(1994) 03 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 779 of 1985 and Cross Objection No. C-II of 1987

Surjit Singh APPELLANT

Vs

Jalandhar Transport Co-Operative Society Ltd. and Others RESPONDENT

Date of Decision : 23-03-1994

Acts Referred:
Motor Vehicles Act, 1939 — Section 110A

Citation : (1995) 2 ACC 335 : (1996) ACJ 280 : (1994) 108 PLR 23

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : Surya Kant and Ranjit Saini, for the Appellant; S.P. Jain, for the Respondent No. 1, H.S. Giani and G.S. Virdi, for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Amarjeet Chaudhary, J.—This judgment of mine will dispose of FAO No. 779 of 1985 and Cross-objections No. 8-CII of 1987 filed therein and F.A.O.No. 858 of 1985 and Cross-objections No. 9-C-II of 1987 filed therein as they have arisen from the common award of the Motor Accident Claims Tribunal, Jalandhar dated January 23, 1985.

2. FAO No. 779 of 1985 has been filed by Surjit Singh and others while FAO No. 858 of 1985 by Harvinder Kaur in which the prayer is for enhancement of the compensation. In both these appeals, Cross-objections have been filed by Jalandhar Transport Company for setting aside the impugned award.

3. The Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal) on a claim petition filed by Surjit Singh and others u/s 110-A of the Motor Vehicles Act, had awarded a sum of Rs. 96,000/- as compensation on account of the death of Jaswinder Singh who died in a vehicular accident on 25.1.1983. Out of this compensation Surjit Singh father and Joginder Kaur mother of the deceased were to be awarded Rs. 8,000/- each while Har-vinder Kaur window of the

deceased was awarded Rs. 50,000/- and Rs. 30,000/-were awarded to the minor children. In a separate claim petition filed by Harvinder Kaur, the Tribunal had awarded a sum of Rs. 27,000/- as compensation for the injuries suffered by her in the said accident. The compensation above-mentioned was awarded alongwith 6% interest from the date of the sward. The liability to pay compensation was fastened on respondents No. 1 to 3 and respondent No. 3 was to indemnify the claimants to the extent of Rs. 50,000/-. in both the claim petitioners while the rest of the compensation was to be paid by respondents No. 1 and 2 individually and collectively.

4. In the appeal filed by Surjit Singh etc. the challenge to the award is that the Tribunal had erred in reading the Income Tax Return of the deceased. As such, the income of the deceased was wrongly determined. It was argued by the learned Counsel for the appellants that the deceased was 32 years of age at the time of his death and a multiplier of 25 instead of 16 should have been applied.

5. In the appeal filed by Harvinder Kaur, it was contended by the learned counsel for the appeal at that the Tribunal had not awarded reasonable compensation for the multiple injuries sustained by the claimant.

6. In the cross-objections, the plea raised is that the liability to pay compensation, if any, be fastened on the Insurance Company.

7. I have considered the submissions of the learned counsel for the parties and perused the entire case file.

8. In the instant case the only question which has cropped up for consideration is with regard to quantum of compensation and from whom. The Tribunal while calculating the income of the deceased did not place reliance on the certificate of Income Tax issued by the Income Tax authorities and by ignoring the same had determined the monthly income of the deceased at Rs. 800/-. The Tribunal calculated the dependency of the claimants on the deceased at Rs. 500/- i.e. annually Rs. 6000/- and by applying a multiplier of 16, had awarded a total compensation of Rs. 96,000/- for the death of Jaswinderjit Singh.

9. A perusal of the certificate of income, Ex.-A-15 produced by Smt. Harvinder Kaur (PW-8) which was issued by Income Tax Office, Batala shows that Jaswinder Singh deceased happened to be partner in the firm M/s Madan Filling Station G.T. Road, Batala and his income in the income Tax Return for the year 1982-83, was Rs. 20,830/- and in the return for the year 1983-84, the deceased''s income was shown to be Rs. 20,810/-.

10. The Tribunal gravely erred in holding that the same related to Smt. Harvinder Kaur claimant herself, though in fact these income tax returns related to Jaswinderjit Singh deceased. Exhibit A-16 is another income certificate issued by Income Tax Officer, Survey Circle, Amritsar which describes Jaswinderjit Singh also as partner in the firm M/s Wazir Singh Gurjit Singh and his income for the assessment years 1981-82 to 1983-84, was shown as Rs. 3806/- for the year

1981-82, Rs. 282.87 for the year 1982-83 and Rs. 7196/- for the year 1983-84. Taking into consideration the income from the above said two firms it can safely be concluded that deceased Jaswinderjit Singh had an annual income of atleast Rs. 21,000/-. Out of which he must be spending l/3rd i.e. Rs. 7,000/- on himself and the remaining Rs. 14,000/- on his family. Thereafter, the annual dependency of the claimants is held to be Rs. 14,000/-.

11. Now coming to the multiplier part of the matter, I am convinced that there was no error on the part of the Tribunal in applying a multiplier of 16 keeping in view the ratio of Lachhman Singh v. Gurmit Kaur 1979 P.L.R. 1.

12. Resultantly by adopting a multiplier of 16 to the dependency of Rs. 14,000/- the claimants would be entitled to Rs. 2,24,000/-. Out of this compensation the parents of the deceased i.e. Surjit Singh and Joginder Kaur would be entitled to 16,000/- each, Harvinder Kaur widow of the deceased would be entitled to Rs. One lac and children to the balance amount of Rs. 92,000/- in equal shares with 12% interest from the date of claim petition. The amount failing to the share of the minors shall be deposited in fixed deposit in any Nationalised Bank till they attain majority.

13. Coming to FAO No. 858 of 1985 filed by Mrs. Harvinder Kaur it has come in the evidence of Dr. Hardas Singh that Harvinder Kaur suffered multiple injuries including fracture shaft femur left side, fracture both bones left leg and fracture of the jaw. She had shortening of the left lower limb by "Limitation of flexion of the knee by 15 degrees, limitation of the movement of the ankles by 20 degrees. The deformity of the jaw with one tooth missing and a scar on the face. She was walking with crutches due to weakness of the muscles of the leg. Permanent disability according to the Doctor was 35 percent which included disfigurement due to scare on her face. The Tribunal taking into consideration the permanent disability referred to above, loss of enjoyment of life, mental agony and pain suffered by her during her medical treatment and physical disability and diminution of her chances for remarriage, awarded Rs. 20,000/-. Another sum of Rs. 1000/- was awarded for the expenditure incurred by Harvinder Kaur on special diet, and Rs. 4000/- as medical expenses besides Rs. 2,000/- for engaging maid servant, totalling Rs. 27,000/-.

14. After going through the evidence of the Doctor, I am of the view that the compensation awarded to Mrs. Harvinder Kaur is not commensurate with the disability suffered by her and it is a fit case in which compensation to the tune of Rs. 50,000/- for disability disfigurement of face, loss of enjoyment of life, pain and sufferings and diminution of her chances for remarriage, should be granted to her. Harvinder Kaur claimant is accordingly held entitled to Rs. 50,000/- in all as compensation with 12% interest from the date of the claim petition till realization. The amount already awarded is to be adjusted.

15. In view of the foregoing discussion, both the appeals are allowed in the above terms. In FAO No. 779 of 1985, the liability to pay compensation is

fastened on respondent No. 1 to 3. The Insurance Company, respondent No. 3 would be liable to pay Rs. 50,000/- only while the rest of the amount of the compensation shall be paid by respondents No. 1 and 2 jointly and severally. The Cross-objections in both the appeal fail and are hereby dismissed.

16. There will however, be no order as to costs in either of the appeals or the Cross-objections.

