

(1989) 07 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Parkash Kaur and
Others

APPELLANT

Vs

Union of India (UOI)
and Another

RESPONDENT

Date of Decision: July 14, 1989

Citation: (1990) 2 ACC 374

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

Bench: Single Bench

Judgement

S.S. Sodhi, J.

The claim is appeal here is for enhanced compensation. The claimant being Parkash Kaur widow of Parshan Singh Dhesi, a retired Superintending Engineer, who was killed when while travelling in the bus- CHW 9043, he was thrown out of it on account of its fast speed on a curve. This happened on the Ropar - Anandpur Sahib Road at about noon time on May 30, 1983.

2. It was the finding of the Tribunal that the accident has occurred entirely due to the rash and negligent driving of the bus. A sum of Rs. 48, 000/- was awarded as compensation to the claimants - Rs. 5, 000/- each to the sons of the deceased and the balance to his widow-Smt. Parkash Kaur.

3. A reference to the evidence on record would show that Parshan Singh Dhesi deceased was about 61 years of age at the time of his death. He was a Superintending Engineer in the State of Punjab and had taken pre-mature retirement and had thereafter taken up employment with Continental Construction Company in Libya where he worked for about a year. On coming back to India, he took up the work of the construction of the Defence Academy at Anandpur Sahib. It was the case of the claimants that this work was being done by a partnership known as J & K Builders & Engineers of which Parshan Singh Dhesi was the Managing Partner. As Managing Partner, he used to receive a salary of Rs. 2,500/- P.M. and he

also had a 12 percent share in this partnership. Besides this, he also drew a pension of Rs. 1300/- per month. It was on this basis that the claimant sought assessment of the pension payable to her.

4. There is no dispute that Parshan Singh Dhesi deceased, had been working as a Superintending Engineer in the State of Punjab and it stands established by the testimony of P.W. 2- Chhanga Singh as also the claimant that he used to receive a pension of Rs. 1300/- per month. This pension now stands reduced to Rs. 911/- as per the testimony of P.W. 5-Mohan Lal Rana after the death of the deceased. It was further stated that with effect from November 1986, the family pension payable to the claimant would be further reduced to Rs. 623/-per month. It is thus apparent that the claimant has now suffered a financial loss by the amount coming into the household as pension being reduced in this manner.

5. As regards the deceased having a share in J & K Builders and Engineers, this stands established by the partnership deed produced on record. The problem, however, arises in determining the financial benefits that accrued to the deceased from this partnership. Except oral testimony of the widow Parkash Kaur, p.w. 2- Chhanga Singh and p.w. 4-Mohinder Singh, no documentary evidence of any kind, what-so-ever is forthcoming to corroborate it. No accounts have been produced to show what amount, if any, was being paid by the partnership to the deceased. It is pertinent to note here that according to p.w.2-Chhanga Singh, who used to maintain the accounts, there is the record showing the receipt of the said amounts by Parshan Singh Dhesi, deceased. If this was so, it was clearly incumbent upon the claimant to have produced this record. There is no explanation forthcoming for the non-production of this record. No record of any bank account has also been produced where any payments from the partnership may have been received, nor any Income Tax return. There is also no account of the investment, if any, of the deceased in the partnership. Such being the state of evidence. It would clearly not be safe to accept the mere oral testimony of the claimant and her witnesses regarding payments, if any, received by the deceased from the partnership.

6. There can of course be no manner of doubt that Parshan Singh Dhesi was indeed a qualified Engineer and capable as such of working and earning his livelihood even after his retirement. There is nothing to suggest that he was otherwise than in good health. This being so, it would be reasonable to assume that he could have continued working and making use of his expertise for another 6 to 7 years, if not more.

7. The position thus emerges that the material on record does indeed establish financial loss with regard to the pension that the deceased was bringing in during his life time. The evidence on record does not however, show what amount, if any, the deceased received from the partnership that had taken on the contract for the construction of the Defence Academy at Anand Pur Sahib. He was, however, capable of using his expertise and experience for gainful employment for the next couple of

years. By the very nature of things, determination of compensation in such a situation cannot be on any precise or definite basis. Some amount of guess work is inevitable taking, of course, into consideration the totality of the circumstances of the claimant and the deceased, in the light of the principles laid down by the Full Bench in Lachhman Singh v. Gurmit Kaur 1979 P.L.R.-1. So considered the compensation payable to the claimants is hereby enhanced to Rs. 1,00,000/- which they 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. Out of the amount awarded a sum of Rs. 5,000/-each, as already awarded by the Tribunal, shall be payable to the sons of the deceased and the balance to his widow.

8. This appeal is consequently hereby accepted to this extent with costs, counsel fee Rs. 500/-