
(1989) 09 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : F.A.O. No"s. 6 and 7 of 1982

Union of India (UOI)

APPELLANT

Vs

Sudhir Khanna and Others

RESPONDENT

Date of Decision : 11-09-1989

Acts Referred:

Citation : (1990) 1 ACC 275 : (1990) ACJ 215 : (1989) 2 ILR HP 1233

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : P.A. Sharma, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—These appeals FAO. No. 6 of 1982 (Union of India v. Sudhir Khanna) and FAO. No. 7 of 1982 (Union of India v. Dharam Pal Kapoor) arise out of the same accident and common award of the Motor Accidents Claims Tribunal, Solan. As facts are common, they are being decided by a common judgment.

2. These appeals have been filed by the Union of India against the award dated 28.9.1981 whereby tortious liability of respondent No. 1 has been established and claims by way of damages have been awarded to the claimants in these cases. Respondent No. 1 has thus assailed the award by these separate appeals.

3. The facts, in brief, are that on 17.11.1974 Sudhir Khanna (28) and Anil Kumar Kapoor (25) were going on Kalka-Shimla National Highway on motor cycle No. CHO 1600 to Snawar Public School. They were coming from Chandigarh and the accident took place near village Sanawara when Air Force truck No. TUD 41637, coming from opposite direction, collided with their motor cycle. As a result of this collision, Anil Kumar Kapoor died instantaneously whereas Sudhir Khanna fell unconscious. They were taken to Government Hospital at Kalka by the people who had gathered at the spot. Anil Kumar Kapoor was declared dead whereas Sudhir Khanna was given medical treatment and on the next day he went to Ludhiana where he got further treatment.

4. Two claim petitions, one by Sudhir Khanna, claiming Rs. 50,000/- as damages, and the other by the parents of deceased Anil Kumar Kapoor, claiming Rs. 7 lakhs, were filed. According to the claimants, the accident was the result of rash and negligent driving of the truck by the driver. They say that the motor cycle was being driven at a low speed and horn at curves was being blown regularly. The offending vehicle appeared suddenly from the opposite direction at a fast speed, driven on the wrong side of the road, struck with the motor cycle, although the same was taken to the extreme left kacha portion of the road. The time of the accident has been stated to be at about 12.30 (noon).

5. All the respondents have jointly opposed the claim petitions. Their case is that the motor cycle driver was guilty of rash and negligent driving and contested the allegation that the driver of the military vehicle was in any way responsible for the accident. The quantum of compensation has also been disputed.

6. The Motor Accidents Claims Tribunal framed the following issues:

(1) Whether the accident occurred due to the negligence of respondent No. 2, Charan Singh? OPP

(2) In case issue No. 1 is proved, to what compensation are the petitioners entitled and against whom? OPP

(3) Relief.

7. These claim petitions were consolidated by the Tribunal and common evidence was recorded in both the claim petitions and finally they were decided by a common award.

8. Mr. P.A. Sharma, learned counsel for the appellant, contends that the findings of the Tribunal as to the rash and negligent driving of the military truck are not based on evidence on the record of this case, therefore, the findings on this aspect of the matter deserve to be set aside. Reference to the evidence on record was also made in order to support his submission.

9. It is an admitted position that the truck was descending while the motor cycle was ascending at the time of the accident. It is also admitted that the motor cycle struck the truck at the point of petrol tank on its right side behind the driver's cabin.

10. Tara Chand, PW 3, an agriculturist, was working near the place of accident. He states that he saw the accident. The truck was coming at a fast speed and blew no horn. He saw the motor cycle before the accident. It was on its left side whereas the truck was on the wrong side of the road; so the accident had taken place. Sudhir Khanna, who was on the motor cycle, received injuries. After the accident, he became unconscious and the other person, who was driving the motor cycle, died at the spot. His statement was recorded by the police and in the court. In cross-examination, he states that he was working at his own quarry. It is at the height of 40 to 50 feet above the road level. At the place of

accident, pucca road is 20 to 22 feet wide and the remaining two sides of the road, 10 feet on each side, are kacha. He has specifically said that from the place where he was working, both the truck as well as the motor cycle were visible before the accident and denies the suggestion that he was busy in excavation work facing the hill. As a matter of fact, he was resting and sitting and the road was level at the spot. He was sitting there with Ram Rattan and Sada Nand.

11. Ram Rattan, PW 4, states that the motor cycle was coming from Kalka side whereas the truck was going towards Kalka. He had seen the truck before the accident. The motor cycle was going on its own side and the accident took place on the side of the motor cycle as the truck was going on the wrong side. There was ample space for crossing on the road to the side of the motor cycle so as to enable the truck to cross. These are the eye-witnesses, agriculturists by vocation. Their statements are quite natural, straightforward and truthful and there is no reason to disbelieve their versions.

12. Tarsem Lai, PW 6, is the Head Constable, Police Station Baddi. He went to the spot of the accident and prepared sketch map, Exh. RW 2/A, (also marked "X"). It further clarifies that the truck was being driven on the wrong side of the road thus leaving very little space for the vehicles to move on the opposite side of the road. Skid marks of the truck have also been noticed which further show that the truck was being driven at a high speed.

13. Claimant Dharam Pal Kapoor, PW 7, states that the deceased was his son and was a partner in a contractors' firm at Chandigarh. He was an income tax assessee and in order to prove it, assessment certificates for number of years, namely, 1972-73, 1973-74, 1974-75 and 1975-76, Exh. PW 7/1 to Exh. PW 7/4, have been filed. He further states that the deceased was unmarried and he himself was 46 years and his wife was 44 years. His grandmother died at the age of 95 and grandfather at the age of 98 and his father at the age of 75 years. The deceased used to spend Rs. 1,500/- per month on the household expenses of the family. The deceased had 5 per cent shares in the firm.

14. Sudhir Khanna, PW 8, gives details of this accident and states that the army truck came all of a sudden from the opposite side near a curve and left no space for them on the road to drive their motor cycle on the hillside of the road. The truck dashed against their motor cycle. He was rendered unconscious on the spot and regained consciousness in the hospital at Kalka. He was in severe pain on regaining consciousness. His right arm was dislocated. He was released the next day from the hospital at Kalka where his arm was bandaged and left for Ludhiana where Dr. N.M. Batra, Assistant Professor, Orthopaedics, Daya Nand Medical College, in his private clinic, treated him. The plaster bandage continued for one and a half month. During this period, he suffered pain in his right arm and continued getting treatment. He was medical representative of Smith Kline and French India Ltd., Bangalore and he had to do field job by giving information to the doctors about the products of the company and booked orders. He was getting Rs. 865/- per month as salary at the time of the accident. He had to

remain on leave, some of which was on half-pay, for 1 1/2 months and had to take special extra diet at the rate of Rs. 15/-daily as additional expenses for about six months. He finds it difficult to drive a scooter although he had been doing so for his local work and he has to depend on others for this work which involves additional expenditure of Rs. 10/- daily. He is a badminton player and due to this accident, he cannot make use of his arm fully and properly. He spent about Rs. 1,000/- on treatment and is still spending more on it. He feels pain during winter. He states that the motor cycle at the place of accident was going uphill. He denies the suggestion that there was sufficient space for the motor cycle to pass at the point of the accident. He has given detailed account of his injuries and the manner of his treatment.

15. On the other hand, an effort has been made to prove that the offending vehicle was being driven at a normal speed and the driving by the driver of this vehicle was not, at all, rash or negligent.

16. Masta Singh, RW 3, states that he was sitting in the rear part of the truck and when the noise of striking something against the truck was heard, the driver stopped the vehicle immediately and on getting down from the vehicle, he saw that the motor cycle had struck the vehicle on the right side with the fuel tank. There was sufficient space, according to him, available for the crossing of a vehicle and their truck, moving at the speed of 20 to 22 km. per hour, was on the left side of the road. Fit. Lt. Gadiock was sitting in the front portion of the vehicle. He admits that he did not see the motor cycle striking the truck. He also admits that the two persons riding the motor cycle received injuries. He admits that the truck was descending at the place of the accident.

17. Fit. Lt. S.S. Gadiock, RW 4, has also stated that after the strike with their vehicle, they came out and found that two persons riding the motor cycle were lying thrown on the right side of their vehicle 3 to 4 feet away. The width of the road at the point of the accident was 25 to 30 feet and their vehicle was moving at the speed of about 20 kmph and they do not allow their drivers to exceed the speed of 20 kmph in the hills and 40 kmph in the plains. They saw the motor cycle coming at a distance of 10 to 15 feet away while approaching them. He admits that the motor cycle was coming on the correct side of the road. To the same effect are the statements of M.L. Sharma, RW 5 and I.M. Lall, RW 6, but I.M. Lall, RW 6, states that he could not say who was responsible for the occurrence.

18. Chanan Singh, RW 7, is the driver of the truck. He states that while he was crossing a turn, two persons on a motor cycle came from the opposite side and while crossing his vehicle, hit the right side of his vehicle at the petrol tank and fell down. They got down from their vehicle. At the place of accident the road was wide enough to permit a passage for a heavy vehicle. In cross-examination, he admits that he was going downhill and as a result of the accident, he could not give details of the scene of occurrence as he had lost the balance of his mind and was frightened. He admits that the motor cycle was on its side when it

crossed his vehicle.

19. Perusal of this part of the evidence does not in any way diminish the strength of the claims. It is very difficult to believe that the vehicle was being driven at the speed of 20 to 25 km. per hour, as stated. There may be some direction to drivers driving the military vehicles to drive them at a particular speed but whether the vehicles were actually driven at that speed, cannot be said with precision. However, it is clear in this case that the military vehicle was descending. The truck was clearing a curve and it cleared it in such a way that it left no space for the other vehicles to pass through its left side and the result was that the vehicle struck with the motor cycle. The negligence is writ large and has been clearly established by the claimants. Exh. RW 2/A has also clearly established it. Besides, the skid marks of the truck found at the spot further establish this fact quite conclusively and the efforts of the respondents to prove to the contrary cannot be accepted in view of the cogent and convincing evidence of the claimants. In such a situation, the maxim *res ipsa loquitur* applies. [See *Minu B. Mehta v. Balkrishna Ramachandra Nayan*, 1977 ACJ 118] The finding of the Tribunal as to the negligence of the truck driver is correct and the same is upheld.

20. Looking to the case of personal injuries received by Sudhir Khanna, he has given detailed account of the same in his statement. In addition to this, Dr. N.M. Batra, PW1, who treated him at Ludhiana, has also supported the version of the claimant. His arm was dislocated. It was bandaged at Government Hospital, Kalka, and then more medical treatment was received at Ludhiana. As discussed above, it has also been stated that he had to suffer a lot of pain on account of this injury and he could not play games and move about freely as he had been doing prior to the accident. His work demanded movement from place to place in the exigency of the nature of his job. He had to incur expenses on special diet and transport. He has been awarded only Rs. 5,000/- by way of general damages and Rs. 500/- towards medical expenses and Rs. 1,297.50 towards claims for special diet and expenses of local conveyance etc. The total amount of compensation to the extent of Rs. 6,800/- cannot, at all, be considered to be arbitrary and unreasonable. The plea against it is, therefore, without any substance and is rejected.

21. Deceased Anil Kumar Kapoor was a young man of 25 years. He was not only a partner in a contractors' firm, namely, M/s. Harbhagwan and Harbhajan Lal, Chandigarh, but also an insurance agent. Keeping in view the evidence already discussed on this aspect, he was contributing Rs. 1,500/- per month for the household expenses of the joint family. The joint family consisted of the parents and children. At the time of the accident, the age of his parents was only 46 (father) and 44 (mother). There is evidence of longevity in the family. Therefore, life expectancy can be easily kept at 75 years in this case. Thus, the deceased could have contributed towards the expenses of the joint family for another 50 years. However, taking into consideration the age of the parents, the Tribunal has

confined the dependency of the parents to 30 years. To me, this appears to be correct. The deceased was earning Rs. 29,160/- annually and so his monthly income was Rs. 2,430/-. He was contributing to the joint family fund to the extent of Rs. 1,500/- per month. Then he may be spending some amount on himself and in this respect it can be said that this amount may be around Rs. 700/- per month but according to the Tribunal, he may be spending one-third of his monthly income upon himself. This estimate appears to be on the higher side and this conclusion of the Tribunal is modified and the monthly spending of the deceased is fixed at Rs. 700/-. Keeping in view the age of the deceased, longevity in the family and the future prospects of the deceased, the appropriate multiplier in this case can be conveniently fixed at 22, as has been rightly done by the Tribunal. In this way, the total amount of compensation payable comes to Rs. 3,96,000/-. To this the Tribunal has added the conventional figure of Rs. 5,000/- towards expectancy of life, which cannot be considered to be unreasonable. Further, by the death of the deceased, there is loss to the estate to the extent of Rs. 52,800/- but the Tribunal has given Rs. 50,160/- by calculating the monthly saving at Rs. 190/-.

22. Mr. P.A. Sharma has contended that there is no difference between loss of expectancy of life and loss to the estate. In fact, he states, these are interchangeable terms. Elaborating his submissions, it is contended that when once the Tribunal has awarded Rs. 5,000/- towards the expectancy of life, there was no reason to award damages towards loss to the estate. This submission is wholly untenable. Loss to estate is caused due to the stoppage of accretions to the estate by the death of the deceased whereas conventional amount towards expectancy of life is given for the loss of his own life at that stage. That is why this compensation is given only in the case of fatal accidents and not in personal injury cases.

23. It is further contended by him that the Tribunal has awarded interest at a higher rate. This contention is equally untenable. There are catena of cases decided by the apex court allowing interest at the rate of 12 per cent per annum from the date of the claim petition till payment has been made. The rate of interest awarded by the Tribunal in this case is quite legal and does not call for any interference.

24. There are no cross-objections in these appeals and, therefore, the award is confined to the one already given by the Tribunal.

25. The result is, there is no force in any of these two appeals and the same are dismissed. Counsel's fee Rs. 500/- in each case.