
(1988) 08 P&H CK 0134

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from the Order No. 685 of 1984

Union of India

APPELLANT

Vs

Rama Devi and others

RESPONDENT

Date of Decision : 01-08-1988

Acts Referred:

Citation : (1988) 08 P&H CK 0134

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

Bench : Single Bench

Advocate : C.B. Kaushik, for the Appellant; D.P. Gupta and Mr. Mukesh Mittar, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sodhi, J.—The challenge in appeal here is to the award of Rs. 3,60,000/- as compensation to the widow and children of Badri Parshad, deceased, who was killed in an accident with the bus CHW-III. This happened on May 28, 1982 at the crossing of sectors 40-A and 40-B Chandigarh. The finding of the tribunal being that it was the bus-driver who was wholly to blame for the accident.

2. It was the case of the claimants that the deceased was trying to cross the road when the bus came at very fast speed and took a turn without blowing any horn, and ran him over.

3. The version of the Respondents, including the bus-driver, on the other hand, was that when the bus reached the crossing of Sectors 38 and 40 and took a turn towards its left, the deceased, who was standing near the Chowk, tried to get into the running bus from the exit door without giving any signal to the driver. In the process, he fell and came under the rear wheel of the bus. The accident, it was said, thus occurred on account of the negligence of the deceased himself.

4. In order to prove their case, on the issue of negligence, the claimants examined P W.2 Gopi Ram and P.W.3 Ghan Sham Dass, who deposed that they

were with the deceased when this accident occurred. It was their testimony that Badri Parshad was trying to cross the road and had in fact crossed more than half of it when the bus came at a very fast speed and suddenly struck against the deceased and ran him over. P.W. 2 Gopi Ram is no doubt the brother-in-law of the deceased while P.W. 3 Ghan Sham Dass the nephew of the said Gopi Ram and both these witnesses were thus related to the deceased but, be that as it may, it is pertinent to note that counsel for the Appellant could point to no discrepancies or contradictions in their testimony to create any doubt there. What is more, there is also the prompt lodging of the first information report relating to this incident.

5. The only evidence forthcoming from the side of the Respondents in support of their version of the testimony of the bus driver R.W.1- Sucha Singh He no doubt deposed that the deceased tried to board the moving bus and he then fell and was run over by the bus, but what is significant to note here is that he did not himself see this happening. It is apparent that what he deposed to was what was conveyed to him, but no passenger or even the conductor of the bus is forthcoming to corroborate his testimony. What is more, this version of the bus-driver was not even put to either PW 2 Gopi Ram and P.W.3 Ghan Sham Dass. Such thus being the state of evidence, it is no wonder that there was no serious challenge to the finding of negligence recorded against the bus-driver. This finding must accordingly be up-held and affirmed.

6. Turning now to the quantum of compensation payable to the claimants it must, at the first instance be noted that the Tribunal clearly fell in error in awarding compensation for a sum larger than that claimed. The claim here was for Rs. 3,00,000/- whereas the amount awarded is Rs. 3,60,000/-.

7. Turning now to the material on record with regard to this aspect of the case, Badri Parshad was only 32 years of age at the time of his death. He died leaving behind his widow aged 31, two daughters aged 15 and 12 respectively and a nine years" old son. All these claimants were wholly dependent upon the income of the deceased for their livelihood Badri Parshad was running a karyana shop in Sector 37, Chandigarh. According to his widow; P.W.4-Rama Devi, his income was about Rs. 1600/- per month and the amount that he used to spend upon himself was only Rs. 100/- per month and the balance that is, Rs. 1500/- per month was what he made available to the claimants for their maintenance.

8. To corroborate the testimony of the widow regarding the income of the deceased, the claimants also examined P. W. 5, D. D. Chadha an electrician, who deposed that the shop of the deceased was close to his house and that the gross sales value of the deceased from his shop was about Rs. 600/ per day, while P. W. 6 Prabh Dayal stated that the deceased used to purchase goods from him worth about Rs. 3 000/- per month

9. In seeking to assess the income of the deceased from his earnings at the shop, it is pertinent to note that he was running his shop in a residential house.

In other words, it was not a regular shop. What is more according to P.W.5-D. D. Chadha, this shop was not known by any particular name.

10. Further, no accounts, bills, receipts or any other documentary evidence is forthcoming to give any indication of the income of the deceased from the shop. In fact, the only evidence on record with regard to the income of the deceased from the shop, are vague and general statements particularly the most interested statement of his widow. In this situation, by the very nature of it, allowance has to be made for an ample measure of exaggeration. At the same time, it has to be recognized that the deceased was maintaining his family which consisted of his widow and three growing children. Keeping in view, therefore, the nature of the occupation he was engaged in and the expenses of the family that he had to meet, it would be fair and just to assess the loss to the claimants to be around Rs. 700/- to Rs. 750/- per month, in accordance with the principles laid down by the Full Bench in *Lachiman Singh v. Gurmit Kaur* (1979) 81 P. L. R. 1.

11. The question now arises as to what would be the appropriate multiplier to be applied in this case. In this behalf, reference deserves to be made to the judgment of the Division Bench of this Court in *Asha Rani and Ors. v. Union of India* 1983 A.C.J. 52, where it was held that the normal multiplier would be "16". This was the conclusion arrived at after giving due consideration to the observations of the Full Bench in *Lachhman Singh's* case (supra).

12. Counsel for the claimants, on the other hand sought to contend that the multiplier should be "20" and cited in support *M/s Rajinder Singh Jasbir Singh v. Unmil* (1986) 89 P. L. R. 647; *State of Punjab through The State of Punjab and Another Vs. Shakuntla Devi and Others*, *Bansi Lal and Another Vs. Sohan Singh and Others*, and *Miss. Ballu Gaur and Ors. v. Mrs, R. P. Randhawa* (1985) 88 P. L. R. 135. These are no doubt cases where a multiplier of "20" had been applied but a reading to these authorities would show that the judgment of the Division Bench in *Asha Rani's* case (supra) does not appear to have been cited or noticed there. In this situation, the rule laid down in *Asha Rani's* case (supra) has thus clearly to be followed. The appropriate multiplier to be adopted in this case must, therefore, be taken to be "6". On this basis, the compensation payable to the claimants deserves to be assessed at Rs. 1,50,000/-.

13. The compensation payable to the claimants is accordingly hereby reduced to Rs. 1,50,000/- which they shall however be entitled 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. Out of the amount awarded, a sum of Rs. 25,000/- each shall be payable to the children of the deceased and the balance to his widow. The amount payable to the minor claimants shall be paid to them in such manner as the Tribunal may deem to be in their best interest.

14. This appeal is consequently hereby partially accepted. There will, however be no order as to costs.