

(2006) 03 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 1495 of 2006

New India Assurance
Co. Ltd.

APPELLANT

Vs

Bimla Devi and Others

RESPONDENT

Date of Decision: March 30, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173

Citation: (2006) 144 PLR 563

Hon'ble Judges: T.P.S. Mann, J; M.M. Kumar, J

Bench: Division Bench

Advocate: Suman Jain, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

The Insurance Company is in appeal against the award dated 19.12.2005 passed by the Motor Accident Claims Tribunal, Kurukshetra (for brevity, "the Tribunal"). The appeal has been filed u/s 173 of the Motor Vehicles Act, 1988. The Tribunal has recorded the findings after detail analysis of the evidence that Mehar Chand, close relation of claimant-respondent, had died in the accident which had occurred on 3.11.2004 at about 7.00 P.M. on account of rash and negligent driving of tractor-trolley No. HR-07C-5482 by its driver Suresh Kumar-respondent No. 7. The tractor-trolley is owned by Ram Swarup, respondent No. 8. Mehar Chand had died on the spot and the tractor-trolley had fled from the scene of occurrence. The number of tractor-trolley was not recorded in the FIR but its driver-respondent No. 7 Suresh Kumar, is alleged to have made extra judicial confession before one eye witness Rameshwar Dass, who is stated to have followed the tractor-trolley up to 1-1/2 kilometers. The findings of the Tribunal on the aforementioned issue in the concluding two paras reads as under:

15. The F.I.R. certainly does not have the number of the tractor or name of its driver. It could not have these particulars because the tractor driver did not stop at the place of accident and Mehar Singh could not notice these particulars because he was at a distance. The facts of this case are however that Mehar Singh asked the motorcyclists who came by that way to follow the tractor-trolley which had caused the accident. Rameshwar Dass is one of those motorcyclists and he had stated that they went in the direction of Jainpur and at a distance of about one or one and a half kilometers from the place of accident, they overtook the tractor and stopped it. Rameshwar Dass PW-5 has stated that they found Suresh Kumar to be frightened. Before Rameshwar Dass, Suresh Kumar is stated to have admitted to have caused the accident. This admission of Suresh Kumar coming in the statement of Rameshwar Dass PW-5 is admissible in evidence. Nothing has come in the cross-examination of Rameshwar Dass that this part of his statement is not believable.

16. All these circumstances, with no evidence from the other side, even from the side of Insurance Company, which had taken the plea of collusion, go to prove that the accident is an outcome of rash and negligent driving of tractor-trolley No. HR-07C-5482 by Suresh Kumar respondent No. 1. There is no doubt about Mehar Chand dying in this accident. He died at the spot and, therefore, it can also be held that Mehar Chand died in this road side accident. The issue is accordingly decided in favour of the petitioners.

2. The age of the deceased has been found to be 49 years and his gross salary has been proved on record as Rs. 12,083/- which include contribution of Rs. 4,000/- to G.P.F. After deducting the element of tax, the salary of the deceased has been taken to be Rs. 12,000/- per month. 1/4th cut has been imposed to leave 3/4th for the claimants, who are in six number, namely, Bimla Devi, widow, Pawan Kumar his son, Suman Lata, wife of Pawan Kumar, Nafe Singh, another son, Sunita Rani, daughter and Nathu Ram, the father. Accordingly, Rs. 9,000/- has been found to be the dependency and a multiplier of 12 has been imposed. Further assessment has been made in para 21, which reads as under:

21. For assessing the dependency of the claimants, I have to take their number into account. The deceased has left two sons and one daughter besides his widow and aged father. Suman Lata petitioner No. 3 is a wife of son of the deceased. She is not an heir of the deceased in the life time of Pawan Kumar, her husband. Still the deceased is survived by his widow, three children and aged father and in view of their number, expenses of the deceased on himself cannot be taken above 1/4th of his salary. Making a cut of 1/4th in the salary of the deceased, I find the dependency of the petitioner at Rs. 9,000/- per month. Multiplying it with 12, the annual dependency of petitioners comes to Rs. 1,08,000/-. Multiplying this annual dependency with 13, the multiplier adopted as above, I find the petitioners to have lost Rs. 14,04,000/- in the death of Mehar Chand. As per the aforesaid second

schedule, the petitioners are entitled to Rs. 9,500/- in the name of funeral expenses, loss of consortium and loss of estate. Adding this amount to the aforesaid amount, I find the petitioners to be entitled to Rs. 14,13,500/- as compensation on the death of Mehar Chand. Out of this amount, a sum of Rs. 1,00,000/- would fall to the share of Nathu Ram petitioner No. 6, a sum of Rs. 2,50,000/- each would fall to the share of petitioners No. 2, 4 and 5 and the remaining amount of Rs. 5,63,500/- shall fall to the share of petitioner No. 1.

3. In the final award, Suman Lata, claimant-respondent No. 3, who is daughter-in-law of the deceased, has not been held entitled to any share. The Tribunal has also awarded interest at the rate of 7.5% per annum by following the judgment of the Hon"ble Supreme Court in the case of [Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, .](#)

4. Mr. Suman Jain, learned Counsel for the appellant-Insurance Company, has raised three submissions before us. Firstly, it has been argued that he tractor-trolley has been planted after fabricating the whole version as there was no reference to the identity of the tractor-trolley in the FIR. According to learned Counsel, onus to prove the identity of the tractor-trolley was placed on the claimant-respondent and they have miserably failed to prove the same. Secondly, it has been pointed out that even the name of driver has not been disclosed. His third submission is that the multiplier of 12 imposed by the Tribunal in the facts and circumstances of the case, particularly by taking into account the age of the deceased, who was 49 years old, is also not justifiable. According to the learned Counsel, maximum multiplier of 10 could have been imposed. He has then submitted that gross salary for computing the dependency cannot be taken as the basis. The net salary of the deceased, which would be his carry-home salary, can alone be taken into consideration to work out the dependency 5. We have thoughtfully considered the submissions made by the learned Counsel and are of the view that the appeal is liable to be dismissed. The Tribunal, under issue No. 1, has decided the question as to whether the accident was caused by Suresh Kumar, the Driver of the ill-fated tractor-trolley bearing registration No. HR-07C-5482 in rash and negligent manner that caused the death of Mehar Chand. The claimant-respondents has produced an eye-witness, who was a cyclists, namely, Mehar Singh as PW. He described as to how the deceased-Mehar Chand came on a motorcycle and was trying to over-take the tractor-trolley. The tractor-trolley had gone ahead without caring for the victim, who was later identified as Mehar Chand. a teacher of Jainpur. Mehar Chand stopped two motor cyclists and told them to chase the tractor-trolley which had caused the accident and himself left for the Police Station, Ladwa and got recorded his statement to the police at Harijan Basti, Ladwa. One of motor cyclists, Rameshwar Dass has also been examined as PW-5, who have substantially supported the version of Mehar Singh and further elaborated that after they were stopped by a cyclist to chase the tractor-trolley, they went ahead and after chasing for about 1-1/2 kilometers, the driver of the tractor-trolley was frightened and he admitted to have caused the accident.

Although eventually he escaped from that place. The Investigating Officer, Chander Bhan, ASI, was also examined as PW-3, who deposed that Rameshwar Pass, who had chased the tractor-trolley after causing accident had come back to the spot and thereafter, he discovered the registration number of the tractor-trolley. Eventually, Suresh Kumar was arrested.

6. In view of the aforementioned detailed evidence, we are unable to accept the contention of the learned Counsel that the tractor-trolley was planted and whole version is fabricated. It may be true that in the FIR registration No. of the tractor-trolley or the name of the driver was missing, yet there is no cogent evidence on the record to the contrary to show that the tractor-trolley was not involved in the accident or it is planted.

7. It is conceded position that the age of the deceased has been found to be 49 years at the time of his death. A multiplier of 13 has been applied by following the second schedule appended to the Act. The Tribunal has kept in view the various factors like the number of the dependents and that he was only bread winner. The multiplier of 13 has been applied on that basis. It has been repeatedly held that no hard and fast rule can be laid down with regard to the adoption of suitable multiplier yet some broad guidelines have been laid down by Hon"ble the Supreme Court, after referring to various judgments, the Hon"ble Supreme Court in the case of S. Raja Priya (supra), has concluded in paras 8 and 10, which is as under:

8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependents, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependents during the period, the chances that the deceased may not have lived or the dependents may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. xxx xxx xxx

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is good servant but bad master" since there are so often many imponderables. In every case "it is the overall picture that matters" and the Court must try to assess as best as it can be loss suffered.

8. It is obvious that the multiplier method stood the test of time yet it is conceded that the conclusion necessarily stems from realm of guess work. Therefore, the argument raised by the learned Counsel that the multiplier of 13 is on higher side, cannot be accepted and we have no hesitation to reject the same. We are further of

the view that since the Tribunal has observed the demeanour of claimants and accordingly discretion exercised by the Tribunal should ordinarily be accepted unless there is any legal infirmity or such unreasonableness in the award that no reasonable man would reach to such a conclusion. We do not find any such thing on the face of the award warranting our interference.

9. The last argument of the learned Counsel is equally devoid of merit wherein it is submitted that the gross income, which includes the element of GPF should not have been taken as the base for working out the dependency. The argument is liable to be rejected out rightly because the concept of net income is to work out that income which show that dependency and not the income which is not worked for the purposes of Income Tax etc. The element of GPF amounting to Rs. 4,000/- and the amount of Rs. 12,500/- contributed to GPF advance in installments would necessarily be construed as income for the purpose of computing the dependency. In this regard, reference may be made to the judgment of the Hon"ble Court in the case of [Janta Travels Pvt. Ltd. Vs. Punjab Chemi-plants Ltd.](#) , where the gross income has been taken to be the basis. If we look at the future prospective in respect of enhancement of income of the deceased then his salary would go further up before his retirement. The Tribunal has not worked out the income keeping in view the prospective increase in the salary of the victim as has been laid down in a number of cases including Susamma Thomas"s case (supra). We also do not propose to undertake any such exercise because the award as it is being upheld which has been propounded on the basis of gross income, multiplier and rate of interest of 7-1/2 percent p.a. Therefore, the last submission of the learned Counsel also fails and the same is rejected.

For the reasons aforementioned, this appeal is fails and the same is dismissed.