

(1980) 07 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : F.A.O. No"s. 47, 49, 50, 51, 52 and 53 of 1977

The State of Punjab

APPELLANT

Vs

H.L. Kochhar

RESPONDENT

Date of Decision : 04-07-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 110B

Citation : (1980) ACJ 437 : (1980) 9 ILR HP 271

Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : Inder Singh, General and H.M. Sharma, for the Appellant; N.S. Thakur, Gurcharan Singh, Kedar Ishwar, K.D. Sud and Bhawani Singh, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Misra, C.J.—This judgment will dispose of F.A.Os. Nos. 47, 49, 50, 51, 52, and 53 since common questions of law and fact are involved.

2. The State of Punjab owns Punjab Roadways. They run passenger buses on Simla-Kalka Highway. On 29th May, 1975, passenger bus having registration No. PUR 1995 left Simla at about 7 A.M. for Chandigarh. The bus stopped at Wagnaghat, lifted some passengers and went ahead. After travelling a distance of about 200 metres, the bus went off the road and rolled down into the khad. Some of the passengers died while some received injuries.

3. Compensation claim petitions u/s 110 of the Motor Vehicles Act were made by Harbhajan Lal Kochhar, Shrimati Krishna Devi, Hari Nand, Narain Dass and Shrimati Tarsem Kaur. The first four petitions were consolidated and jointly tried.

4. The Petitioners claimed various compensation amounts. It was averred that the accident took place due to the rash or negligent driving of Surinder Singh driver. These petitions were resisted. It was inter-alia averred that the accident occurred due to "sudden defect in the machinery, the steering got jammed and

the bus went on the wrong side and because of the defective road the Bus stuck-down and could not be controlled inspite of the best efforts of the driver as a result the bus rolled into the khud.

5. The Motor Accident Claims Tribunal came to the conclusion that the accident was the result of the rash or negligent driving of Surinder Singh driver. Vanous amounts of compensation were awarded to the Petitioners.

6. The State of Punjab has filed appeals F.A.Os. Nos. 49, 50, 51, 52 and 53. F.A.O. No. 47 of 1977 is an appeal by Shri H.L. Kochhar and others praying for the enhancement of the compensation awarded to them.

7. Mr. Inder Singh, appearing for the State of Punjab, contends that the evidence on record shows that the accident did not take place because of the negligence of the driver. It is also submitted that it was because of the latent mechanical defect, that is, jamming of steering, that the accident took place.

8. Statements of the relevant witnesses have been read to us. It is contended that the bus left at about 6.40 A.M. and the time taken to cover the distance upto the place of accident shows that the bus was not being driven fast. Admittedly the bus had stopped at many places including Wagnaghat. It is, therefore, immaterial what the speed of the bus was between Simla and Wagnaghat. The only question which falls for determination is whether at the time of the accident the driver was negligent.

9. Shri Hari Dutt Joshi P.W. 5., who is a lecturer, was also travelling in the ill fated bus. He categorically stated that the driver was found driving the bus in an irresponsible manner and the passengers had warned him twice or thrice that he should drive the bus properly so that they may not lose their lives. Though he could not give the exact speed of the bus, he categorically stated that the driver was in the habit of suddenly applying the brakes and giving a great jolt to all the passengers. The driver according to the witness, near the place of accident, overtook some stationary vehicles and while doing so he lost control of the bus because of its speed with the result that the bus went off the road and rolled down the khud. This witness was not cross-examined on material aspects. Only two questions were asked. One was that there was enough space between the parked vehicles and the concrete lying on the opposite side of the road for a bus to pass.

10. Shiv Ram P.W. 2 is a road supervisor working with the Himachal Pradesh Public Works Department. He is living in village Wagnaghat. He had boarded the ill fated bus from that place. He was to go to Kiaribungalow. He corroborates Hari Dutt Joshi and deposes that the driver could not control the bus which was being driven fast. Narain Dass and Hari Nand P.Ws. who were also travelling in the bus, also attribute the accident to the failure of the driver to control the bus.

11. Surinder Singh driver appeared as R.W. 1. He does not tell us how the accident took place. He was the best person to know since he was the driver. The

only relevant part of his statement is "I turned the vehicle on the curve and a sound was heard and then I do not know what happened to the vehicle." In cross-examination he goes on to say: "I did not come to know till now what breakage occurred in the vehicle which caused the accident?.I had checked up the brakes on the way and upto Wagnaghat the brakes were functioning properly. From Wagnaghat to the place of accident it is not steep but all the same it is downward journey with descent. I had negotiated the preceding curve rightly with the steering system but it failed on the next curve. The earlier curve is about 25-30 metres from the accident place.

12. The statement of the driver shows that he never applied brakes near the place of accident. He was on a descent. He does not tell us the speed on the bus at that time. He is also not sure that the steering got jammed. This would happen only if he had tried to turn the steering wheel. But he does not say that he had tried to turn the steering wheel and it was found jammed. Indeed, in the examination in chief he categorically states that he does not know what happened to the vehicle when the accident took place.

13. The statements of the passengers referred to above, therefore, cannot be disbelieved. They are telling the truth when they say that the driver could not control the bus and for that reason it rolled down the khud.

14. There is no evidence on record before us to show that at the time of the accident the steering got jammed. The bus must have been inspected mechanically by the experts after the accident. That evidence was available to the State of Punjab but it has not been produced. A presumption has to be drawn that the mechanical inspection did not support the defence. Moreover, the Punjab Roadways must be keeping the maintenance record of the bus in question. The condition of the bus about its road worthiness was within the special knowledge of the Punjab Roadways and it was for them to prove that there was some latent defect in the bus which resulted in the alleged jamming of the steering system. The defence of the State seems to be an afterthought one. It is a pity indeed to see how the State has tried to defraud the claimants of their dues by hook or crook at public expense. The State is for the welfare of its citizens whose just claims must be met promptly.

15. At this stage we may point out that a committee was admittedly appointed in order to find out the cause of accident. The copy of the report of the committee (Ex. P.W. 3/A) was filed before the Motor Accident Claims Tribunal. This was done by the Petitioners. This report goes against the defense put up by the State. However, an objection has been raised by the State that the report has not been properly proved. The report shows that the committee was appointed by the Deputy Commissioner Solan. Evidently there is nothing on record to show that this committee had any legal status. It may be that the Deputy Commissioner wanted to know for himself the cause of the accident in order to take necessary remedial measures to avoid future accidents. We have not been shown why and how this report is admissible in evidence. We are, therefore, not taking it into

consideration while deciding this case.

16. The facts as discussed leave no doubt that the maxim *res ipsa loquitur* fully applies in the circumstances of the present case. Since we find that the bus had no latent defect, it should not have gone off the road and rolled down the khud but for the negligence on the part of the driver.

17. Asquith L.J. in *Barkway v. South Wales Transport Co. Ltd.* (1941) 3 All E.R. 322 ruled:

"If the Defendants' omnibus leave the road and falls down an embankment and this without more is proved, then *res ipsa loquitur*, there is a presumption that the event is caused by negligence on the part of the Defendants, and the Plaintiff succeeds unless the Defendants can rebut this presumption.

18. It was also observed that to displace this presumption the Defendants must show that they used all reasonable care in and about the management of the bus. The Supreme Court in *Krishna Bus Service Ltd. v. Mangli and Ors.* 1976 A.C.J. 184 quoted with approval the above mentioned observations of Asquith L.J. and held that the maxim will apply even in case where a tie rod end broke down causing the vehicle to go out of control. Similar view was again taken by the Supreme Court in *Minu B. Mehta v. Balkrishana Ramachandra Nayar and Anr.* 1977 A.C.J. 118.

19. Mr. Inder Singh refers to a Supreme Court judgment reported in 1980 A.C.J. 38 *Syad Akbar v. State of Karnataka* and submits that the maxim *res ipsa loquitur* is not applicable. We have perused this judgment. We find that it was a criminal appeal and the question before the Court was whether the driver had committed an offence under the Indian Penal Code. This has no relevance to the question before us.

20. We, therefore, uphold the finding of the Tribunal that the accident was the result of negligence of the driver.

21. A contention has been raised in these appeals is that the Tribunal was not justified in awarding compensation for the loss of affection and care besides mental agony and torture suffered by the claimants. We must uphold this contention. Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) A.C.J. 601 while discussing the proper approach to the determination of damages observed thus:

"There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities.

22. What is the proper method of calculating the loss of dependency, the loss in estate and the loss of expectation of life? This question came up for consideration before a Division Bench of this Court in *Himachal Road Transport Corporation v. Jai Ram etc.* ILR 1979 H.P. 267. After considering various English

and Indian decisions the Court came to the conclusion that "Multiple method" (also known as "Multiplier method") serves best the purpose of justness contemplated by Section 110-B of the Motor Vehicles Act. This method was expressed by the formula $(A-E) \times Y$. Here "A" represents the amount of net wages which the deceased was earning, "E" represents the expenditure incurred by the deceased for his own self, and "Y" represents the number of years purchase. Where compensation was required to be assessed separately for the loss of dependency and loss to the estate, $(A-E)$ was to be further split up to know the separate figures of dependency and accretion to the estate, and then multiplication by "Y" to be applied to each. The method of fixing the annual dependency was described by the Court in the following manner:

The best evidence to fix the figure of this factor is supplied by the net income derived by the deceased at the time of his death. If the amount expended by the deceased for his personal expenditure is deducted from this amount of his net income, the remainder would represent the amount spent by him for his dependants plus the amount saved for future. If there is satisfactory evidence regarding the amount spent by him for his dependants, the figure of the amount so spent should be taken as the basic figure for calculating loss of dependency. But if no such satisfactory evidence is available it would be reasonable to fix the units of family expenditure and deduct the units consumed by the deceased for his personal expenditure. Normally, an adult member of the family would consume double the units consumed by minors, except those minors who are taking education in college for whom in an appropriate case, two units of expenditure may legitimately be taken into account. Hence, if a minor is consuming one unit an adult member of that family should be taken to consume two units. For instance, a family consisting of two adults and three minors would, on this basis, consume seven units of expenditure as under:

Two adults 4 units (two each)

Three minors 3 units (one each)

x x x

We find this to be a safe method to find out the basic value of dependency where clear and reliable evidence is lacking.

23. As regards choice of multiplier, the Court observed that the Court should use its own experience having due regard to the peculiar facts of each case, because the ultimate goal is not to adhere to any rigid formula, but to award a compensation which is just. It was, however, pointed out that in the case of a deceased who was hale and hearty and was round about 35 years of age at the time of his death, it would be safe to take the multiplier ranging from 15 to 18 years provided there were no other compelling circumstances for adopting a multiplier which was lower or higher than these limits. The Court also ruled:

"We... hold that conventional figure of damages for loss of expectation of life

should be Rs. 3,000/-, as observed by the Gujarat High Court, and this should be added to the total amount of compensation awardable by applying the multiplier method.

24. One of the questions raised in the present appeals is whether the dearness allowance, additional dearness allowance and the interim relief, which were being paid to the deceased, should be taken into consideration while determining the earnings of the deceased. It has been argued that all these allowances are not only subject to variation from time to time but could also be completely taken away. Dearness allowances have been granted to the employees in order to compensate them for the increase in the prices. It is common knowledge that dearness allowance depends on the price index. Technically it is possible that if the price index goes down there is a chance of the dearness allowance and the additional dearness allowance becoming zero. However, we cannot lose sight of the fact that ever since the dearness allowance was first granted it has continuously been paid and the chances of its going down are extremely remote. The accident took place in 1975 and in the last five years this allowance has, instead of going down, been increased. Keeping in view the history of the dearness allowance and the trend of rise in prices we can take judicial notice of the fact that there is no likelihood of the dearness allowance coming down in the foreseeable future. In this view of the matter we are of the opinion that this allowance should be taken into consideration. Interim relief also cannot be deducted. We are given to understand that this relief was granted about a few years ago and continued to be paid till the pay scales were upgraded and this relief was merged into the pay. In other words the interim relief has by now become a part of the salary. House rent allowance also cannot be deducted because this was the amount which was being paid to the deceased for keeping a house. The house was admittedly being used for residential purposes by the other members of the family since they were all living together.

25. It is also contended that while calculating the loss of dependency we should deduct general provident fund and other deductions being made by the employer from the salary of the deceased. Though these amounts can be deducted for considering the loss of dependency but it must be remembered that these very amounts will have to be taken into consideration while calculating the compensation for loss in estate. In other words, where the claimants happened to be the heirs of the deceased, they would be entitled to compensation for loss of dependency as well as for loss in estate. We may at this state point out that no deduction can be allowed from the amount of compensation either on account of insurance or on account of pensionary benefits or gratuity: see Jai Ram's case (supra). Now we will take individual appeals.

F.A.O. No. 47 and 53 of 1977.

26. In this case the deceased was Shrimati Lakhvinder Kaur. She was 40 years old at the time of her death. The claimants are her husband Harbhajan Lal Kochhar (aged 46 years), her two sons Rajesh (aged 16 years) and Ajay (aged

12 years), and one daughter Madhu aged 13 years.

27. The learned Counsel for the parties agree that the unit method should be applied for calculating the compensation for loss of dependency and loss in estate.

28. The family of the deceased consists of two adults and three minors. Mr. Gurbachan Singh submits that one of the sons of the deceased was studying in a college at the time of the death of Lakhvinder Kaur and so he should be awarded two units. We do not find any evidence of the fact that any son was studying in any college. The total units for the family would, therefore, come to 7. The share of the deceased would be 2/7th. Since the claimants are the legal heirs of the deceased there is no necessity of calculating separately the loss of dependency and the loss in estate.

29. Ex. P.W. 4/A is the salary certificate of the deceased who was employed as Lady Health Visitor at H.V.M.C.W. Centre Sanjauli, Simla. This certificate shows that the deceased was getting Rs. 628/- per month from which general provident fund of Rs. 100/- and house rent amounting to Rs. 18.75 was being deducted. Rs. 24/- were being deducted on account of suspense allowance. However, we find that the deceased was getting Rs. 30 as travelling allowance. This allowance was personal to her and cannot be considered as her earning since she was supposed to be spending this amount on her actual travelling. Similarly she was being paid Rs. 76/- per month as "other allowances". We have not been informed about the nature of these allowances and, therefore, we cannot consider them as her regular income. We would, therefore, deduct Rs. 30/- and Rs. 76/- from Rs. 628/-, the monthly salary of the deceased. The net salary would thus come to Rs. 522/-. After deducting house rent amounting to Rs. 18.75, the net balance comes to say Rs. 503/-.

30. Out of the net income the deceased was spending on herself Rs. 503 X 2/7, that is, say Rs. 144/-. The total amount of dependency would thus come to Rs. 503-144=Rs.359/- per month. The yearly amount will come to Rs. 359 X 12=4308/-. Keeping in view the age of the deceased and the ages of the claimants we find that it would be safe to take 17 years multiplier. The compensation would thus come to Rs. 73,236/-. To this should be added the conventional figure of damages for loss of expectation of life Rs. 3,000/-. The total would thus come to Rs. 76,236/-.

31. The Motor Accident Claims Tribunal awarded a total sum of Rs. 31,000/- which is too low. We would, therefore, enhance this compensation to Rs. 76,200/-. The result is that F.A.O. No. 53 of 1977 is dismissed whereas F.A.O. No. 47 is allowed. The claimants will be entitled to their costs.

F.A.O. No. 49 of 1977.

32. Madan Gopal Sharma deceased was 39 years of age at the time of his death. He left behind a widow Shrimati Krishna Devi (aged 31 years), son Lalit Kumar

(aged 13 years). He also left behind his minor sister Sharda and his mother Chitru Devi. They were all dependants on the deceased.

33. Applying the multiplier method the total units in this family would come to 9 since the family consisted of 3 adults and 3 minors. Keeping in view the ages of the deceased and the dependants, the multiplier should be 17 years.

34. The deceased was getting Rs. 887-887-60 paise as salary at the time of his death (see Ex. P.W. 6/A). He was working as a Junior Engineer in the Himachal Pradesh Public Works Department. The Tribunal has found that the deceased was making Rs. 500/- per month available to the dependants of his family, that is, the claimants. Applying the multiplier method the loss in dependency would come to $\text{Rs. } 6000 \times 17 = \text{Rs. } 1,02,000/-$. To this amount should be added Rs. 3,000/- as loss of expectation of life. The total would come to Rs. 1,05,000/- (one lac five thousands). We have still to calculate the loss in estate to the legal heirs of the deceased, that is, the widow Krishana Devi and her two minor children. After spending Rs. 500/- per month on the maintenance of his dependants the deceased was left with Rs. 387.60 paise per month. We know that being a government employee he was required to contribute towards the general provident fund which would be an accretion to the estate of the deceased. However, there is no evidence on the record to show the amount of the general provident fund which was being deducted from his pay. We are informed that the minimum compulsory deduction on this account used to be 10% of the basic pay. He would thus be subscribing Rs. 41/- per month towards general provident fund. In addition to that we can safely assume that he would be saving at least Rs. 60/- per month more. In other words, he was contributing Rs. 100/- per month towards his estate. The total loss in estate would thus come to $\text{Rs. } 100 \times 12 \times 17 = \text{Rs. } 20,400/-$. This amount would be payable to the widow and the two minor children of the deceased. The total compensation thus payable to the claimants comes to Rs. 1,25,400/-. The total compensation awarded by the Tribunal is Rs. 80,000/- which is far less than the claimants are entitled to. This appeal by the State is, therefore, dismissed with costs.

F.A.O. No. 52 of 1977.

35. The deceased Kewal Krishan was 27 years of age at the time of his death. He was working as a conductor with the Punjab Roadways Chandigarh. He was getting total emoluments of Rs. 367.10 paise. This included Rs. 2/- per month paid to the deceased as washing allowance and Rs. 22.50 paise as city compensatory allowance. Washing allowance was a necessary expenditure and cannot be treated as an earning. City compensatory allowance was paid only because the deceased happened to be having his headquarters in a town for which this allowance was payable. The deceased was liable to be transferred to all the cities in the State of Punjab. City compensatory allowance is not payable to employees who are posted at towns where no city compensatory allowance is allowed. Therefore, this allowance cannot be treated as regular and has to be deducted. Thus the net income of the deceased would come to Rs. 367 minus Rs.

24.50, that is, say Rs. 343 per month. The deceased has left behind a widow Shrimati Tarsem Kaur (aged 25 years), two minor sons and a daughter whose ages range between 9 years and 1-1/2 years. Another son was born after the death of the deceased. The total units of the family would thus come to 8. There is no finding by the trial Court about the amount which was spent by the deceased on the maintenance of his family. The deceased can be said to be spending on himself 2/8th of Rs. 343, that is, Rs. 86 per month. Thus the net dependency was Rs. 256 per month. Keeping in view the age of the deceased as well as the ages of the dependants, the fair multiplier should be 22. Thus the total amount would be Rs. $256 \times 12 \times 22 = 67,584/-$. To this should be added Rs. 3,000/- as loss of expectation of life. Thus the total compensation to which the claimants are entitled to would come to Rs. 70,584/-. The claimants have been granted Rs. 32,000/- only by the Tribunal. The State appeal, therefore, fails and is hereby dismissed with costs.

F.A.O. No. 50 of 1977.

37. Hari Nand was one of the passengers in the ill fated bus. He was lucky to ascape alive. However, he received injuries. His foot and head were found to have been fractured. The foot was kept under piaster for about 1-1/2 months. He had to remain in government hospital Kandaghat for 6 days and thereafter he was referred to Snowdon Hospital, Simla. He has claimed Rs. 5,000/- as loss of earnings etc. He also claimed Rs. 52,000/- for shock and disability of the leg. He has been awarded a lump sum of Rs. 5,000/- only. The amount awarded to the injured has not been challenged before us. We, therefore, dismiss the appeal with costs.

F.A.O. No. 51 of 1977.

38. Narain Dass was one of the passengers travelling in the ill fated bus. Though luckily he escaped alive, he suffered injuries. He has been awarded Rs. 4,000/-. The amount has not been assailed before us. We, therefore, dismiss this appeal with costs.