

(2000) 11 P&H CK 0079

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 1524 of 1997 (O and M)

New India Assurance Company
Ltd.

APPELLANT

Vs

Partap Singh

RESPONDENT

Date of Decision: Nov. 27, 2000

Acts Referred:

- Motor Vehicles Act, 1988 - Section 149, 149(2), 163

Citation: (2002) 1 ACC 530 : (2002) ACJ 530 : (2001) 1 RCR(Civil) 702

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. Deepak Suri, for the Appellant; Mr. Lokesh Sinhal, for the Respondent

Judgement

R.L. Anand, J.

By this judgment I dispose of two F.A.O. No. 1524 of 1997 The New India Assurance Company Ltd. v. Partap Singh and others and F.A.O. No. 1558 of 1997 Partap Singh and others v. Nazir etc. as both these appeals can be disposed of by one judgment. Facts are being taken from F.A.O. No. 1524 of 1997.

2. Some facts can be noticed in the following manner. In the FAO No. 1524 of 1997 filed by the Insurance Company, the appellants have prayed for the reduction in the amount of award whereas in FAO No. 1158 of 1997 the appellants have prayed for the enhancement of the compensation of Rs. 4,20,000/- which was awarded by the Tribunal.

3. The brief facts of the case are that Shri Partap Singh and his wife Smt. Vidhya Rani, the parents of deceased Dinesh Kumar, filed a petition u/s 166 of the Motor Vehicles Act against Nazir Singh Driver, Surinder Pal Singh owner of truck No. DIL 836 and the New India Assurance Company. The accident took place on 10.11.1993. Deceased Dinesh Kumar was going from Gurgaon to Palwal while driving scooter No. HR-30-6993 and his brother Deepak Kumar was sitting on the pillion seat of the

scooter. At about 5.00 p.m. Dinesh Kumar crossed bus stop of village Gham-roj and was driving his scooter on the correct left hand side of the road. In the meanwhile Truck No. DIL-836 driven rashly and negligently by Nazir Singh respondent came from Sohna side and hit the scooter from front side. As a result of the accident Dinesh Kumar suffered serious and multiple injuries. His brother Deepak Kumar also sustained minor injuries. Dinesh Kumar was firstly taken to Civil Hospital, Sohna and since his condition was serious, he was shifted to Escort Hospital, Faridabad and thereafter to Holy Family Hospital, New Delhi, where he died on 14.11.1993. According to the claimants the deceased was holding a Diploma in Civil Engineering issued by State Board of Technical Education, Haryana. The deceased was a B-Class contractor earning Rs. 10 to 12 thousands per month and he was paying income tax. It was further pleaded by the claimants that the deceased remained admitted in the hospital from 10.11.1993 till the time of his death on 14.11.1993 and a sum of Rs. 30,000/- was spent on his treatment during the said period in addition to transport expenses of Rs. 10,000/-. The scooter was damaged badly in the accident in question and a sum of Rs. 8,000/- was spent on the repair thereof. The claimants claimed rupees twenty lacs as compensation.

4. The notice of the claim petition was given to the respondents. The driver and the owner of the truck filed a joint written statement and denied the allegations. According to them, the accident took place due to negligence of Dinesh Kumar. They pleaded that the compensation will be paid by the Insurance Company as the vehicle was insured.

5. Respondent No. 3-Insurance Company filed a separate written statement and it took the stand that the driver of the truck was not holding a valid driving licence.

6. From the above pleadings of the parties the learned Tribunal framed the following issues":-

1. Whether Dinesh Kumar Gupta died as a result of rash and negligent driving of truck No. 836, by its driver Nazir, respondent No. 1 ? OPP

2. Whether the petitioners are the legal heirs/representatives of the deceased ? OPP

3. Whether respondent No. 1 was not holding a valid driving licence at the time of the accident ? OPR

4. To what amount of compensation the petitioners are entitled to and against whom ? OPP

5. Relief.

7. The parties were given opportunities to lead the evidence and on conclusion of the trial, issue No. 1 was decided in favour of the claimants and against the owner and driver by the truck. Issue No. 2 was also decided in favour of the claimants and while deciding issue No. 4, it was observed that the claimants are entitled to an

amount of Rs. 4,20,000/- and the reasons given by the Tribunal are contained in paras No. 8 to 11 of the award which are quoted as follows :-

"8. The case of the petitioners is that Dinesh Kumar deceased, who was holding diploma in Civil Engineering and was an authorised Government Contractor, was earning Rs. 10 to 12 thousand per month. To substantiate their claims, one of the petitioners Partap Singh appeared as PW6 and made statement that his unmarried son Dinesh Kumar aged 24 years and holding diploma in Civil Engineering, was working as a Government contractor and was earning Rs. 10 to 15 thousands per month and used to pay him Rs. 6 to 7 thousands per month for house-hold expenses. He tendered in evidence copies Exs. P. 16 to P. 17 of the acknowledgments vide which income tax returns pertaining to Dinesh Kumar deceased were filed after his death. He has further testified that he had also spent Rs. 30-40 thousands on the treatment of Dinesh Kumar, Rs. 10 to 15 thousands on his last rites and Rs. 7 to 8 thousands on repair of the damaged scooter.

The petitioners have also examined Shri Balram Mangla, Accounts Clerk, Municipal Committee, Palwal, who appearing as PW2 made statement that during the year 1993-94, Dinesh Kumar, contractor, was paid a sum of Rs. 1,62,606/- and a sum of Rs. 3250/- was deducted as income tax at source. He proved copy Ex. P. 12 of the statement issued by Municipal Committee, Palwal as per office record.

Sh. Ravinder Kumar, Sub Divisional Clerk, Haryana State Agricultural Marketing Board, Faridabad appeared as PW3 and stated that Dinesh Kumar, an authorised contractor of their department, was paid sum of Rs. 10,68,495.09 and a sum of Rs. 23,8847/- was deducted as income tax at source during the year 1993-94. He proved copy Ex.P.13 of the certificate regarding deduction of income tax at source and copy Ex. P. 14 of the details of the payments made to Dinesh Kumar deceased during the year 1993-94.

9. Perusal of income tax return acknowledgments Ex.P.16 for the Assessment Year 1993-94 (Financial Year 1992-93) and Ex.P. 17 of the Assessment Year 1994-95 (Financial Year 1993-94) shows that the same were filed on 13.6.1995 and 27.3.1995 respectively after death of Dinesh Kumar. It can well be presumed that the income tax returns were filed much after the due date and death of Dinesh Kumar, showing inflated income in order to get higher compensation. As such income tax return acknowledgments Exs.P.16 and P. 17 cannot be made the sole base to assess the income of the deceased. The petitioners have also placed on record copy mark "B" (not admitted in evidence for want of proper mode of proof) of the acknowledgement vide which the deceased had on 25.8.1991 filed income tax return for the Assessment year 1991-93 (financial year 1990-91) showing his annual income as Rs. 27,700/- and claiming refund of Rs. 8425/- deducted as income tax at source. To arrive at the just and fair conclusion it will be better to work out the average of the annual income shown in three income tax returns filed vide acknowledgment Exs.P. 16 and P.17. and Mark "B" which comes to Rs. 54218/-. The

annual income of the deceased is, thus, accepted at Rs. 54,000/- and after giving margin to his own personal expenses, his annual income is reduced to Rs. 36,000/-.

10. Now the next question that arises is as to what multiplier shall be adopted. In the claim petition the petitioners have given the age of Dinesh Kumar deceased as 24 years and petitioner Partap Singh appearing as PW6 has also given the age of the deceased as 24 years. In the post mortem, report also Dinesh Kumar is shown to be aged 24 years. As such, the age of the deceased is accepted as 24 years at the time of the accident.

Learned counsel for the claimants has placed reliance on case [Delhi Transport Corporation Vs. Om Prakash Verma and Others](#), wherein High Court of Delhi in a case of death of un-married son aged 18 years had applied multiplier of 25 years and awarded Rs. 90,000/- as compensation to the parents. He has also placed reliance on case [Smt. Ratni and Another Vs. Joga Singh and Others](#), wherein Hon'ble Division Bench of our High Court had enhanced the compensation amount of Rs. 10,000/- awarded by the Single Judge, to Rs. 40,000/- applying the multiplier of 20, in respect of the death of unmarried son aged 15 years.

On the other hand, learned counsel for insurance company-respondent No. 3 has relied upon case *Ajtt Kaur v. Kulvinder Singh and others* 1996(2) P&H LR 218, wherein our High Court assessing the monthly dependency of claimant of a bachelor son aged 20 years, at Rs. 600/- for a period of first five years and Rs. 300/- per month for the remainder span of her life, awarded Rs. 54,000/- in all, taking into consideration the fact that the deceased was a bachelor and likely to be married after five years had he been alive.

This Tribunal is of the view that while assessing the compensation payable to the parents of an unmarried son, regard must be had both to the age of the deceased as well as the age of the claimants. Above views of this Tribunal find support from case [National Insurance Co. Ltd. Vs. M/s. Swaranlata Das and others](#), wherein Allahabad High Court has held that in case of death of unmarried son/daughter multiplier appropriate to the age of the claimants/deceased, whichever multiplier is lower, shall be applied. In the present case Dinesh Kumar deceased was aged 24 years while the claimants, who are parents, are of the age group of 50-55 years. The second schedule provided u/s 163A of the Motor Vehicles Act, 1988, inserted by Amendment Act No. 54 with effect from 14.11.1994, can be adopted as a guiding factor, though the accident in this case had taken place earlier. In the said schedule the multiplier of 11 has been provided for the persons aged in between 50 to 55 years. Applying the multiplier of eleven to the annual dependency of Rs. 36,000/- the total compensation payable to the claimants- parents come to Rs. 3,96,000/- (Three lacs ninety six thousand).

11. As regards the expenses which the petitioners had incurred on medical treatment of Dinesh Kumar during the period of his admission in various hospitals

from 10.11.1993 till his death on 14.11.1993, the petitioners have examined Shri Surinder Kumar Sharma, Senior Accounts Clerk, Holy Family Hospital, New Delhi, who appearing as PW1 made statement that Dinesh Kumar deceased remained admitted in Holy Family Hospital, New Delhi from 10.11.1993 to 14.11.1993. He proved Bill Ex.P1 receipts Exs. P.2 and P.3 prescription slips Exs. P.4 to P.7 and cash memos Exs. P.8 to P.11 issued by Holy Family Hospital, New Delhi. Vide Bill Ex.P1 and receipts Exs. P.2 and P.3 the petitioners had paid a sum of Rs. 21, 160/- to the said hospital. PW1 Surinder Kumar Sharma, has, however, proved cash memos Exs. P.8 to P.11 but a perusal thereof shows that neither they bear the name of the patient nor they disclose as to in what respect the same had been issued. The so-called cash memos Exs. P.8 to P. 11 appear to be the computer slips without containing the name of the patient, the details of the medicines or equipments purchased. As such cash memos Exs. P.8 to P. 11 do not inspire confidence in the mind of this Tribunal and are kept out of consideration. The petitioners are certainly entitled to a sum of Rs. 21, 160/- on account of medical expenses which they had paid to the Holy Family Hospital, New Delhi."

9. Aggrieved by the decision of the Tribunal two appeals i.e. one by the Insurance Company along with the owner of the vehicle and the other by the claimants have been filed.

10. I have heard Shri Deepak Suri Advocate, appearing on behalf of the appellant-Insurance Company and Shri Lokesh Sinhal, Advocate, appearing on behalf of the claimants-respondents No. 1 and 2.

11. The preliminary objection has been taken by the claimants to the effect that New India Assurance Company and Shri Surinder Pal Singh the owner of the truck, have no locus standi to file the present appeal in view of Section 149 sub-clause (2) of the Motor Vehicles Act which gives a limited right to the Insurance Company to file the appeal on specified ground. The counsel further submitted that now the Hon"ble Supreme Court has said that even a joint appeal by the Insurance Company with the owner or the driver will not be maintainable.

12. On the contrary, learned counsel appearing on behalf of the Insurance Company and the owner of the truck, submitted that since the liability of the Insurance Company is always there, therefore, the Insurance Company has the right to address the argument. I am not in a position to accept the contention of Shri Suri in view of the judgment of the Hon"ble Supreme Court reported as 2000(4) Supreme Court Cases 130, Chin-nama George and others v. N.K. Raju and another, where the Hon"ble Supreme Court was pleased to hold that only limited defences are open to the Insurance Company which are permissible to it u/s 149(2) of the Motor Vehicles Act and the appeal along with the driver or the owner is not permissible.

In this view of the matter, I maintain the first objection of the claimants and hold that the appeal is not legally maintainable.

13. Still, I want to adjudicate whether the compensation which has been awarded by the Tribunal to Shri Partap Singh and his wife Smt. Vidhya Rani is on the lower side or on the higher side.

14. It is proved on the record that Dinesh Kumar was a young boy of 24 years. He was a "B Class" contractor. He was having a diploma in Civil Engineering. It is also proved on the record that the deceased was assessed to income tax.

15. The discussion of the Tribunal reveals that after the death of Dinesh Kumar, income tax return was filed in which the income of the deceased was shown at Rs. 98,940/- for the financial year 1993-94. It is also established on the record that the deceased received a sum of Rs. 10,68,495.90 from the Agricultural Marketing Board, after deducting the income tax, as is evi-dentfrom Ex.P.14.

16. In these circumstances, it is established that the deceased was a man of resources. He had a flourishing business of contractship and his income must not be less than Rs. 54,000/- per year. As 1 stated above that the deceased was a young boy of 24 years, the age of his father at that time was about 53 years and the age of the mother must be 50 years. The proximity of life in this part of the country of a male is 70 years and of a female is 65 years. It is true that after some time Dinesh Kumar must have married and had his own wife and children but it is not always necessary that he would neglect his parents also. Our system is based on a joint family and the loyal sons invariably support their parents specially in their old ages. The dependency of the parents have rightly been calculated at Rs. 36,000/- by the Court below and the multiplier of 11 has been applied which cannot be held to be unjust.

17. In this view of the matter, I do not find any merit in both these appeals, FAO No. 1524 of 1997 and FAO No. 1558 of 1997 and dismiss the same with no order as to costs.

18. Appeals dismissed.