
(2000) 06 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From the Order No. 478 of 1997

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Narinder Kaur and others

RESPONDENT

Date of Decision : 01-06-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2001) 2 ACC 60 : (2002) ACJ 1116 : (2001) 1 RCR(Civil) 639

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Mr. Ashok Aggarwal, Mr. Subash Goyal and Mr. Vikas Bahl, for the Appellant; Mr. C.S. Pasrecha and B.R. Mahajan, for the Respondent

Judgement

Amar Dutt, J.—This judgment will dispose of F.A.O. Nos. 255 to 260 and 478 to 482 of 1997. For the purpose of this judgment, the facts are being taken from FAO No. 478 of 1997.

2. On 11.2.1991 at about 4.00 P.M. within the revenue limits of village Godana, Police Station Dhilwan, District Kapurthala a head on collision took place between Maruti Car bearing registration No. CH 01 1477 which was owned by Neera Gullati at the time of accident and was being driven by Shri P.S. Multani and a truck bearing registration No. PUU 9201 which is owned by Kashmiri Lal. The accident had resulted into the death of Atinderjit Singh and injures to Kamaljit Kaur, Baby Gurnoor, Balwant Kaur, Narinder Kaur and Baby Karishma. Claim petitions have been filed by the injured and all the heirs of Atinderjit Singh under the Motor Vehicles Act asserting that the accident had taken place on account of the rash and negligent driving of the drivers of both the vehicles. These petitions were contested by the respondents who admitted the factum of accident but denied that the same had taken place owing to the negligence of the driver of the car. The Oriental Insurance Company Ltd. had in a separate written statement denied the factum of accident for want of knowledge and raised preliminary objections regarding the application being bad for non-joinder of the

drivers of the vehicle involved and that the driver of the car was not holding any valid driving licence. Kashmiri Lal, the owner of the truck had asserted that the accident had taken place as a result of the rash and negligent driving of the car by Atinderjit Singh, deceased, himself. He had also taken the plea that the claim applications were bad for non-joinder of necessary parties. From the pleadings of the parties, the following issues were framed:

" 1. Whether the petition is bad for non-joinder of necessary parties as alleged in preliminary objection of written statement ? OPR-2 and 3.

2. Whether respondent No. 2 has no liability to pay the compensation in view of the preliminary objection No. 5 of the written statement of respondent No. 2 ? OPR-2

3. Whether the driver of the Maruti car was not holding valid driving licence in view of the preliminary objection No. 3 of the written statement of respondent No. 2 ? If so, its effect ? OPR-2.

4. Whether P.S. Multani was not authorised to drive the car ? If so, to what effect ? OPR-2.

5. Whether the accident took place on account of rash and negligent driving of the Maruti car No. CH01/1477 driven by P.S. Multani ? OPR-3.

7. Whether accident took place on account of rash and negligent driving of truck No. PUU 9201 and Maruti car No. CH-01-1477 ? OPA.

8. If above issues No. 7 and 8 proved, to what amount, the claimant/claimants is/ are entitled to compensation and from whom, OPA

9. Relief.

So far as Issue No. 6 framed in each of the claim application excepting MACT case No. 36, is concerned, is also almost common excepting the name of the injured and it is as under:

Whether applicant (named) was injured on account of rash and negligent driving of truck No. PUU-9201 and Maruti car No. CH-01-1477 ? OPA.

However, so far as M.A.C.T. Case No. 36 of 1991 is concerned, Issue No. 6 is as under :-

" Whether deceased Atinderjit Singh died on account of rash and negligent driving of truck No. PUU-9201 and Maruti car No. CH-01-1477 driven by P.S. Multani? OPA."

3. Since all the applications arose out of the same accident, they were consolidated for the purposes of evidence. After the parties had led evidence, arguments were heard and the Tribunal disposed of Issue No. 1 in favour of the claimants, issue Nos. 2 to 4 were also decided against respondent No. 3. Issues Nos. 5 and 7 were taken up together and the Tribunal came to the conclusion

that the accident had taken place on account of the rash and negligent driving of the Maruti car by P.S. Multani and truck No. PUU-9201 driven by its driver. Issue No. 6 was also decided in favour of the applicants and while disposing of issue No. 8, the Tribunal awarded Rs. 20,000/- as compensation to Kamaljit Kaur, Rs. 15,000/- to Baby Gurnoor, Rs. 15,000/- to Balwant Kaur, Rs. 5,000/- to Narinder Kaur on account of her own injuries and Rs. 90,000/- to Baby Krishma, Rs. 4,05,000/- to Narinder Kaur, Gurnoor, Krishma and Balwant Kaur on account of the death of Atinderjit Singh. The Tribunal had while awarding the compensation apportioned the inter se liability of both the drivers as 50 per cent by holding that it was a case of composite negligence indicating that the respondents were jointly and severally liable for the payment of the compensation. The award did not satisfy any one of the claimants and the Insurance Company. F.A.O. Nos. 478 to 482 of 1997 have been filed by the Insurance Company to challenge that portion of the award which had made it jointly and severally liable for payment of the compensation. Appeal Nos. 255 to 260 of 1997 have been preferred by the claimants seeking enhancement of the compensation awarded to them.

4. In the appeals filed by the Oriental Insurance Company Ltd. (for short the Insurance Company) who had provided insurance cover for the Maruti car, the solitary ground on which the award is sought to be assailed is that after having equally apportioned the responsibility of the accident between the driver of the truck and Shri P.S. Multani, the Tribunal erred in observing that the amount of compensation paid would be recoverable jointly and severally from all the respondents. On the other hand, the claimants have sought to challenge the reasons adopted by the Tribunal for awarding the compensation claimed by Balwant Kaur, Narinder Kaur that had been claimed on behalf of Baby Krishma and Gurnur. They also submitted that the deduction of family pension payable to Narinder Kaur after the death of Atinderjit Singh from the income of the deceased was against the principles laid down by the Full Bench of this Court in *Bhagat Singh Mohan Singh v. Om Sharma and others*, 1983 PLR 1.

5. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties.

6. In the appeals filed by the Insurance Company the only ground on which the awards are sought to be challenged is the failure of the Tribunal to apportion the responsibility for the accident which according to it would necessarily reduce their liability that has been fastened upon it. This, I am afraid is not correct as while deciding Issue Nos. 5 and 7, the Tribunal has come to the conclusion that the accident had taken place on account of the rash and negligent driving of P.S. Multani, who was driving Maruti car No. CH- 01 -1477 as well as the driver of truck No. PUU-9201. It is also observed that both the drivers were equally responsible for causing head on collision between the truck and the car. After having apportioned this responsibility for the accident, the Tribunal had observed that the circumstances in which the accident took place indicate a composite negligence and, therefore, the liability of the respondents including the insurance

company for paying the compensation was joint and several. Since, in the present case, the Tribunal has already given a finding regarding the apportionment of the responsibility, the challenge to the award on this ground alone cannot be sustained as from the circumstances in which the Maruti car and the truck were involved in a head on collision with one another would only warrant an inference that the accident was the result of the composite negligence of both the drivers.

7. The second limb of the argument that once the responsibility was apportioned the Tribunal ought to not to have made all the respondents jointly and severally responsible for payment of the awarded amount is also based on mis-conception of the legal position. While it is correct that judicial precedent requires the Tribunal to fix inter se liability of the parties responsible for the accident yet it is also settled law that in cases where more than one persons are responsible for the accident, the claimants are entitled to recover the whole of the compensation awarded from one of the respondents. See *Narinderpal Singh v. Punjab State* 1989 ACJ 708 wherein it is held : "This is only for the purpose of inter se liability of the two vehicles found negligent but this determination has no effect on the claimant because in law he is entitled to recover the entire amount jointly and severally. Therefore, on a reading of the provisions, it is clear that while awarding the amount in a case of composite negligence, the Tribunal can direct the payment of the entire compensation jointly and severally, but at the same time would apportion the liability between the two owners for their facility, and if both the owners or the two insurance companies, as the case may be, may pay the amounts to the claimants in proportion as awarded by the Tribunal, there will be no problem, for the claimant."

To the same effect is the view taken in *Bhajan Lal Bishnoi Vs. Rajasthan State Transport Corporation*, and *New India Assurance Co. Ltd. Vs. Mrs. Swaran Kanta and Others*, . In view if this, the appeals filed by the Insurance Company are liable to be dismissed.

8. I may now proceed to take up the appeals filed by the claimants for enhancement. While assessing the compensation payable to Kamaljit Kaur, Baby Gurnoor, Balwant Kaur, Narinder Kaur and Baby Krishma the Tribunal has based its assessment on the evidence submitted before it. While dealing with the case of Kamaljit Kaur, the Tribunal had rejected that portion of the claim which sought reimbursement of the amount spent by the claimant while admitted in Command Hospital, Chandi Mandir on the ground that petitioner's husband was Major in the Army and he and all other members of the family were entitled to free medical treatment in the hospital. He had worked out the amount spent by the petitioner on her treatment in the C.M.C. Ludhiana at Rs. 6842.25 and making further allowance for allied expenditure mat might have been incurred by her rounded off the compensation payable on account of the treatment in the C.M.C. Ludhiana, at Rs. 7,500/-. He had also awarded a sum of Rs. 3,000/- towards expenses that were likely to have been incurred by the claimant on employing an

attendant at Rs. 3,000/- and had given her Rs. 2,000/- on account of the special liquid diet. He had further awarded a sum of Rs. 1,500/- for transportation and rejected her claim for Rs. 2,800/- p.m. which she might have got in case she had been selected as a Teacher at the place of posting of her husband as speculated. In addition to this, the Tribunal awarded a sum of Rs. 6,000/- on account of pain and suffering and thus worked out the total compensation payable to her as Rs. 20,000/-.

9. In the case of Gurnoor the Tribunal had awarded a sum of Rs. 1500/- on account of the expenditure for the treatment of the minor while she was admitted in CMC Ludhiana, on account of permanent scar which was left on the face of the child, the Tribunal had awarded a sum of Rs. 10,000/- plus another sum of Rs. 3,500/- on account of pain and suffering. The total compensation awarded to Baby Gurnoor was worked out at Rs. 15,000/-.

10. In the case of Batwant Kaur, the Tribunal after taking into consideration the receipts produced before it awarded the expenditure incurred on medical scanning at Rs. 5036.80 and had after making an allowance for another expenditure that might have been incurred by the applicant awarded a sum of Rs. 6,000/- towards the treatment of the injured. Balwant Kaur had also claimed a sum of Rs. 3,000/- towards travelling expenses and produced receipts of only Rs. 800/- and 1800/- in support of her claim which had not been proved before the Tribunal. As such an amount of Rs. 1,000/- had been awarded in lump sum. Taking into account the statement of Dr. Surjit Singh, Orthopaedics Surgeon, Civil Hospital, Kapurthala, he had awarded a sum of Rs. 3,000/- on account of 60% disability suffered by the petitioner on account of the malunited fracture of the left clavicle. The injured had also claimed Rs. 18,000/- which was paid by her to the Nurse was rejected on account of fact that Swaran Kaur Nurse who was alleged to have been engaged belongs to another State. For the pain and sufferings, the claimant was awarded Rs. 5,000/- which brought the total compensation payable to Balwant Kaur at Rs. 15,000/-.

11. In the case of Narinder Kaur, the Tribunal had assessed the amount spent by her on her treatment at Rs. 3,000/- and awarded her a sum of Rs. 2,000/- on account of pain and sufferings.

12. In the case of Krishma an amount of Rs. 2,000/- was awarded on account of the treatment and Rs. 3,000/- on account of pain and suffering. Since the child had suffered 25% disability on account of the shortening of left leg, she was awarded Rs. 35,000/- in addition to which she was awarded another sum of Rs. 50,000/- as special damages on account of any difficulty that might be faced by her at the time of her marriage. In all an amount of Rs. 90,000/- was awarded.

13. In all these cases, the learned counsel appearing for the claimants has not been able to point out any piece of evidence which if considered by the Tribunal would have warranted the enhancement of the compensation awarded. As a matter of fact the Tribunal had after taking into consideration the various pieces

of evidence produced by the claimant awarded the amounts over and above the amounts which have been proved on the record and therefore do not call for any interference and will have to be ignored.

14. In relation to the compensation awarded to the heirs of Atinderjit Singh, it has been submitted that the Tribunal had while working out the compensation payable to them has deducted a sum of Rs. 1050/- which according to the learned counsel would be payable to the heirs on account of the family pension. This part of the deduction is assailed on behalf of the appellants on the ground that the same is contrary to the view taken by a Full Bench of this Court in Bhagat Singh's case (supra) wherein it has been observed, "that financial benefits like insurance, provident fund, family pension or gratuity are in essence the deferred earning of the victim of the accident or the result of his savings, his thrift or foresight. The dependents, even otherwise, would have had the benefit of these sums in due course. To take these away from the rightful claimants and to enure them only for the benefit of the tortfeasor is something which rightly shocks the judicial conscience. That the receipt of insurance, provident fund, pension or gratuity benefits by the dependants of the victim of an automobile accident must be altogether excluded from consideration in the award of compensation to them." To the same effect are the judgments in The Oriental Insurance Co. Ltd. Vs. Gowramma and others, , Pallavan Transport Corporation Ltd. (Metro) v, P. Murthy and others 1989 ACJ 413. In this view of the matter, the deduction made by (he Tribunal of Rs. 1050/- from Rs, 3856/- while working out the pendency (dependency ?) of the heirs of the deceased cannot be sustained. The compensation will have to be worked out by taking into consideration the monthly salary as Rs. 38567-P.M. on the basis of which the compensation will come out to Rs. 5,55,264/-. This amount shall be payable to the claimants with 12% interest w.e.f. the date of their application till realisation as per the directions of the Tribunal.

For the reasons recorded above, the appeals are dismissed. However, the compensation awarded to the heirs of Atinderjit Singh is modified to the extent indicated above.

15. Appeals dismissed.