one truck was being driven by her son. She has deposed that her husband was earning Rs. 15,000 per month. Importantly, there is no cross-examination on this point at all by any of the respondents. The fact that deceased was owning two trucks in his own name is evident from the registration certificates, Exh. P2 and Exh. P3 of the said vehicles. The deceased was definitely a man of means. Assuming that one of

the trucks was being managed by his son who was keeping the entire income to himself the income from at least one truck was there to the deceased.

10. It is true that no proof of income has been placed on record by the claimants but, however, it is equally true that the claimant has not been cross-examined on the point of income of the deceased.

11. The Apex Court in Oriental Insurance Company Ltd. Vs. Jashuben and Others, , after considering its earlier decisions in N. Sivammal v. Managing Director, Pandian Roadways Corporation 1985 ACJ 75 (SC); General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; Smt. Sarla Dixit and another Vs. Balwant Yadav and others, ; Rathi Menon Vs. Union of India, ; Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, ; New India Assurance Co. Ltd. Vs. Charlie and Another, ; U.P. State Road Transport Corporation Vs. Krishna Bala and Others, ; The Managing Director, TNSTC Vs. Sripriya and Others, and National Insurance Company Ltd. Vs. Indira Srivastava and Others, , has held that amount of compensation indisputably should be determined having regard to the pecuniary loss caused to the dependants by reason of death of the victim. The earnings of the deceased at the time of the accident including future prospects within the legal principles have to be considered.

12. The court has approved its earlier views, which are reproduced as under:

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

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...In Black's Law Dictionary, "compensation" is shown as "equivalent in money for a loss sustained" or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for some loss, injury or service especially when it is given by statute...

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The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants

may not live up to the estimated remaining period of their life expectancy, chances that the deceased might have got better employment or income or might have lost his employment or income altogether.

The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself as regards both self maintenance and pleasure and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years" purchase.

Much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters" and the court must try to assess as best as it can the loss suffered.

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If the dictionary meaning of the word "income" is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

13. For the purpose of determination of compensation, the Supreme Court in *Lata Wadhwa and Others Vs. State of Bihar and Others*, , has determined the income of a housewife to be Rs. 3,000. Tribunal in the instant case also arrived at the said figure, but, however, without any basis. The death took place in the year 2001. The deceased was a transporter. If in the case of a housewife the income can be Rs. 3,000 then definitely in the instant case, the income of the deceased is bound to be more than that.

14. The deceased was a man of means and still had many more years to earn his livelihood. Some guesswork is required to be done to arrive at the exact income. In my view, the total income of the deceased can be assessed to be at Rs. 6,000 per month instead of Rs. 3,000 determined by the Tribunal and for the purpose of dependency the income is assessed at Rs. 4,000. The Tribunal has applied the multiplier of "8", which keeping in view the decision of the Apex Court in *New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others*, , is quite reasonable. Therefore, the claimant shall be entitled to compensation of Rs. $4,000 \times 12 \times 8 = \text{Rs. } 3,84,000$.

15. The claimant has been awarded Rs. 10,000 as conventional charges. In my view, it is on the lesser side and it would be just if Rs. 20,000 as lump sum is awarded for funeral expenses, loss of consortium including love and affection. This is considering that some expenditure must have been incurred as the

deceased died in an accident at a distant place from his residence and the post-mortem took place at Anandpur Sahib in Punjab.

16. Ms. Sunita Sharma, learned Counsel for the insurance company has referred to and relied upon the judgment of the Apex Court in State of Haryana and Another Vs. Jasbir Kaur and Others, , to contend that normal rule about the deprivation of income is not strictly applicable where the agriculture income is the source and attendant circumstances have to be considered. I may clarify that the deceased was an agriculturist has not been taken into account while arriving at the income of the deceased.

17. The present appeal is accordingly allowed. The claimant shall be entitled to the aforesaid amounts along with interest as awarded by the Tribunal. The award of the Tribunal is modified accordingly.