

(2012) 10 P&H CK 0122

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 652 of 1989 (O and M)

Shrimati Krishna Devi and
Others

APPELLANT

Vs

Sh. Dilbar Singh, Driver and
Another

RESPONDENT

Date of Decision: Oct. 3, 2012

Citation: (2013) 169 PLR 288

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Ekta Thakur, for the Appellant; B.S. Chahal, Advocate, for Mr. H.S. Bhullar,
Advocate, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The appeal is for enhancement of compensation assessed by the Tribunal arising out of death of one Balwant Singh, his wife Bimla and one year old child. Balwant Singh was aged 27 years and Bimla was 24 years. The claimants were parents of appellants and brother and sisters, all of whom are minors, who are arrayed as claimants 3 to 6. They had filed a single petition for death of 3 persons. It should have been appropriate that the Tribunal had called the parties to split the petitions and make claims independently, but it had allowed the trial to proceed without any such modification. I do not intend to sound technical but would only point out that such a combined petition is likely to cause miscarriage in justice in not assessing the compensation payable for death of each one of the persons properly. The accident was said to have been caused by a collision between the scooter, which the deceased was driving, with the bus belonging to the Pepsu Road Transport Corporation. Ajit Walia-AW3 claimed that he had been a witness to the accident and that it took place when the Scooterist was hit by a speeding bus coming from the opposite direction and after the collision, the bodies of the deceased persons were

dragged to at least at a distance of 200 yards from the place of occurrence. A FIR had also been lodged at his instance where the details of accident had been set out. The police had also given a plan after spot inspection. The Corporation placed evidence of some persons who were said to be passengers in the bus, but the Tribunal rejected this evidence as not worthy of acceptance since no documentary evidence had been produced for acceptance of their status as passengers at that relevant time. While AW3 had stated that the driver ran away from the spot immediately after the accident, the driver and conductor were also examined. The Tribunal held that the accident must have been the result of contributory negligence by the fact that the photographs had shown the bodies somewhere in the middle of the road and the bus itself had been stopped farther away from the bodies. Photographs taken post accident could not be appropriate evidence to understand the fact of negligence or otherwise of the driver who had caused the accident. A photograph can only show that deaths were instantaneous and that the bodies were found at the spot. If we examine the evidence of AW3 that the bodies had been dragged to at least at a distance of 200 yards, the actual location where the bodies were, namely, at the middle of the road, ought not to have taken as a place of impact of collision. The best evidence could be only through an independent witness and in this case, the person, who had seen the accident had also lodged the complaint speaking about the rash driving of the driver. The fact that the driver ran away from the spot and did not report the matter to the police was also to be noticed as a culpable circumstance against the driver. I would, therefore, reverse the finding given by the Tribunal and hold that the driver of the bus was wholly responsible for the accident.

2. As regards the compensation claimed for death of Balwant Singh, the evidence was that Balwant Singh was actually supporting a large family of his wife and child, besides his dependent parents and minor siblings. That was evidence to the effect that the son used to send Rs. 800/- to Rs. 900/- while working at Parmar Filling Station at Zirakpur for the last about 10 to 12 years. He was 26 or 27 years of age. Although his own contribution to the family would have lessened over a period of time, Courts have approached the issue of determining compensation for death of a son by providing for appropriate deductions which is more than 1/3rd. In a typical Indian situations, it is not uncommon that the eldest son takes care of aged parents and his siblings, as well, apart from minding family of wife and son, the dependence as spoken to by the parents cannot therefore be discarded and I will take the monthly contribution as Rs. 800/- and adopt a multiplier suitable to the age of the younger of the parents. I do not have information about the age but considering the fact that the deceased had 3 minor siblings and the father himself had given evidence that he was aged 50, I would take the age of the mother to be 45 and adopt a multiplier of 14. The loss of dependence would be Rs. 1,34,400/-. I will include towards the conventional heads of claim another Rs. 5,000/- to round it off to Rs. 1,40,000/- considering the cost of living at that time in the year 1987. The

dependence of the parents-in-law to a daughter-in-law cannot be seen in monetary terms but again in Indian social conditions where daughter-in-law moves into the family of husband and takes care of the household, her services as householder cannot be discarded. We have come through several judicial approaches and in a judgment of the Division Bench of the Madras High Court in National Insurance Co. Versus Minor Deepika-(2009) 6 MLJ 1005 which was approved by the Supreme Court in a subsequent judgment in Arun Kumar Agarwal Versus National Insurance Co.-2010(3) RCR (Civil) 827. The Court held that the value of the household services must be taken as 50% of the contribution of husband. We have determined the compensation of Rs. 1,40,000/- for the husband, I would take the contribution of the wife to the family of her parents-in-law to be estimated at Rs. 75,000/-. As regards the death of the minor child aged 1, it is not possible to make assessment of financial loss. Considering the fact that the claimants were the grandparents and the brothers and sisters of the deceased father, I will make approximation of Rs. 25,000/- for the death of the child for the loss of love and affection to the grandparents. On the whole, the compensation payable would be Rs. 1,40,000/- for the death of Balwant Singh, Rs. 75,000/- for the death of Bimla and Rs. 25,000/- for the death of child. The amount of compensation determined for the death of Balwant Singh will be divided in the ratio of 2:2, 1:1:1:1 between the parents and the brothers and sisters respectively. As regards the compensation determined for Bimla and the child, it shall be wholly distributed between the parents of the deceased Balwant Singh. This additional amount of compensation will also bear 6% interest from the date of petition till date of payment. The liability shall be on the Pepsu Road Transport Corporation. The award stands modified and the appeal is allowed to the above extent.