

## Smt. Jasbir Kaur and Another Vs Shri Vijay Kumar and Others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 11, 1995

**Acts Referred:** Motor Vehicles Act, 1939 " Section 110A

**Citation:** (1996) ACJ 893 : (1996) 113 PLR 458

**Hon'ble Judges:** Sarojnei Saxena, J

**Bench:** Single Bench

**Advocate:** Ravinder Chopra and Meghna Nijawan, for the Appellant; Surinder Garg, for the Respondent

**Final Decision:** Allowed

### Judgement

Sarojnei Saxena, J.

This is claimants appeal against the award of the Claims Tribunal dated July 20, 1989, whereby an amount of Rs.

76,800/- has been awarded as compensation to the claimants.

2. Kashmir Singh, husband of Jasbir Kaur claimant No. 1, was an Army personnel earlier. Later on he was running a shop in his village and was

earning about Rs. 1,200/- per month. Appellant No. 1 is his widow. Appellant No. 2 is his minor son. After Kashmir Singh's death she gave birth

to a son Jagtar Singh posthumously. They are the legal heirs of deceased Kashmir Singh. On May 30, 1985 at about 2.45 P.M. Kashmir Singh

was going on his moped when near Grain Market Fazilka he was knocked down by truck No. PBX 3250 owned by deceased Lekh Raj

respondent No. 2 and driven by Vijay Kumar respondent No. 1. This vehicular accident took place because of the rash and negligent driving of

the said truck by respondent Vijay Kumar. Kashmir Singh sustained injuries in this accident and he breathed his last on account of these injuries.

Claimants' contention was that this truck was insured with respondent No. 3. Hence, the claimants claimed Rs. 2,50,000/- as compensation.

3. Respondents 1 and 2 submitted their joint written statement and denied that this accident took place because of the rash and negligent driving of

the aforesaid truck by respondent Vijay Kumar. They submitted that this truck was insured with respondent No. 3. They also denied that this truck

was involved in this accident.

4. The Insurance Company denied all the allegations made in the petition. It was alleged that the truck was insured with it but on the date when the

contract of insurance was taken Lekh Raj was not alive. Hence the company was not liable for this accident. Other defence available to the

company Under Sections 96 and 110C of the Motor Vehicle Act were also raised by them.

5. The Claims Tribunal framed issues. After recording parties' evidence, the Claims Tribunal came to the conclusion that Kashmir Singh died in this

Vehicular accident, at the time of accident respondent Vijay Kumar was driving the said truck in a rash and negligent manner and he dashed his

truck against the Moped of the deceased. The Tribunal further held that at the time when insurance policy of this truck was taken from respondent

No. 3 Lekh Raj was not alive. Hence, insurance Company is not liable to pay the amount of compensation to the claimants. The legal

representatives of Lekh Raj were brought on record. The Tribunal held that these sons of Lekh Raj are liable to pay the amount of compensation

to the claimants. So, far as the amount of compensation is concerned, the Tribunal disbelieved the claimants' evidence that at the time of death

Kashmir Singh was earning Rs. 1200/- per month by running a shop. The Tribunal concluded that Kashmir Singh might be working as a labourer

and, thus his monthly income can be held to be Rs. 600/-. Dependency of the claimants was determined, at Rs. 400/- per month. Applying a

multiplier of 16, Rs. 76800/- were awarded as compensation to the claimants.

6. In this appeal, respondents 1 and 2 did not appear after notice. Hence they are proceeded ex parte. No relief was granted against respondent

No. 3.

7. Against this award, respondents 1 and 2 have also filed FAO No. 1160 of 1989. This appeal stands dismissed in default.

8. Learned counsel for the appellants contended that the Tribunal has wrongly disbelieved the sworn testimony of Jasbir Kaur AW-6 who is duly

corroborated by the statement of Satnam Singh AW-7 on the point that deceased Kashmir Singh was running a shop and was earning Rs. 1200/-

per month. He pointed out that Jasbir Kaur AW-6 has stated on oath that her husband was earning Rs. 1200/- per month by running a shop. Out

of this income, he was giving her Rs. 1100/- for running the household. He further pointed out that respondents 2 and 3 have simply asked one

question with regard to the above fact to this witness, and she further reiterated that her husband was running a shop at Chhatiwala. She denied

the suggestion that her husband was a daily labourer. In the cross examination by respondent No. 3 she has stated that before her marriage

Kashmir Singh was in military service. He left military service and thereafter starting running a shop in the village. She has denied the suggestion that

he was not running a shop or was not earning Rs. 1200/- per month. Satnam Singh AW-7 has not said a word about the occupation of Kashmir

Singh in his examination in chief, but in the cross-examination in last para he has stated that he had seen the house of Kashmir Singh. He was

running a shop in his own house in the village.

9. The appellants' learned counsel submitted that there is no rebuttal to the above said evidence adduced by the claimants. Kashmir Singh was

running a shop in his own house in the village. The Tribunal has wrongly disbelieved this evidence simply on the ground that no account book has

been submitted of this shop. According to him, in villages small shops are run in the residential houses and since the business is on a very small

scale, shop keepers do not maintain any account books. If those documents are not produced, it cannot be held that the deceased was not running

a shop. Jasbir Kaur claimant has testified on oath that Kashmir Singh was earning Rs. 1200/- per month by running the shop. Hence there was no

reason for the Tribunal not to hold that Kashmir Singh was earning Rs. 1200/- per month by running a shop. On its own conjectures and surmises,

the tribunal has held that the deceased was a daily wage earner and wrongly it has assessed his monthly income at Rs. 600/-.

10. In my considered view, the Tribunal has definitely fallen into an error in assessing the monthly income of the deceased. There was no reason for

the Tribunal to disbelieve the sworn testimony of Jasbir Kaur AW-6 and Satnam Singh AW-7. Jasbir Kaur AW-6 has stated on oath that her

husband was earning Rs. 1200/- per month by running a shop and used to give her Rs. 1100/- per month. She is also categorical that at that time his

age was 30 years. Satnam Singh has corroborated her and has stated that Kashmir Singh was running a shop in his own house in the village. There

is no rebuttal of this evidence. Hence I find that at the time of death the age of Kashmir Singh was 30 years and he was earning about Rs. 1200/-

per month by running shop. Deducting 1/3rd of this income for his personal expenses, the dependency of the claimants can safely be determined at

Rs. 800/- per month. The tribunal has already applied a multiplier of 16. Thus, in my considered view, the claimant appellants are entitled to get

Rs. 1,53,600/- from respondents 1 and 2 as compensation. The appeal is accordingly allowed with costs. The amount of compensation of

compensation is enhanced to Rs. 1,53,600/- with interest at the rate of 12 per cent per annum from the date of filing of the petition.