**(1997) 03 P&H CK 0087**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal from the Order No. 181 of 1992 and Cross Objection 42-C-II of 1996

United India Insurance Company, Bhatinda — APPELLANT

Vs

Sukhdev Kaur — RESPONDENT

**Date of Decision :** 04-03-1997

**Acts Referred:**

**Citation :** (1997) 2 CurLJ 590 : (1999) 2 RCR(Civil) 592

**Hon'ble Judges :** H.S.Bedi, J

**Advocate :** Mr. Gopal Mittal, Advocate, Mr. Pawan Bansal, Advocate, Mr. Alok Jain, Advocate, Mr. Ashok Aggarwal, Senior Advocate, Advocates for appearing Parties

## Judgement

H.S. Bedi, J.—On 23rd November, 1988, Bikkar Singhsince deceased alongwith his brother Karam Singh and cleaner Mohinder Singh were going towards their village on a Canter bearing registration No. PAR8298. This vehicle was being driven by Bikkar Singh on its own side of the road. In the meanwhile, a bus bearing registration No. PBO5545 driven by Baljit Singh respondent came from the opposite side at a very high speed on which there was a head on collision between the two vehicles. Bikkar Singh received multiple injuries on his body and he died on the way to the hospital. On these facts, the claimants who are the (sic) deceased, filed the present claim petition before the Motor Accidents Claims Tribunal, Bathinda.

2. Respondent Nos. 1 and 2 before the Tribunal i.e. the driver and the owner of the bus denied the allegations made the claim petition and pleaded that the collision had taken place due to the rash and negligent driving of the Canter by the deceased. Respondent No. 3, i.e. the Insurance Company denied its liability to pay on the ground that the Canter''s owner did not have a valid registration or fitness certificate and that in any case, its liability was limited to Rs. 50,000/ only.

3. On the pleadings of the parties, the Tribunal framed the following issues :

 

1. Whether Bikkar Singh has died as a result of accident caused on 23.11.1988 by respondent No. 1 Baljit Singh while driving Bus No. PBO5545 rashly and negligently ? OPA

2. Whether the claimants are the heirs and dependents of Bikkar Singh deceased ? OPA.

3. Whether Bikkar Singh did not have a valid driving licence at the time of accident ? OPR

4. Whether Karam Singh respondent owner of the minitruck is necessary party ? If so, its effect ? OPR.

5. Relief.

The Tribunal, on a consideration of the evidence of the various witnesses who had seen the accident, came to the conclusion that accident in question had taken place on account of the rash and negligent driving of Baljit Singhthe bus driver and that Bikkar Singh had died on account of the accident. On issue No. 2, the Court held that the claimants were the only heirs of the deceased and entitled to compensation on account of his death. Issues No. 3 and 4 were not material to the controversy and were, accordingly, disposed of whereas on issue No. 5, (on the question of compensation), the Tribunal came to the conclusion that as the income of the deceased was about Rs. 800/ p.m the family was liable to compensation at Rs. 500/ p.m. as its dependency as Rs. 300/ p.m. would have been spent by the deceased on himself and having held as above, awarded a compensation of Rs. 96,000/ by utilising a multiplier of 16. The claimants were also found entitled to payment of interest at the rate of 12% from the date of the application till realisation of the amount, the compensation to be paid by the United India Insurance Company. Aggrieved by the award of the Tribunal, the present appeal has been filed by the United India Assurance Company the insurer of the Bus in question whereas crossobjections seeking enhancement of the compensation awarded has also been filed by the claimants. Both the matters are being disposed of by this judgment.

4. Mr. Ashok Aggarwal, the learned counsel appearing in support of the appeal of the Insurance Company has urged that the finding of fact with regard to the rash and negligent driving of the driver of the bus was not in order as it was clear that the accident having taken place in the middle of the road making both the drivers of the bus and also Canter equally liable.

5. I have considered this argument of the learned counsel and find that it lacks merit. The Tribunal has given very good reasons for arriving at its conclusion that the accident had taken place on account of rash and negligent driving of Baljit Singh driver of Bus hearing No. PBO5545. A number of witnesses including the two who were travelling in the Canter in question have also been examined. Mohinder Singh AW1 and Karam Singh AW2 who appeared in support of the claim petition clearly stated that they had seen the accident taking place on

account of the rash and negligent driving of the bus driver. I am, therefore, of the opinion that no interference is called for with regard to the finding of negligence.

6. Mr. Ashok Aggarwal, the learned counsel has, however, also challenged the finding of the Tribunal on Issue No. 5 and held that the liability of the Insurance Company the insurer of the offending bus was limited only to Rs. 50,000/.

7. I have gone through the Insurance Policy Ex.RW/1 on record as also the cover note and find that the assertion of Mr. Aggarwal appears to be correct. It is clear from this document that the liability of the Insurance Company was limited to the extent of Rs. 50,000/ only, and no other evidence has come on record to make the liability unlimited. I am, therefore, of the opinion that the finding of the Tribunal that the Insurance Company''s liability was unlimited is misplaced.

8. Mr. Bansal, the learned counsel for the crossobjectors has urged that it had come in the evidence of Mohinder SinghAW1 and Karam Singh AW2 the former being the owner of the Canter that the deceased was drawing a salary of Rs. 1200/ per month, and that in addition to the salary he was also giving him some money towards his daily expenses. From this, Mr. Bansal has sought to draw an inference that as the needs of the deceased were being taken off (care of ?) by the owner of the Canter, no amount was being spent by him on himself out of his salary. Even assuming for a moment that some amount was being paid to the deceased by Karam Singh in addition to the sum of Rs. 1200/ p.m. it cannot be said that no amount was being spent by the deceased from his salary on himself. I am, therefore, of the view that the salary of the deceased had to be taken at Rs. 1200/ per month, and that he would also be spending at Rs. 200/ per month on himself leaving a sum of Rs. 1000/ per month as the claimants'' dependency. Taking this to be so and utilising a multiplier of 16, (the deceased being 38 years of age), the amount would come to Rs. 1,92,000/. To my mind, therefore, the compensation should be taken at Rs. 1,92,000/ plus the other benefits conferred by the Tribunal. This appeal is, accordingly, partly allowed and it is held that the appellant i.e. the New India Assurance Company (United India Assurance Company correction to be made in compliance with the orders dated 19.2.1998) would be liable to the extent of paying compensation to the extent of Rs. 50,000/ only and the claimants shall be entitled to recover the balance amount of the compensation from the owner and the driver of the bus. The crossobjections are also allowed and compensation of Rs. 1,92,000/ is held payable to the claimants. It is further ordered that the amount of compensation will be apportioned amongst the claimants as per the ratio fixed by the Tribunal. However, Gurtej Singh claimantrespondent No. 2, who has by now attained majority, shall also be entitled to receive the payment of the amount of compensation falling to his share whereas the amount falling to the share of Baltej Singh minor shall be deposited in his name in a fixed deposit account in some scheduled bank so that the could receive the said amount on attaining majority. He shall, however, be entitled to receive the interest on this amount even before attaining majority if

 

his guardian so desires.

 