

(1997) 11 P&H CK 0015

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 21 of 1987 in F.A.O. No. 384 of 1983

Smt. Nirmala Puri

APPELLANT

Vs

Gurmel Singh and Others

RESPONDENT

Date of Decision: Nov. 11, 1997

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A

Citation: (1998) 2 ACC 127 : (1999) ACJ 403 : (1998) 118 PLR 188 : (1998) 2 RCR(Civil) 318 : (1998) 1 RCR(Civil) 696

Hon'ble Judges: R.L. Anand, J; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: R.K. Battas, for the Appellant; Sarjit Singh and Parminder Singh, for the Respondent

Final Decision: Dismissed

Judgement

R.L. Anand, J.

By this judgment we dispose of L.P.A. No. 21 of 1987 titled Smt. Nirmala Puri v. Gurmel Singh and Ors., 1 and the Cross Objections Nos.13 of 1987 filed by Pepsu Road Transport Corporation (for short "PRTC") as the L.P.A. and the cross objections have arisen from the Judgment dated 9.10.1986 passed by the learned Single Judge in F.A. O. No. 384 of 1983.

Brief facts of the case are that Smt. Nirmala Puri, Ashok Kumar Puri, Krishan Puri and Rajiv Puri filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939, against Gurmel Singh Driver and Pepsu Road Transport Corporation, Patiala through its General Manager, and claim compensation amounting to Rs. 1,50,000/- for the death of Shri Roshan Lal Puri, who died in a motor vehicle accident, which took place on 2nd April, 1981 at Patiala. It was alleged by the claimants before the Tribunal that on 2nd April, 1981 at about 10.45 A.M. the deceased Roshan Lal Puri was going on a bicycle and was going on the Mall Road, Patiala, from the side of District Courts

towards the side of Fawara Chowk and when the deceased had just crossed the Mandir of Kali Devi and was proceeding on the correct side of the road, bus No. PBP 3573 belonging to the PRTC appeared there and it was being driven rashly and negligently by Shri Gurmel Singh respondent. The bus came from the side of Chowk Fawara. The driver did not slow down the vehicle and while crossing the chowk in front of the building of the State Bank of Patiala, he lost control of the vehicle and brought the vehicle on the wrong side of the road and hit the bicycle of the deceased, which was crushed under the right wheel of the bus, as a result of which Roshan Lal Puri deceased was thrown on the road and he thereby sustained serious injuries on the head and other parts of his body. Later on these injuries became fatal after a few hours. According to the claimants, the accident was witnessed by Constables Ishar Singh and Mastan Singh of Division No. 4, Patiala, Mrs. Kiran Saxena and Yog Ram, Architect. After causing the accident, the driver fled away from the place of accident by leaving the bus at the spot. F.I.R. 98 dated 2nd April, 1981 was registered in Police Station Civil Lines, Patiala. It was alleged by the claimants that the deceased was born on 11th February, 1927 and was about 54 years of age, and was earning Rs. 1100/- per month as he was employed as Inspector Wireless Traffic, Northern Railway, Amritsar. With the above averments, the claim petition for the award of Rs. 1,50,000/- was filed.

2. The claim petition was contested by the driver and the owner of the vehicle, who filed separate written statements and denied the allegations. It was pleaded by the respondents that another bus was standing on the Mall Road near the crossing of State Bank of Patiala because of the red light at the said crossing and when bus No. PBP 3573 approached the said crossing, the bus which was standing in front, moved forward and the cyclist, who was proceeding from Baradari towards Sheran-wala Gate side did not heed to the traffic light, which was red for him, with the result he struck against the said bus, which was in front of bus No. PBP 3573 and thereafter the driver of that bus fled as a crowd had collected and immediately Gurmel Singh, respondent No. 1, stopped his bus on humanitarian grounds, was instead implicated in case F.I.R. No. 98 u/s 304-A, I.P.C. The respondents stated in their written statements that bus No. PBP-3573 never struck against the cyclist.

3. With the above pleadings of the parties, the Motor Accident Claims Tribunal framed the following issues:-

1. Whether Roshan Lal Puri deceased died on account of injuries sustained in a motor vehicle accident on 2.4.1981 due to the rash and negligent driving of bus No. PBP-3573 owned by P.R.T.C. respondent No. 2, and driven by Gurmel Singh, respondent No. 1? OPA.
2. If issue No. 1 is proved, to what amount of compensation the applicants are entitled and from whom ? OPA.
3. Relief.

The parties led oral and documentary evidence in support of their case. On the conclusion of the proceedings the learned Tribunal vide award dated 28th February, 1983 decided issue No. 1 against the claimants and in favour of the respondents. Issue No. 2 was, however decided in favour of the claimants and the dependency of the claimants was calculated to Rs. 54,000/- In view of the findings recorded by the Tribunal under issue No. 1, the petition of the claimants was dismissed.

4. Aggrieved by the award, the claimants filed F.A.O. No. 384 of 1983 which was disposed of vide judgment dated 9th October, 1986 by the learned Single Judge, who set aside the award of the Tribunal and partly allowed the petition and granted compensation to the tune of Rs. 75,000/- in favour of the claimants along with interest at the rate of 12 per cent per annum from the date of the filing of the petition till payment. It was further ordered by the learned Single Judge that the driver and the owner of the bus shall be jointly and severally liable for the payment of the compensation. The learned Single Judge relied upon a Full Bench judgment reported as Lachhman Singh v. Gurmit Kaur (1979)81 P.L.R.1 and the annual dependency of the claimants was assessed at Rs. 7,500/- and by applying the multiplier of 10, the compensation amounting to Rs. 75,000/- was assessed.

5. Aggrieved by the said judgment of the learned Single Judge, the claimants have filed the L.P.A. and have claimed further/enhanced compensation while the P.R.T.C. has prayed for the dismissal of the claim petition in its entirety as earlier ordered by the Tribunal.

6. We have gone through the impugned judgment and first of all we would like to deal with the appeal of Smt. Nirmala Puri. The case set up by the appellant is that Shri Roshan Lal Puri was Inspector and was drawing a salary of Rs. 1100/- per month. After deducting his personal expenses, the dependency of the claimants should not be calculated less than Rs. 9,000/- per year and in this case the suitable multiplier should be of 12 years instead of 10 years. It is further pleaded by the appellant that she was hardly 47 years of age at the time of the death of her husband and keeping in view all the attending circumstances and specially the fact that the deceased was to earn promotion with the passage of time, the learned Single Judge ought to have granted not less than Rs. 90,000/- by way of compensation to the claimants.

7. In our considered opinion the submissions raised by appellant Smt. Nirmala in her appeal are devoid of any merit. Roshan Lal Puri deceased was aged about 54 years at the time of his death. His total emoluments at the relevant time were Rs. 1100/- per month. The deceased was the earning member of the family and in order to keep his appearance in the public, he would be spending at least Rs. 400/- to Rs. 500/- on his personal expenses. The deceased would have served in the Department upto the age of 58 years and thereafter he would have earned pension. To this extent also, there is a statement of the witness that after retirement the deceased would have earned a pension of Rs. 669/- per month. Claimants Nos. 2 to 4 were

majors and in these circumstances, the dependency, if any, was only of claimant No. 1. It is a settled principle of law that no compensation can be awarded to a dependent for the loss of love and affection. For the first four years, the dependency of claimant No. 1 could not be more than Rs. 28,800/- say Rs. 30,000/- keeping in view the span of life of a male person in this region, the deceased might have survived upto the age of 70 years. The possible income of the deceased after his retirement was Rs. 664/- per month; say Rs. 700/-. In these circumstances the dependency of the widow for the next 12 years in no way could exceed Rs. 45,000/-. This aspect of the case has been rightly taken note of by the learned Single Judge in the impugned judgment and we would like to reproduce to the reasoning adopted by the learned Single Judge as follows:-

" Next to consider is the quantum of compensation payable to the claimants. The evidence on record shows that Roshan Lal Puri deceased was about 54 years of age at the time of his death he was posted as Inspector, Wireless Traffic in the Railways and his total emoluments were almost Rs. 1100/- per month. It has also come on record that after his retirement, he would have earned a pension of Rs. 664/- per month. The deceased died leaving behind his 47 years" old widow and their three major sons. The only dependent, in this case was really his widow.

The compensation payable to the claimants has to be assessed in view of the principles laid down by the Full Bench in *Lachhman Singh v. Gurmit Kaur* (1979)81 P.L.R. 1. Considering the circumstances of the claimant and the deceased, in the light thereof, it would be appropriate to apply a multiplier of "10" in the present case and to assess the dependency at Rs. 7500/- per annum. So computed the compensation payable to the claimants would work out to Rs. 75,000/-

The widow-Nirmal Puri is accordingly hereby awarded a sum of Rs. 75,000/- (Rs. Seventy-five thousand only) as compensation, which she shall be entitled to 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."

8. Resultantly, we affirm the finding of the learned Single Judge when he awarded compensation to the tune of Rs. 75,000/- to the claimants along with interest.

9. Reverting to the cross-objections of the PRTC, we are again of the view that these objections have been filed for the sake of objections only as these lack any merit. It is stated in the objections that Smt. Nirmala had made a categorical statement in her application that she did not want to institute legal proceedings against the driver and the conductor of the bus in question and from the statement it should be inferred that she did not attribute any negligence so far as Gurmel Singh driver is concerned. The ground taken up by the Corporation in the cross-objections has no merit at all The statute has conferred right upon the claimants of the deceased to claim compensation. On proving the negligence on the part of the driver, the owner has been made vicariously liable. It is the common case of the parties that Smt.

Nirmala Puri was not the eye-witness of the accident and in these circumstances her statement in the shape of writing is meaningless. The learned Single Judge has categorically held in the judgment that the accident had taken place due to the negligence of Gurmel Singh. His plea was found to be false. It will be highly unlikely that the dependents of the deceased would try to implicate a wrong person and would try to fasten the liability on Gurmel Singh or upon the Corporation. There is hardly any evidence on the record from which it can be inferred that Gurmel Singh at the first point of time had given a story different than the one as given by the claimants in the claim petition. The alleged statement, if any, made by Smt. Nirmala Puri at the most can be treated as her admission, which had been successfully retracted. So far as the position of law is concerned, admission is the best evidence, upon which the opposite party can rely, but with one exception that the alleged maker of the statement can successfully show that it is erroneous. We have already held above that Smt. Nirmala Devi was not the eye-witness of this accident. If she has stated in the application that she did not want to institute legal proceedings against the driver or the conductor, her that statement does not bind her nor the other legal representatives who have independent right of claiming compensation.

10. Resultantly, we do not find any legal infirmity or illegality in the impugned judgment dated 9th October, 1986 passed by the learned Single Judge and affirm the same. Consequently, we do not find any merit either in the appeal of the cross-objections, which are hereby dismissed leaving the parties to bear their own costs.