

(1988) 09 P&H CK 0021
In the Punjab And Haryana At Chandigarh

The New India Assurance Company Ltd.	APPELLANT
Vs	
Durga Parshad Khemka and Others	RESPONDENT

Date of Decision : 01-09-1988

Acts Referred:

Citation : (1989) 1 ACC 521

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

Bench : Single Bench

Judgement

S.S. Sodbi, J.—Several persons travelling in the Rajasthan Road Transport Corporation Bus RSB 1820 were injured and some died too when it was involved in an accident with the truck OLG-3962 coming from the opposite direction. This happened on March, 12, 1980 at about 11.30 A.M. near village Bilaspur on the Delhi-Jaipur Road.

2. The four bus passengers killed in this accident were Radhey Sham Khemka, Madan Mohan Grover, Arvind Kumar alias Vinod Kumar and Jagdish Prashad while the injured included Kanwar Singh and Niranjana Dutt.

3. The Tribunal came to the finding that the accident had been caused as a result of the composite negligence of both the bus as also the truck driver and apportioned their negligence at 75 per cent as that of the bus-driver and 25 per cent of the truck driver.

4. A sum of Rs. 2500/- was awarded as compensation to the brother of Radhey Sham Khemka deceased, Rs. 17000/- to the widow of Madan Mohan Grover deceased, Rs. 45,000/- to the widow, children and parents of Jagdish Prashad deceased and Rs. 10,000/- to the parents of Vinod Kumar deceased while the injured Kanwar Singh and Niranjana Dutt were awarded Rs. 15,000/- and Rs. 1250/- each respectively.

5. The appeals here are by the New India Assurance Company with which the offending truck DLG-3962 had been ensured.

6. In appeal, now the contention sought to be raised by Mr. G.S. Chawla, counsel for the appellant-Insurance Company was that as both the bus-driver and the truck-driver has been held to be guilty of negligence, the liability for the compensation awarded should have been apportioned in proportion to their respective share of blame. The argument, in other words, being that the Award should have specified that the claimants were to recover 75 per cent of the compensation awarded from the bus-driver and owner and only the remaining 25 per cent from the truck-driver, owner and its Insurance Company. This is indeed an untenable contention as in so far as the claimants are concerned, both the truck-driver and the bus-driver were joint tortfeasors and it is consequently open to the claimants to recover the whole or any part of the compensation awarded from all or either of the joint tort-feasors. No question thus arises of the Tribunal specifying the proportion of the compensation awarded to the claimants to be recovered by them from particular tort-feasors. Amongst themselves, the joint tort-feasors are, of course, entitled to ratable contribution.

7. In the case of Vinod Kumar deceased (F.A.O. 336 of 1982) cross-objections have been filed by his parents seeking enhanced compensation. A reference to the evidence on record would show that Vinod Kumar, deceased, was about 20 years of age at the time of his death. He was a XIIth Class student and according to his father, AW 7 Jai Parkash, the deceased also helped him in his business and thus had the effect of enhancing his earnings from the shop. Further, it was contended that the Tribunal had erred in not allowing cost of transportation of the dead body of the deceased from the Civil Hospital, Gurgaon to village Katholi, a distance said to be over 200 kilometres. Besides, this, some amount is also claimed as cost of cremation.

8. The claimants are indeed entitled to the amount spent by them on the transportation of the dead body of the deceased as also the cremation. Besides this some enhancement is also warranted by the fact that the deceased was not merely a student but was also gainfully employed in the business of his father.

9. Taking an over-all view of the circumstances of the claimants and the deceased, it would be fair and just to hold the parents of the deceased entitled to Rs. 20,000/- as compensation.

10. The compensation payable to the claimants is accordingly hereby enhanced to Rs. 20,000/- which they 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.

11. The appellant, Insurance Company and respondents 2, 3 and 4 shall be jointly and severally liable for the compensation awarded.

12. In the result, the appeals filed by the Insurance Company are hereby dismissed with costs, while the cross-objections of the claimants in F.A.O. 336 of 1982 are hereby accepted. The claimants shall be entitled to their costs in these appeals. Counsel fee Rs. 500/- (one set only).