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**(1989) 07 P&H CK 0026**

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

**Case No:** None

Kulwant Kaur and Another

APPELLANT

Vs

Balbir Singh and Others

RESPONDENT

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**Date of Decision:** July 11, 1989

**Citation:** (1990) 1 ACC 615

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

**Bench:** Single Bench

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**Judgement**

S.S. Sodhi, J.

The claim in appeal here is for enhanced compensation. The Claimants being the widow and daughter of Gurdip Singh deceased who was killed while driving his car. PNK-6328 when it was involved in an accident with a four - wheeler tempo HRF-6545 coming from the opposite direction. This happened on the road between villages Ratia and Pabra at about 9.30 A.M. on April 29,1979. It was the finding of the Tribunal that this was a case of contributory negligence with 70 percent of the blame being that of the driver of the tempo and 30 per cent of the deceased Gurdip Singh. After making an allowance for the contributory negligence to the deceased, a sum of Rs. 29,400/- was awarded as compensation to the claimants, as also a further sum of Rs. 2330/- for damage to the car, the total amount, thus, awarded to the claimants being Rs. 31,730/-.

2. Counsel for the claimants, in the first instance, assailed the finding of contributory negligence recorded against Gurdip Singh deceased. According to the case as set up in the claim application, the car was travelling on its correct side of the road when the four-wheeler tempo coming the opposite direction came on to its wrong side and hit into the car of the deceased and, thus, caused the accident. No return was filed by the driver of the tempo. The owner and insurance company, however, took the plea that the accident had been caused due to the rash and negligent driving of the deceased himself who was under the influence of liquor.

3. The case of the claimants rests upon the testimony of PW 2 Sultan Singh, PW 6 Tek Ram and PW 7 Umed Singh who were all travelling in the car of the deceased at the time of the accident. It was" the consistent version of all these witnesses that the car was travelling on its correct side of the road when the tempo came from the opposite direction at a very fast speed and hit into it by going on to its wrong side. These witnesses were categoric that on seeing the tempo the deceased had taken his car to the Kacha portion of the road and only half of it was on the metalled road when the accident occurred. To corroborate it there is also the testimony of the investigating officer PW 8 A.S.I Mehar Singh who prepared the site plan Exhibit A. 1. This too shows that the tempo had gone on to the wrong side of the road and then caused the accident.

4. On a reading of the testimony of three eye witnesses PW 2 Sultan Singh, PW 6 Tek Ram and PW 7 Umed Singh, counsel for the respondents could not point out any contradictions or discrepancies to create any doubt in their veracity. The Tribunal had no doubt recorded the finding that all these witnesses were under the influence of liquor at the time of the accident, but counsel for the respondents failed to show the basis on which the Tribunal could have possibly come to this conclusion.

5. The matter of great significance here is the non-examination of any witness from the side of the respondents to support their version of the accident. Even the driver of the tempo was not examined in spite of ample opportunities having granted to them to adduce evidence. It is also pertinent to note that the driver of the tempo was challenged for this accident and he was later convicted and sentenced too by the Criminal Court.

6. Taking an over-all view of the circumstances and the evidence on record, particularly the photographs taken soon after the accident, there can be no manner of doubt that accident was caused entirely due to the rash and negligent driving of the tempo. The finding of contributory negligence as arrived at by the Tribunal cannot, therefore, be sustained and is, thus, hereby set aside.

7. Turning now to the quantum of compensation payable to the claimants, on the Tribunal's own finding the claimants must be held entitled to the amount claimed. Rs. 50,000/- was the compensation that the claimants had prayed for in this case. The Tribunal assessed the dependency of the claimants at Rs. 350/- per month. Considering the fact that Gurdip Singh deceased was only about 25 years of age and he died leaving behind his young widow and minor daughter, the appropriate multiplier to be applied would clearly be 16 keeping in view the principles laid down by the Full Bench in Lachhman Singh v. Gurmeet Kaur 1979 P.L.R. 1. So computed, the compensation payable to the claimants would work out to a figure more than the amount claimed.

8. Here counsel for the claimants sought to press the application for amendment of the claim application to seek enhanced compensation to the extent of Rs. 1,00,000/-.

In dealing with this matter it would be pertinent to note that the award in the present case was made as far back as April, 1984 and it was in the month of July of that year that the appeal was filed. The application for amendment of the claim application was not filed till October 28, 1988. No plausible explanation is forthcoming for this inordinately delayed application. It deserves mention here that it was as far back as December, 1984 that ad valorem court-fee ceased to be payable on claims for compensation in such case. Such being the circumstances, interests of justice clearly disentitle the claimants to the amendment sought. This application for amendment of the claim application must consequently be declined.

9. In the result, the compensation payable to the claimants is hereby enhanced to Rs. 50,000/- which they shall be entitled to along with interest at the rate of 12 per cent annum from the date of application till the date of payment of the amount awarded. Out of the amount awarded, a sum of Rs. 15,000/- shall be payable to the daughter of the deceased and the balance to his widow. The amount payable to minor claimant shall be paid to her in such manner as the Tribunal may deem fit in her best interest. This appeal is thus, accepted with costs. Counsel fee Rs. 300/-.