

(1986) 11 P&H CK 0054
In the Punjab And Haryana At Chandigarh

The Oriental Fire And General Insurance Co. Ltd.	APPELLANT
Vs	
Daya Chand and Others	RESPONDENT

Date of Decision : 27-11-1986

Acts Referred:

Citation : (1987) 2 ACC 475

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Judgement

D.V. Sehgal, J.—This judgment will dispose of FAO's Nos. 229, 230, 231 and 232 of 1983 as all of them are directed against a common award dated 16-12-1982 made by the Motor Accident Claims Tribunal, Gurgaon. Four Persons namely Ranbir Singh, Shiv Charan, Nanak and Phagwa were transporting their load of goats on truck No. HRR/8917 on the Jaipur-Delhi road on 1-2-1981. The truck was owned by Bhajan Singh respondent and it was being driven by Ved Parkash respondent. It was being driven rashly and negligently by Ved Parkash. At about 2 or 3 P.M. when the truck reached near village Khandwa in the jurisdiction of Police Station Sadar, Gurgaon, it hit against a Kikar tree and turned turtled. As a result of this accident, Ranbir Singh and Shiv Charan sustained injuries and died. Nanak and Phagwa were also seriously injured. The following claim applications were presented before the learned Tribunal on account of the death of two victims of the accident and on account of the injuries to the other two.

(i) M.V.A. Case No. 7 of 1981 (Daya Chand etc. v. Ved Parkash etc.) arising out of the death of Ranbir Singh filed by his parents and widow.

(ii) M.V.A. Case No. 5 of 1982 (Smt. Parwati v. Bhajan Singh and Ors.) arising out of the death of Shiv Charan, filed by his widow and three minor children.

(iii) M.V.A. Case No. 6 of 1982 (Nanak v. Bhajan Singh and Ors.) on account of the injuries, pain and sufferings caused to Nanak.

(iv) M.V.A. Case No. 7 of 1982 (Phagwa v. Bhajan Singh and Ors.) on account of the injuries, pain and sufferings caused to Phagwa.

In each of the application, the compensation had been claimed to the tune of Rs. 40,000/-. The respondents to the claim applications filed their written statements. The factum of the accident, death of Ranbir Singh and Shiv Charan and injuries to Nanak and Phagwa as a result of the same, were admitted. Ved Parkash, driver of the truck and Bhajan Singh, its owner, however, pleaded that the accident was not due to rash or negligent driving on the part of Ved Parkash. It was as a result of vis major. They stated that when the truck was near the place of occurrence, all of sudden its front left tyre burst with the result that vehicle went to the left side of the road. The driver applied the brakes but without success. It was further stated that the criminal case registered against the driver had been cancelled as he was not found at fault. The Insurance Company, respondent-appellant in its written statement took an additional plea that the driver had violated the term of the policy by allowing the victims of the accident to ravel on the truck.

2. On appreciating the evidence adduced on behalf of the parties, the learned Tribunal reached at a finding of fact that the accident had been caused on account of rash and negligent driving of the truck by Ved Parkash. It was further cocluded that the parents and widow of Ranbir Singh were entitled to Rs. 55,000/- as compensation while the widow and children of Shiv Charan were entitled to Rs. 90,000/- as compensation on account of the death of these two victims of the accident. Since, however, in the claim applications filed by the claimants, they had limited their claims for compensation to Rs 40,000/- each only, they were awarded the amount so claimed. In respect of the injuries caused to Nanak and Phagwa, the learned Tribunal held that both of them had been partially incapacitated. They being the labourers had lost considerably their capacity to earn their livelihood. The compensation to the tune of Rs. 40,000/- was, therefore, awarded to them vide the award under appeal. It was further held by the learned Tribunal that the claimants were entitled to interest at the rate of 6 per cent per annum from the date of their respective claim applications till the final payment and that the liability of the Insurance Company-appellant shall extend to the satisfaction of the awards. The present appeals have been filed against the aforesaid award, by the Insurance Company.

3. I have heard the learned Counsel for the appellant at some length. He has not been able to persuade me to differ with the findings recorded by the learned Tribunal, that the accident was caused as a result of rash and negligent driving of the truck by Ved Parkash driver. As already pointed out above, the death of Ranbir Singh and Shiv Charan and the injuries caused to Nanak and Phagwa, as a result of the accident are not disputed. No doubt, as pointed out by the learned Counsel, Ranbir Singh and Shiv Charan were labourers. They dealt with the purchase, transportation and sale of goats and no definite evidence with regard to their income was adduced before the learned Tribunal. It is, however, a matter of common knowledge that a Labourer earns not less than Rs. 10/-per day. Ranbir Singh was aged 21 years while Shiv Charan was 25 years old when they fell the victims of the accident. By any conservative estimate, the compensation

amount to the tune of Rs, 40,000/-in the case of death of each of these two victims to the claimants cannot be termed as more than adequate. In fact, as rightly held by the learned Tribunal, the claimants were entitled to far more amount as compensation, but since the claim made by them was Rs. 40,000/- in each claim application, the compensation was so awarded. No fault can be found with this finding..

4. Coming to the case of Nanak and Phagwa, who received injuries in the accident, it is to be noted that Nanak was aged 40 years and Phagwa was 45 years old at the time of accident. Dr. Batta, PW 3 who conducted X-ray examination on these two injured gave the age of Nanak as 25 years and that of Phagwa as 45 years. We can, however, take the age of these two injured persons as 40 and 45 years respectively as mentioned by them while appearing in the witness box. Both of them stated in their claim applications that they have been disabled as a result of the injuries sustained by them in the accident. This assertion was simply denied for want of knowledge, which, as rightly observed by the learned Tribunal, is no denial in the eyes of law. Dr. Batta, PW 3 has stated that X-ray examination of Nanak showed fracture of clavicle bone and of third of seventh posterior ribs of right side with surgical emphysema. This statement was not challenged in cross-examination. Nanak appearing as PW 4, stated that he could do no work after the accident and he has no source of income and the entire family is dependent upon him. Although there is no evidence that Phagwa suffered any fracture, he has stated in the witness box that he has been completely disabled and cannot do any manual work. The learned Tribunal had the occasion to see him when he appeared in the witness box. It has been observed in the award that he could not properly walk and his incapacity was evident. Both of them had many years before them to earn livelihood even by manual labour to support their respective families. Now because of incapacity, they are burden instead of being the source of support to their dependents. The learned Tribunal assessed the loss of income to each one of them at Rs. 300/- per month and applied a multiplier of 12 to work out the compensation payable to them at Rs. 43,200/-. It also decided that they were entitled to Rs. 2000/- each or* account of pain, shock and sufferings. Since, however, their claim was limited to Rs. 40,000/- each, the same amount has been awarded. Learned Counsel for the appellant could not advance any cogent reason which could persuade me to hold that the amount of compensation so awarded was in any way excessive and not warranted by the disability suffered by these two injured persons.

5. Learned Counsel for the appellant contended that the Insurance Company is not liable to the payment of compensation in these cases as all the four victims of the accident were unauthorised passengers in the truck which is a goods vehicle. He relied on Parkash Vati and Others Vs. The Delhi Dayal Bagh Dairy Ltd., . I find that the facts of Parkashvati's case (supra) were different and quite distinguishable from the present one. It is not even the case of the driver and the owner of the truck that the aforesaid four victims were unauthorised passengers on the vehicle. In fact, they were on the truck transporting their

goats. It was necessary for them to remain on the truck with the goats so that these animals could be watched and contained on the truck. They, thus, cannot be described as unauthorised passengers on goods vehicle. I have, therefore, no doubt to my mind that the liability of the appellant is co-extensive with that of the driver and the owner of the truck and it is liable for the amount of compensation and interest awarded by the learned Tribunal.

6. In view of the above discussion, I find no merit in these appeals-, which are consequently dismissed but without any order as to costs.