
(1988) 09 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 40 of 1984

Surjit Pavitar Singh and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 01-09-1988

Acts Referred:

Citation : (1990) ACJ 156 : (1989) 95 PLR 623

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : G.S. Grewal and S.S. Bajwa, for the Appellant; L.M. Suri and Ravinder Arora, Ravi Kapoor and K.P. Bhandari, A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—The challenge in appeal here is to the award of Rs. 1,06,000/- as compensation to the mother and brother of Lieutenant Harpreet Singh deceased, who was killed when the Punjab Roadways bus PUK 7142, he was travelling in, hit into the stationary truck PUR 5197, loaded with cement poles parked on the roadside. This happened on July 3, 1982 at about 10 p.m. near village Belongi on the Kharar-Chandigarh Road. The Tribunal held this to be a case of composite negligence of both the drivers of the bus as also of the truck. Negligence being apportioned at 60 per cent as that of the bus driver and 40 per cent of the truck driver.

2. Considering the circumstances and the manner in which the accident occurred, no scope is provided here for doubting the fact that the accident had been caused due to the negligence on the part of both the offending vehicles. The only question that arises for determination is the extent to which responsibility for the accident deserves to be apportioned between the two offending drivers.

3. According to the bus driver, RW1 Sarwan Singh, but for the fact that the truck had been parked in the middle of the road, the accident would not have taken place. A reference to the photographs, Exhs. P-1 to P-3, would, however, show

that the truck can, by no means, be said to have been parked in the middle of the road. These photographs show it to be parked very much on one side of the road with only one edge of the metalled portion of the road being under its wheels on the right hand side.

4. As is well-known, Kharar-Chandigarh Road is wide enough to permit two heavy vehicles to cross. In other words, had the truck been parked and the bus been driven as per the well recognized rules of the road, this unfortunate accident could not have occurred.

5. A reading of the testimony of the bus passenger, PW5 Vasa Dharma Rao, would show that the headlights of the bus were dim, but despite this, it was being driven at a very fast speed. No wonder, the bus driver and the passengers in the bus were blinded by the headlights of an oncoming truck. Just at that point the truck happened to be parked on the roadside with protruding cement poles. There was no light or other indication of the truck being there and the cement poles protruding out of it. According to Vasa Dharma Rao, he spotted the obstruction from a distance of 15 to 20 yards and he and many other passengers in the front portion of the bus had shouted to the driver to take the bus towards the right to avoid collision with the truck, but the driver was not able to spot the truck in time to avoid the accident.

6. It is obvious from the manner in which the accident occurred that the major part of the blame must lie with the bus driver while the negligence of the truck driver lies in his parking the truck partly on the road and leaving it there without any light or indication to warn road-users of this hazard. It has to be borne in mind, in this behalf, that it was at about 10 p.m. at night that this accident had occurred.

7. Taking an overall view of the circumstances that existed at the time of the accident and the position at the spot of the two offending vehicles, in the light of the evidence on record, negligence of the bus driver and the truck driver deserves to be apportioned at 75 per cent and 25 per cent respectively. The finding of the Tribunal on the issue of negligence is consequently modified accordingly.

8. Turning now to the compensation awarded to the claimants, it must, at the very outset, be observed that the Tribunal fell in error in awarding Rs. 10,000/- as compensation to the brother of the deceased. In the presence of the mother, no compensation was payable to the brother and consequently the award of Rs. 10,000/- as compensation to the brother cannot be sustained and is accordingly hereby set aside.

9. As regards the compensation payable to the mother, counsel for the parties failed to show any reason to differ with the dependency, as assessed by the Tribunal, namely, Rs. 500/- per month. The deceased here was only about 24 years of age at the time of his death and he was lieutenant in the Indian Army. The widowed mother of the deceased was only 50 years of age when he died and

according to the evidence on record, she was dependent upon his earnings. Considering the circumstances and the situation of the claimant and the deceased in the light of the principles laid down by the Full Bench in Lachman Singh v. Gurmit Kaur 1979 ACJ 170 , the dependency of the widowed mother at Rs. 500/- per month must indeed be upheld and affirmed as also the multiplier of " 16". So computed, the compensation payable to the claimant would work out to Rs. 96,000/-. This may be rounded off to Rs. 1,00,000/-. Considering the fact that the total compensation awarded was only Rs. 6,000/- more than this, no occasion is provided in the circumstances here to reduce it in appeal. In the result, the widowed mother of the deceased alone must be held entitled to and is accordingly hereby awarded a sum of Rs. 1,06,000/- (Rs. One lakh and six thousand only) as compensation, which she shall be entitled to along with interest at the rate of 12 per cent per annum from the date of the application to the date of the payment of the amount awarded.

10. The respondents shall be jointly and severally liable for the compensation awarded.

11. Both the appeals of the claimant mother and of the insurance company are accepted to this extent. There will be no order as to costs.