
(2003) 03 P&H CK 0006
In the Punjab And Haryana At Chandigarh

Vijay Laxmi

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2004) 1 ACC 106 : (2003) 3 CivCC 232 : (2003) 3 RCR(Civil) 623

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

Bench : Single Bench

Judgement

H.S. Bedi, J.—These two appeals, one at the instance of the legal heirs of the deceased and the other filed by the State of Haryana are being disposed of by this judgment as the same arise out of an award dated 1.12.1997 passed by the Motor Accident Claims Tribunal, Ambala whereby a sum of Rs. 10,00,000/- has been awarded to the claimants on account of the death of Kuldeep Kumar, the husband of claimant No. 1, father of claimant No. 2 and son of claimant Nos. 3 and 4.

2. The facts of the case are as under:

On 17.2.1996, Kuldeep Kumar deceased was proceeding towards Ambala from village Raipur Rani as a pillion rider on a scooter bearing registration No. HR-03-A-6195, which was being driven by Harish Kumar (P.W. 3). As they reached near Baldev Nagar Camp, a Haryana Roadways Bus bearing registration No. HR-2638 came from behind, knocked down the scooter and crushed the deceased. The claimants filed a petition claiming Rs. 35 lacs by way of compensation basing their claim on the plea that the deceased had been employed as a Functional Manager, District Industries Centre, Kurukshetra and had been drawing a salary of Rs. 6,000/- per month on the date of his death.

3. Respondents 1 and 2 filed their written statement controverting the claim of the claimants and attributed the accident to the negligence of the scooter by its driver.

4. On the pleadings of the parties, the following issues were framed by the Tribunal:

(1) Whether the accident in question has taken place on account of rash and negligent driving of Haryana Roadways Bus No. HR-01-2638 by its driver Harbans Singh-respondent? -OPP

(2) To what amount of compensation, if any, the petitioners are entitled to and if so from whom? -OPP

(3) Whether the respondent Nos. 1 and 2 not liable to pay any compensation in view of the various preliminary objections raised by them in their written statement? -OPP

(4) Relief.

5. On Issue No. 1, the Tribunal held that the accident had happened on account of the rash and negligent driving of the driver of the bus (respondent No. 3). On issue No. 2, the Tribunal found that the deceased was about 31 years of age at the time of his death and drawing a salary of Rs. 6,124/-, which was to be rounded off to Rs. 6,000/- and after deducting 1/3rd as the personal expenses of the deceased, the claimants could claim a dependency of Rs. 4,000/- per month i.e. Rs. 48,000/- per annum and by applying a multiplier of 21, they were entitled to a sum of Rs. 10,08,000/- as compensation. The Tribunal also observed that the multiplier of 21 was a proper one under the circumstances as the deceased was a brilliant Scientist. Interest at the rate of 12% per annum on the amount of compensation was also awarded to the claimants from the date of filing the claim petition till its realisation.

6. As already mentioned above, two appeals have been filed against the award of the Tribunal, one by the claimants and the other at the instance of the State of Haryana.

7. While the matter was yet pending in this Court, Civil Misc. Application No. 3239-CII of 2003 has been filed under Order 41 Rule 27 of the CPC by the legal heirs for producing additional evidence Notice of the application was issued to the State of Haryana and Mr. C.R. Dahiya, DAG, Haryana has accepted notice today.

8. In the application, it has been pointed out that the State of Haryana had implemented the report of the Pay Commission retrospectively w.e.f. 1.1.1996 and as the accident had happened on 17.2.1996, the deceased was entitled to emoluments of Rs. 8,400/- per month w.e.f. 1.1.1996 and it was this amount, which was to be taken into account while determining the compensation.

9. The stand taken by the learned Counsel for the claimant-appellants appears to be correct as but for his death the deceased would have been entitled to a salary of Rs. 8,400/- as on 1.1.1996. To my mind, this amount should be considered while determining the compensation.

10. I have gone through the award of the Tribunal and am of the view that as the negligence on the part of the bus driver has been proved and no successful challenge can be made by Mr. Dahiya on this issue.

11. It is clear from the record that the bus had hit the scooter from rear, knocked down the driver and the pillion rider of the scooter and crushed the latter under its front wheel. In this view of the matter, the finding of the Tribunal on issue No. 1 is confirmed.

12. The question of compensation must now be examined.

13. It is virtually the admitted position that the pay scales of the employees had been revised w.e.f. January, 1996. In this view of the matter, the total emoluments payable to the deceased would have been Rs. 8,400/- and after deducting 1/3rd as the expenses, which the deceased must have been spending on himself, the annual dependency would come to Rs. 67,200/- (5600 x 12 - 67200).

14. Mr. Dahiya, the learned Counsel, has contended that the multiplier of 21 applied by the Tribunal was much in excess of that visualised in the schedule given to the Motor Vehicles Act and was even contrary to the express directions of the Hon'ble Supreme Court and a multiplier of 17 would be a suitable one. This assertion is correct. In this situation, by applying a multiplier of 17, the total compensation payable to the appellants would come to Rs. 11,42,400/-.

15. The learned Counsel for the claimant-appellants has also contended that the Tribunal has given a positive finding that the deceased was a brilliant Scientist and as such some amount ought to have been awarded on account of loss of consortium and future prospects. Reliance, for this assertion has been placed on judgment of this Court reported as Jagjit Kaur Vs. State of Haryana, .

16. I find merit in the submission of the learned Counsel for the appellants and accordingly award a sum of Rs. 25,000/- for future prospects and for loss of consortium as the deceased's wife was only 27 years of age at the time of his death. The appellants shall also be entitled to interest at the rate of 12% per annum on the enhanced amount of compensation from the date of filing the claim petition till its realisation.

The State appeal is accordingly dismissed. The appeal filed by claimant is allowed in the above terms.