
(1996) 01 P&H CK 0025

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 248 of 1986

Jagjit Kaur

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Jan. 16, 1996

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A

Citation: (1996) 112 PLR 742

Hon'ble Judges: Sarojnei Saksena, J

Bench: Single Bench

Advocate: L.M. Suri, Deepak Suri and Ritu Bahl, for the Appellant; Vijay Pal Singh, AAG, for the Respondent

Final Decision: Allowed

Judgement

Sarojnei Saksena, J.

This order shall dispose of the above mentioned four First Appeals from orders arising out of the award dated 17.12.1985 whereby four claim cases of these appellants were decided.

2. In claim case No. 1 of 1985, claimant Jagjit Kaur is the widow and other five petitioners are children of the deceased Mohinder Singh.

3. In claim case No. 3 of 1985, claimant Janki Devi is the widow of Head Constable Amar Singh and other four claimants are children of the deceased Amar Singh.

4. In claim case No. 4 of 1985, claimant Sunita Rani is the widow of Head Constable Tilak Raj and other three claimants are minor sons and father of deceased Tilak Raj.

5. In claim case No. 5 of 1985, claimant Prabha Devi is the widow of Mast Ram and the claimants 2 to 4 are minor sons of the deceased Mast Ram.

6. Factual matrix of the case is that on 30.12.1984 Mohinder Singh, Head Constable Amar Singh, Head Constable Tilak Raj and Peon Mast Ram were travelling in the official car bearing No. CHE-702, belonging to the Punjab and Haryana High Court from Chandigarh to Delhi on official duty. When the said car reached near village Shahpur between Ambala and Shahbad, on G.T. Road, at about 10.15 A.M. bus No. HRX-1609 belonging to the Haryana Roadways came from the opposite direction at a fast speed and dashed against the said Ambassador car on wrong side of the road. At the the time of this vehicular accident, Ambassador car was being driven at a slow speed and on the left side of the road. In this accident, the said car was completely smashed and all the four occupants excluding the driver of the car sustained severe injuries. All the injured persons finally succumbed to their injuries. All these claimants filed claim petitions alleging that this accident took place due to rash and negligent driving of the bus. They also averred that in case it is found that the driver of the car was also rash and negligent, then joint and several award be passed against the respondents for the composite negligence of both the drivers.

7. In claim case No. 1 of 1985, Smt. Jagjit Kaur and her children have claimed six lacs as compensation alleging that at the time of accident, deceased Mohinder Singh was aged 54 years. He was posted as Additional Registrar-cum-Principal Secretary to Hon"ble the Chief Justice of Punjab and Haryana High Court, Chandigarh and was drawing monthly income of Rs. 3759/-.

8. In claim case No. 3 of 1985, claimant Janki Devi and her children pleaded that they are legal heirs of Head Constable Amar Singh. They have claimed Rs. 3,50,000/- as compensation alleging that Head Constable Amar Singh was aged 52 years at the time of his accidental death. He was drawing monthly income of Rs. 1234.10 Paise. He was on deputation with the Punjab and Haryana High Court, Chandigarh.

9. In claim case No. 4 of the 1985, Sunita Rani and her children have claimed Rs. 3,50,000/- as compensation for the death of Head Constable Tilak Raj alleging that at the time of this accident, his age was 32 years. He was drawing monthly income of Rs. 1158.70 P. He was also on deputation with the Punjab and Haryana High Court, Chandigarh.

10. In claim case No. 5 of 1985, claimant Prabha Devi and her minor children have claimed Rs. 2,50,000/- as compensation alleging that the deceased Mast Ram was aged 36 years at the time of his death and he was drawing monthly income of Rs. 841.00P. and was posted as a Peon in the Punjab and Haryana High Court, Chandigarh.

11. All the four petitions were contested by the respondents. In their joint written statement, they controverted the allegation that this accident took place because of the rash and negligent driving of the said bus. Their plea was that the driver of the said Ambassador car was following a truck. On reaching near place Shahpur, the driver of the truck suddenly applied brakes, the driver of the car also followed him

and made an attempt to over take the truck, but due to rains the car slipped and skidded towards right side. The driver of the bus turned his bus to the extreme left but the car struck against the said bus and thereafter against a tree and resultantly, the four passengers of the car died on the spot. Thus, the driver of the car was negligent and due to his fault, this accident took place.

12. Other respondents also filed their separate written statements and denied the allegations made in the claim petitions.

13. Petitioners filed replications to the written statements and reiterated their stand taken up in the petitions.

14. The Claims Tribunal framed 5 issues. All the cases were consolidated. Parties adduced their evidence. After scanning the record, the Claims Tribunal arrived at a finding that this accident took place because of the rash and negligent driving of the driver of the aforesaid bus. Considering the dependency of the claimants while deciding issue No. 3, the Tribunal awarded Rs. 3,60,000/- as compensation to Smt. Jagjit Kaur and her children, Rs. 1,27,920/- to claimants Janki Devi and others, Rs. 1,60,160/- to claimants Sunita Rani and others and Rs. 1,07,520/- to claimants Prabha Devi and others - The Tribunal also directed that Rs. 15,000/- paid by respondents 1 and 2 in each of the four cases u/s 92-A of the Motor Vehicle Act (in short the "Act") shall be adjusted out of the total amount of compensation as determined. Respondents 1 and 2 were made liable to pay the amount of compensation jointly and severally.

15. Respondents have not assailed the finding that this accident occurred because of the rash and negligent driving of the aforesaid bus.

16. The only point for consideration in all these appeals is whether the amount of compensation is rightly adjudged or on any count, it can be enhanced.

17. In F.A.O. No. 248 of 1986, the appellants' learned counsel contended that admittedly at the time of this accident, Mohinder Singh was drawing a salary of Rs. 3759.10 Paise. He was posted as Additional Registrar-cum-Principal Secretary to Hon'ble the Chief Justice, Punjab and Haryana High Court, Chandigarh. Raminder Khanna PW-3 has proved the salary of the deceased. He has also testified that the retirement age of the High Court employees is 60 years. He has further stated that at the time of death Mohinder Singh was aged 54 years. Jagjit Kaur PW-1 has stated that Mohinder Singh was bringing Rs.2500/- per month as salary to the house and used to take Rs. 200/- per month for his personal expenses. Virender Singh PW-4 has testified that Mohinder Singh used to tell him that after retirement he will start legal practice as he has passed L.L.B examination. Petitioners' learned counsel contends that the learned Claims Tribunal has not taken into consideration future prospects of the deceased. He has determined the dependency of the claimants at Rs. 2500/- and has adopted a multiplier of 12 only and thus an award of Rs. 3,60,000/- has been granted. According to him, this is on the lesser side. Jagjit Kaur and her children are

entitled to Rs. 6 lacs as claimed by them.

18. Respondents' learned counsel pointed out that from the statement of Jagjit Kaur PW-1, it is evident that he son (claimant) Paramjit Singh is working as Reader in the Central Labour Court at Chandigarh, her eldest son (claimant) Swaran Singh is employed as Clerk in the High Court on the death of her husband and her daughters Ranbir Kaur and Baljinder Kaur are already married while the youngest daughter Harsharan Kaur is also employed as Clerk in the High Court on the death of her Jagjit Kaur husband. Ranbir Kaur and Baljinder Kaur were married during the life time of Mohinder Singh. Hence, he contends, that the Claim Tribunal has fallen into an error in awarding compensation to these claimants also, who cannot be treated as dependants on the income of Mohinder Singh. From the impugned award, it is evident that this point was not raised before the tribunal. Nevertheless, the claimant-widow Jagjit Kaur has admitted that her two daughters Ranbir Kaur and Baljinder Kaur were married during the life time of her husband and her son Paramjit Singh is in service for the last 4/5 years and he is working as Reader in the Central Labour Court at Chandigarh, but her another son Swaran Singh and her daughter Harsharan Kaur are employed in the High Court as Clerks on the death of Mohinder Singh. This fact is not disputed by the respondents. Thus, it becomes apparent that only Jagjit Kaur, Harsharan Kaur and Swaran Singh are dependants of Mohinder Singh, but ail these children are legal heirs of deceased Mohinder Singh and on this count, they are entitled to get compensation for the accidental death of their father.

19. In para 19 of its award, the tribunal has taken into consideration this fact also that after six years, Mohinder Singh would have retired on attaining superannuation age, but still as he was a law graduate, he was to start his law practice. This fact was also considered and taking into consideration both these facts, multiplier of 12 was adopted. By no stretch of imagination, it can be said that a wrong multiplier is adopted. The appellants' learned counsel relying on [Mrs. Leela Ohri and Others Vs. The Punjab State Electricity Board and Others](#), , contended that in that case, the deceased was aged 52 years, he was drawing Rs. 2652/-, dependency was assessed at Rs.1768/- and multiplier of 20 was adopted, but in [General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others](#), , their Lordships of the Apex Court have adopted a multiplier of 12 in a case where the deceased was aged 38 years. Considering the age of the deceased, multiplier of 12 is rightly adopted but the dependency is assessed at a lower rate. Admittedly, Mohinder Singh was drawing Rs.3750/- per month. After taking into consideration his future prospects, his monthly income can be determined at Rs.4500/-. Deducting 1/3rd for his personal expanses, dependency can be determined at Rs.3000/- per month. Thereby, the annual dependency of the family can be determined at Rs.36,000/- and adopting the multiplier of 12, it come to Rs. 4,32,000/-. The tribunal has not awarded any amount for the loss of consortium and loss of estate which should have been allowed to the petitioner No. 1/petitioners respectively. I find that

claimant No. 1 is entitled to get compensation for the loss of consortium and all petitioners are entitled to get compensation for loss of estate which is determined at Rs. 15,000/- on each count. Thus, adding this amount to the above amount the total compensation that the claimants are entitled to recover from the respondents comes to Rs. 4,62,000/-. Thus, this appeal is allowed to this extent and respondents are directed to pay Rs. 4,62,000/- to the claimants, jointly and severally. This amount should be disbursed amongst the claimants as directed by the learned Claims Tribunal.

F.A.O. No. 249 of 1986

20. The tribunal has awarded Rs. 1,60,000/- as compensation to the claimants. The appellants' learned counsel argued that in this case also, adequate compensation is not awarded to the claimants. The multiplier of 16 was adopted which is not proper. At the time of death, Head Constable Tilak Raj was aged about 32 years. The other two claimants are minor sons of Sunita Rani. As per her statement dated 9.11.1985, they were aged 5 and 3 years. So, even today, they are minors. Head Constable Tilak Raj was getting pay Rs. 1200/- per month. Sunita Rani has stated that he used to give Rs. 1000/- for household expenses. The learned tribunal has held that from this certificate, Annexure PW-7/1, it is evident that Head Constable Tilak Raj was drawing Rs. 1158.70P. per month. Relying on the statement of Jai Bhagwan PW-7, learned Tribunal has also held that Tilak Raj was drawing salary for 13 months at the above rate. Taking Rs. 1158.70P. as pay of the deceased Tilak Raj, the learned tribunal has determined the dependency of the claimants at Rs.770/- per month after deducting 1/3rd for his personal expenses multiplied by 13, the annual dependency is determined at Rs. 10,010/-. Even in his case, future prospects are not taken into consideration as Tilak Raj was only 30 years and he might have got promotion as well. Thus, according to me, taking into consideration the future prospects of deceased Tilak Raj, his monthly income can be safely determined at Rs.1500/-. After deducting 1/3rd for his personal expenses, the dependency of the claimants is determined at Rs. 1000/- per month. Multiplying it by 13, it comes out to Rs. 13,000/- P.A. in my view multiplier of 16 is rightly adopted as he was aged only 34 years. Thus, adopting multiplier of 16, the amount of compensation comes to Rs. 2,08,000/-. The learned tribunal has not awarded any] amount for the loss of consortium and loss of estate which should have been allowed to the claimant. I find that claimant Sunita Rani is entitled to get compensation for the loss of consortium and loss of estate which is determined at Rs. 10,000/- on each count. Thus, adding this amount to the above amount, the total compensation that the claimants are entitled to recover from the respondents is Rs. 2,28,000/-. Thus, this appeal is allowed to this extent and respondents are directed to pay Rs. 2,28,000/- to the claimants jointly and severally.

21. It is directed that out of this awarded amount of compensation, claimant Sunita Rani is entitled to get 1/2 of the amount as directed by the tribunal but the

remaining amount is to be divided equally between the three remaining claimants, Pawan Kumar, Sanjeev Kumar and Dewan Chand. On 9.11.1985, as per the statement of Sunita Rani, Pawan Kumar was aged 5 years and Sanjeev Kumar was aged 3 years. By now their age must be 15 and 13 years respectively. Hence, it is ordered that the amount of compensation awarded to these minor claimants be deposited in some nationalised bank after obtaining fixed deposits receipts in the name of Pawan Kumar for five years and the name of Sanjeev Kumar for seven years. Claimant Sunita Rani would be entitled to withdraw the interest accruing on the amount of these fixed deposits.

F.A.O. No. 250 of 1986

22. In connection with F.A.O. No. 260 of 1986, the appellants' learned counsel contended that even in this case amount of compensation awarded is on the lesser side. Janki Devi's husband was Head Constable. She and her children claimed Rs. 3.5 lacs as compensation. Head constable Amar Singh died at the age of 52. His monthly emoluments were Rs.1234/- as is evident from the certificate Annexure PW-7/2. Claimant Janki Devi has stated that Amar Singh was getting Rs.1250/-. The learned Tribunal has determined the dependency of the claimant at Rs.820/- per month and he has also taken into consideration the fact that the police constable are paid salary for 13 months, i.e. one month's pay is given as bonus. Applying a multiplier of 12, the compensation of Rs. 1,27,920/- is awarded to the claimants. In this case also future prospects of the deceased Amar Singh are not taken into consideration by the learned tribunal. At the time of death, he was drawing Rs.1234.10P. Taking into consideration his future prospects, his monthly income can be determined at Rs.2000/-. Thus, the dependency of the claimants can be determined at Rs. 1334/- rounded up as Rs. 1350/-. Thus, the annual dependency comes to Rs. 16,200/- per annum. The learned tribunal has rightly applied multiplier of 12. Thus, according to me, amount of compensation comes to Rs. 1,94,400/-. The learned tribunal has also not awarded any amount for the loss of consortium and loss of estate. In my considered view, the claimant Janki Devi is entitled to recover Rs. 10,000/- on aforesaid each count. Thus, adding this amount to the above amount, the total compensation that the claimants are entitled to recover from the respondents 1 and 2 jointly and severally is determined at Rs. 2,14,400/-.

23. Janki Devi has testified on oath that her sons Laj Pat Rai, Inder Singh and Mohinder Singh are unmarried. Who are aged 25, 18 and 15 years respectively but they are not employed anywhere. They are not doing any work. Her daughter Shakuntla Devi is aged 20 years and is unmarried. Her statement was recorded on 9.11.1985. By now claimant Mohinder Singh has also become major. Hence, it is ordered that the aforesaid awarded compensation amount be disbursed amongst the claimants as directed by the learned tribunal.

F.A.O. No. 251 of 1986

24. In F.A.O. 251 of 1986, the claimant Prabha Devi and her three minor children are awarded Rs. 1,07,520/- as compensation for accidental death of Peon Mast Ram. The learned tribunal has held that at the time of death Mast Ram was aged 36 years. The respondents' counsel contends that as per the statement of PW-2 Prabha Devi at the time of death, her husband's age was 37 years. It will not make much difference in determining the amount of compensation because Prabha Devi is an illiterate woman and further when Raminder Khanna PW-3 was examined by the petitioner, he has stated on oath that at the time of death, Mast Ram was aged 36 years. He is not cross-examined on this point.

25. The appellants' learned counsel contends that the learned tribunal has awarded only Rs. 1,07,520/- to the widow and minor children of Mast Ram. Admittedly, at the time of death, Mast Ram was drawing Rs. 841/- per month as his salary as is proved by Raminder Khanna PW-3. The learned tribunal has determined the dependency of these claimant at Rs. 560/- only. He has adopted a multiplier of 16 in his case as Mast Ram was only 36 years at the time of his death. His age of retirement as per Government rules is 60 years. The tribunal has rightly deducted 1/3rd from the total emoluments drawn by Mast Ram and has determined the dependency at Rs. 560/- per month. But his future prospects are not taken into consideration, in my considered view, his pay can be taken to be Rs. 900/- and thus dependency can be determined at Rs. 600/- per month. Accordingly, adopting a multiplier of 16, the claimants are entitled to get Rs. 1,15,200/-. It is not disputed before me that the correct multiplier is not adopted in this case, but even then it is pertinent to note that the learned Tribunal has not awarded any amount on account of loss of consortium and loss of estate. In my considered view, claimant No. 1 is also entitled to recover compensation on account of loss of consortium and loss of estate which is determined at the rate of Rs. 11,000/- on each count. Thus, the appeal is partly allowed. Respondents 1 and 2 are directed to pay Rs. 1,37,200/-. The learned tribunal has directed that out of the awarded amount of compensation, Prabha Devi is entitled to get half of the amount and the remaining half shall go to the remaining claimants. The remaining claimants are minor Children of Prabha Devi. Prabha Devi has stated that her children Sunil Kumar, Narain Kumar and Anil Kumar are aged 13, 5 and 4 years respectively on the date on which she was examined in the Court, i.e. 9.11.1985. Thus, it is apparent that by now Sunil Kumar has become major but Narain Kumar and Anil Kumar are still minors. Hence,, it is ordered that out of this awarded amount of compensation, Prabha Devi is entitled to recover Rs. 68,760/-, claimants Sunil Kumar is entitled to recover Rs. 22,920/- and the remaining half is to be divided equally between the two remaining claimants. It is ordered that the amount awarded to Narain Kumar and Anil Kumar should be deposited in some nationalised bank after obtaining fixed deposit receipts for five years but the claimant Prabha Devi shall be entitled to withdraw interest accruing on these fixed deposit receipts.

26. With these modifications, all these appeals are allowed, the order regarding grant of interest @ 12% p.a. is affirmed.