

**(1985) 02 P&H CK 0010**

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

**Case No:** None

Mohinder Singh and Another

APPELLANT

Vs

Rattan Kaur and Others

RESPONDENT

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**Date of Decision:** Feb. 27, 1985

**Citation:** (1985) 2 ACC 419 : (1986) ACJ 1083

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

**Bench:** Single Bench

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**Judgement**

S S. Sodhi

1. The challenge in appeal here is to the Award of Rs. 1,49,765/-, as compensation to the widow and children of Hukam Chand Dalal, District Education Officer, who was killed while sitting on the pillion seat of the scooter DEO-1681 when it met with an accident with the taxi HRY-866 coming from the opposite direction. This happened on February 12, 1982 at about 7 P.M. near Murthal on the G.T. Road between Panipat and Delhi. It was the finding of the Tribunal that this accident had been caused entirely due to the rash and negligent driving of the taxi-driver Ranbir Singh.

2. The finding on the issue of negligent warrants no interference in appeal. The evidence shows that traffic checking by the police was on with some trucks parked on one side of the road and the police jeep on the other when this accident occurred. According to PW 5 Kanwar Singh driver of the scooter, he had slowed down his scooter and put it into neutral gear when he, saw the police. Just then the car came there from the opposite direction and hit into his scooter as a result of which the scooter get entangled in the car and it was dragged to a considerable distance before it eventually stopped.

3. The counter-version of the accident, as given by RW 3 Ranbir Singh, the taxi-driver, on the other hand was that seeing the police checking vehicles, he had blown the horn and switched on the car head-lights. The police, however, signalled him to move on. There was then a truck coming from the opposite direction which,

on the signal of the police had slowed down. The scooter was overtaking this truck and it thereby came on to the wrong side of the road hit into the car. This was supported by the testimony of RW 3 Mohinder Singh, the owner of the taxi, who deposed that he was sitting in the the car at that time as also by RW 1, Phul Singh and RW 2 Ranbir Singh, who claimed that they witnessed the occurrence as their trucks were parked there at that time.

4. It would be pertinent to note at the very out-set that there is no plea in the written statement to the effect that it was on account of the scooter trying to over-take the truck proceeding ahead that it came on to the wrong side of the road and hit into the car, nor was there any such suggestion made to RW 5 Kanwar Singh-driver. It was when the taxi driver and his witnesses came into the witness-box that they for the first time came forth with this version. In the circumstances, it cannot be described as an after-thought.

5. Further, no statements of RW 1 Phul Singh, RW 2 Ranbir Singh or RW 3 Mohinder Singh were ever recorded by the police. This is indeed a matter of material significance as the police was admittedly at the spot at the time of the accident and Mohinder Singh was at any rate a person highly interested in what had happened. As for Phul Singh and Ranbir Singh, neither of them cared to produce their log-books to corroborate their trucks being there at Murthal when the accident occurred.

6. As for the story of the car headlights being switched on by the taxi-driver on seeing the police, common experience shows, this is a device resorted to by rash drivers to warn-used to be ware of the vehicle as it would not give way or slow-down. Switching on of the headlights in this manner when police checking was on would imply a deliberate intent on the part of the taxi driver to seek to avoid it and hence its fast speed.

7. Mr. H.N. Mehtani, counsel for the appellants sought to lay great stress upon the site plan and the photographs of the scene of occurrence with a view to show thereby that the accident had taken place when the car was on its correct side of the road. This is indeed a contention devoid of merit. It has come in evidence that the car did not stop at the place of impact, rather it went ahead and dragged the scooter to a considerable distance. In such a situation, there would be natural tendency on the part of the car-driver to bring his vehicle on to his side of the road. The site-plan and photographs, therefore, cannot be taken to advance the appellant's case.

8. Considered in their totality, the circumstances and the evidence on the record, clearly point to the accident having been caused entirely due to the rash and negligent driving of the car. The finding of the Tribunal must consequently be upheld and affirmed.

9. A challenge was next made to the compensation awarded on the ground that it was disproportionately high. The evidence on record shows that Hukam Chand Dalai, deceased, was about 55 years of age. He died leaving behind his widow Rattan Kaur who was 48 years of age and their three children the youngest of whom was only 12 years old, the other two being 21 years old daughter and a 19 years old son. Neither of the children had been married or settled in life. They were thus wholly dependant upon the deceased. According to PW 4 Sadhu Ram and CW 1 Krishan Kumar, the total emoluments of the deceased at the time of his death were Rs. 1,972/- per month. He had little over 2½ years of service left and after that he would have been entitled to a pension of Rs. 800/- per annum. Keeping in view the earnings of the deceased at the time of his death, his remaining span of service and the pension payable to him thereafter, in the light of the evidence regarding his good health and also the possibility, even though limited of supplementing his income by teaching privately, after retirement, in the over-all context of the principles laid down by the Full Bench in Lachhman Singh v. Gurmit Kaur, 1979 PLR 1 it would be apt to take "10" to be the appropriate multiplier and the dependency at Rs. 14,000/- per annum. Som computed, compensation payable would work out Rs. 14,000/-. The Tribunal clearly fell in error in awarding Rs. 10,000/- as compensation for the loss of love and affection. This part of the award cannot, therefore, be sustained.

10. In the result, the compensation payable to the claimant is reduced to Rs. 1,40,000/- (Rs. One lac and forty-thousand only), which they shall, however, be entitled to along with interest at the rate of 12 per cent from the date of the application to the date of the payment of the amount awarded. Out of the amount awarded, a sum of Rs. 25,000/- (Rs. Twenty five thousand only) each shall be payable to the children of the deceased and the balance to his widow. The driver, owner and the Insurance Company; with which the taxi involved in the accident was insured, shall all be jointly and severally liable for the compensation awarded. The liability of the Insurance Company shall, however, be limited to Rs. 50,000/-.

11. This appeal is accordingly accepted to the extent indicated above, while the cross-objections filed by the claimants are hereby dismissed. In the circumstances there will be no order as to costs.