
New India Assurance Co. Ltd. and Others Vs Mohinder Kaur

None

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 27, 1993

Acts Referred:

Motor Vehicles Act, 1988 " Section 110A

Citation: (1994) 2 ACC 374

Hon'ble Judges: Amarjeet Chaudhary, J

Bench: Single Bench

Judgement

Amarjeet Chaudhary, J.

This judgment of mine will dispose of FAO No. 224 of 1985 filed by New India Assurance Co. Limited and Anr.

v. Smt. Mohinder Kaur and Ors. and Cross Objections No. 62-CII of 1985 filed in the said FAO by the claimant-respondents.

2. The Motor Accident Claims Tribunal, Chandigarh on a claim application filed by Smt. Mohinder Kaur, widow and her three children, had

awarded a compensation of Rs. 2,20,800/- which was recoverable from the New India Assurance Company Limited, and one Opinderjit Singh

on account of death of Randhir Singh who died in accident on 1.9.1983.

3. In this appeal, the New India Assurance Company Ltd., has challenged the award of the Tribunal on the grounds that the Tribunal has awarded

exorbitant, compensation in favour of the claimant-respondents, the income of the deceased and the annual dependency of the claimants have not

been properly calculated and further that the Tribunal had erred in applying the multiplier of 16 in the case. It has been further submitted that no

compensation on the basis of the pension after retirement can be granted.

4. In the cross-objections, the claimants have prayed for the enhancement of the compensation and for applying the multiplier of 20 instead of 16

applied by the Tribunal.

5. The brief facts of the case are as follows:

Smt. Mohinder Kaur, widow and three children of Randhir Singh, deceased filed a claim application u/s 110-A of the Motor Vehicles Act for the

grant of compensation to them on account of death of Randhir Singh which was caused in a motor vehicle accident. The case of the claimants was

that the deceased was 50 years of age having an income of Rs. 1,600/- p.m. Randhir Singh, deceased was going on his Scooter No. CHO 5910

on the road between Sectors 21-A and 18-D, Chandigarh from the side of Bus Stand towards Sector 20, Chandigarh. A motor cycle bearing

registration No. CHR 4342 came from behind at a fast speed. The driver of the motor cycle did not slow down the speed of the motor cycle and

also did not blow any horn. The motor cyclist took a turn towards the right side by which time the deceased had almost reached the right side of

the road. The motor cycle hit the scooter of the deceased. The accident had, thus, taken place on account of the rash and negligent driving of the

driver of the motor cycle. The claimants demanded a sum of Rs. 3,00,000/- as compensation.

On the pleadings, the Tribunal framed the following issues:

1. Whether Randhir Singh died on 1.9.1983 in a motor vehicle accident as a result of rash and negligent driving of motor cycle No. CHR 4342 by

Opinderjit Singh respondent No. 1? If so, what is effect? OPP.

2. If issue No. 1 is proved, to what amount of compensation, are the claimants entitled to and if so, against whom? OPP.

3. Relief.

In order to prove their case, the claimants examined PW-1, Rakesh Bajaj, PW-2, Dr. U.S. Bansal, PW-3 ASI Samme Singh, PW-5 Satwinder

Singh, PW-6 Tarlok Singh besides one of the claimants Smt. Mohinder Kaur, who herself stepped into the witness box as PW-4.

6. Smt. Mohinder Kaur, PW-4, wife of the deceased in her statement stated that her deceased husband was drawing a sum of Rs. 1,600/- p.m. as

his salary and had also left behind landed property which was being used for agricultural purpose. The deceased used to look after the land himself

and earn Rs. 6,500/- p.a. therefrom. She further deposed that after his retirement the deceased had planned to look after the agricultural land.

However, in the cross-examination, Smt. Mohinder Kaur admitted that the deceased used to be left with just about Rs. 600/- p.m. by way of his

carry home salary after necessary deductions.

7. In his statement PW-6 Tarlok Singh, Assistant working in the office of the Controller of Stores, Punjab, Chandigarh where the deceased

Randhir Singh also used to work, deposed on the basis of the official record that the deceased was born on 13.3.1933. The deceased was

working as an Assistant and the total emoluments which he was drawing were Rs. 1,590.60 p.m.

8. On 6.11.1984, the Tribunal returned the finding that Randhir Singh deceased had died in accident due to negligent driving of Opinderjit Singh,

driver of the Motor Cycle. Believing the statement of PW-6 Tarlok Singh, official witness, who had deposed in the cross-examination on the basis

of the record that the deceased used to have a carry home salary of Rs. 1,326/- paise p.m. and since the deceased was entitled to get further

promotion as a Superintendent, he was in this way likely to earn salary at a higher rate, in due course of time, the Tribunal, therefore, fixed the

average salary of the deceased upto the age of superannuation at Rs. 2,000/- p.m. Out of this monthly income, the Tribunal after deducting Rs.

400/- as personal expenses of the deceased, held that the deceased must be giving Rs. 1,600A to his wife for running the house. As such the

annual dependency of the claimants upon the deceased was worked out at Rs. 19,200/-. The deceased was 51 years old at the time of his death

and was to superannuate after 7 years. The Tribunal, therefore, had applied a multiplier of 7. The Tribunal also held that after the retirement, the

deceased would have got a pension of Rs. 1,000/- per month and thus would have been paying Rs. 800/- per month to his wife for running the

house after deducting a sum of Rs. 200/- as his personal expenses and further granted compensation for a period of 8 years at the rate of Rs.

800/- per month. The claimants were thus awarded a total compensation of Rs. 2,20,000/- (Rs. 1,34,400/- for first 7 years for the service of the

deceased which he was to render and Rs. 86,400/- for a period of 9 years after his retirement).

9. In this appeal filed by the New India Assurance Co. Ltd., the main dispute is with regard to the quantum of compensation awarded by the

Tribunal.

10. After hearing the learned Counsel for the parties and perusing the case file, I am of the view that there was no jurisdiction in calculating the

income of the deceased at Rs. 2,000/- per month for the reason that Tarlok Singh (PW-6) in his statement had stated that the deceased's total

emoluments were Rs. 1590.60 per month (rounded off to Rs. 1600/-). The Tribunal while assessing the dependency should have taken into

consideration the monthly salary of the deceased which he was drawing at the time of his death. Out of this income of Rs. 1600/- the deceased

must be spending Rs. 400/- on himself and remaining amount of salary i.e. Rs. 1200/- on his family. In view of this, the annual dependency of the

claimants on the deceased would be Rs. 14,400/- As mentioned in the earlier part of the judgment, the deceased was 51 years old at the time of

his death and after 7 years he was to retire on superannuation at the age of 58 years. As such, the multiplier of 7 as adopted by the Tribunal is just

and reasonable. In view of this, the total compensation to which the claimants are entitled comes to Rs. 1,00,800/- (Rs. 14,400 x 7 = 100800/-)

11. The other glaring omission on the part of the Tribunal is with regard to the compensation awarded for 9 years based on calculation of pension

of the deceased. The proposition of law is settled that for the purposes of calculating the compensation, annual dependency of the dependents

should be determined in terms of annual loss accruing to them due to abrupt termination of life. For this purpose, annual earning of the deceased at

the time of his death and the amount which he was spending on the maintenance of his family will be determining factor. The amount which the

deceased was spending on himself as such would be deducted from the annual earning and then the figure arrived at would be adjudged as the

annual dependency. The basic figure then be multiplied by a suitable multiplier. The emphasis on "just compensation" can easily be laid in view of

the provisions of Section 110-B of Motor Vehicles Act under which petitions for grant of compensation are maintained. The mandate of law in the

aforesaid provision further envisages for the grant "just compensation" which the Court thinks reasonable keeping in view of the facts and

circumstances of each case. This conclusion is based on the Full Bench decision of this Court rendered in Lachhman Singh v. Gurmit Kaur 1979

PLR 1.

12. As already mentioned in the earlier part of the judgment, the annual dependency of the claimants will be Rs. 14,400/-. By applying a multiplier

of 7, the compensation payable to the claimants would be Rs. 1,00,800/- (Rs. One lac and eight hundred). The claimants shall also be entitled to

12% p.a. interest on this amount from the date of claim petition till realization.

13. In view of the foregoing discussion, the appeal filed by the Insurance Company is partly allowed and the award of the Tribunal is modified to

the extent indicated above.

14. Learned Counsel for the respondents-cross-objections have not been able to substantiate his claim for enhancement of the compensation. In

view of this, cross-objections fail and are dismissed.

Parties are left to bear their own costs.