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**(2006) 07 P&H CK 0218**

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

**Case No:** None

K.G. Nathani (Dr.)

APPELLANT

Vs

Harun Khan and Others

RESPONDENT

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**Date of Decision:** July 5, 2006

**Citation:** (2007) 2 ACC 147

**Hon'ble Judges:** Arvind Kumar, J

**Bench:** Single Bench

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### **Judgement**

Arvind Kumar, J.

The judgment of mine shall dispose of four appeals, namely, FAO Nos. 190, 191, 192 and 262 of 1988 as common question of law and facts is involved therein, having arisen out of same accident.

2. In brief, the facts of the case are that on 30.10.1986, at about 7 p.m. appellant Dr. K.G. Nathani along with his wife Mrs. Santosh Nathani and four minor daughters was travelling in Car No. MB W-1 31 being driven by Rajesh Singh and were heading towards Ambala. A bus bearing registration No. HRW-4575, belonging to Haryana Roadways, Faridabad depot, driven by Haroon Khan was moving ahead of them. The driver of the car, namely, Rajesh Singh blew horn thereby showing his intention to overtake the bus. On a signal given by the bus driver, the car driver overtook the bus. From the opposite direction, a tempo (4-wheeler) No. DBL-1775 was coming. As soon as the car overtook the bus, the bus hit the car from behind due to which the car dashed against the on-coming tempo and thereafter, the bus driver fled away from the spot along with the bus. The occupants of the car, Dr. Nathani and his family sustained injuries while driver Rajesh Singh died at the spot. Later, Dr. Nathani's wife, namely, Mrs. Santosh Nathani and their three-month-old daughter named Baby succumbed to their injuries.

3. As a result of the above accident, appellant-Dr. Nathani filed three claim petitions before the Motor Accident Claims Tribunal, Kurukshetra, claiming compensation on account of death of his wife and daughter and for the injuries suffered by him in the

accident. In claim No. 10 of 1987 he claimed compensation on account of injuries received by him including multiple fractures, disability and expenses incurred on treatment, travel and diet. In claim petition No. 11 of 1987, compensation was claimed on account of death of daughter aged three months. In claim petition No. 12 of 1987, Dr. Nathani claimed compensation for the death of his wife Mrs. Santosh Nathani.

4. The fourth claim petition, i.e., Claim petition No. 9 of 1987 was filed by Sulekha Devi, widow of Rajesh Singh (driver of car), two minor children and parents of the deceased.

5. The claim petitions have been preferred against the driver and owner of the Haryana Roadways bus, i.e., respondents 1 to 3, the owner of tempo, respondent No. 4, driver of tempo, respondent No. 5 and insurer of the tempo, respondent No. 6.

6. Upon notice of the claim petitions, one set of written statement was filed by respondent Nos. 1 to 3 wherein the averments of the claim petition were denied and it was pleaded that the bus in question was not involved in the accident. On behalf of respondent Nos. 4 to 6, three separate written statements were preferred in which they also denied their respective liability and pleaded that the accident took place due to rash and negligent driving of the car driver. Besides, respondent No. 6, insurer to the tempo, took up the objection that it was not liable to pay compensation since the driver of the tempo was not holding a valid driving licence.

7. On pleadings of the parties, issues were struck by the Tribunal where after the parties led their respective evidence.

8. The learned Counsel on appreciation of evidence brought on record, came to the conclusion that the accident took place due to rashness and negligence on the part of driver of the bus. Accordingly, the Tribunal awarded a sum of Rs. 25,000 to Dr. Nathani for the injuries suffered by him in the accident. For the death of his wife, Dr. Nathani was granted compensation of Rs. 1,92,000. For the death of his three months' daughter, Dr. Nathani was granted compensation of Rs. 8,000.

9. As regards the widow, two children and parents of the deceased Rajesh Singh, the Tribunal allowed compensation of Rs. 1,16,544.

10. Feeling aggrieved by the award of the Tribunal, the claimants have come to this Court by way of present appeals.

11. Learned Counsel for the appellant-claimant has confined their arguments to enhancement of compensation. On the contrary, learned State Counsel has argued that the award passed by the Tribunal is just and reasonable keeping in view the value of money at the relevant time.

12. Dr. K.G. Nathani has been awarded a consolidated sum of Rs. 25,000 for the injuries suffered by him in the accident. He in his statement stated that his nervous system had been affected due to injuries to spinal cord; his sitting hours has been reduced and his memory has been adversely affected. It is only his bald statement without there being any medical evidence in support thereof. He had a fracture of the left wrist bone. He claims that his index finger had been pressed giving a permanent dent. He claims to have taken treatment at Shahabad hospital and remained admitted there till 3.11.1986 and then from 3.11.1986 to 6.11.1986 at General Hospital, Ambala. However, he has not examined any of the doctors either from Shahabad hospital or General Hospital to prove the nature of injuries and the treatment given. The only document produced is the discharge certificate, Exhibit A-9, of General Hospital, Ambala City. It shows that plaster was applied, required to be removed after 5-6 weeks. Other medicines were also prescribed. There is absolutely no medical evidence to establish that, thereafter, he had suffered any of the deformities referred to above. He has not suffered any disability. There is also no medical evidence that the injuries so suffered by him caused any impairment. He had taken treatment from General Hospital where treatment is normally free of cost. He has not even stated in regard to any expenses incurred by him on his treatment. Therefore, in the backdrop of these facts, the sum of Rs. 25,000 as awarded by the Tribunal cannot be said to be meagre.

13. Baby, three months" old daughter of Dr. Nathani, had also died in the accident. Award of Rs. 8,000 given by the learned Tribunal is certainly on lower side. When there is a death of minor female child, it cannot be said that there is no financial loss to her parents. As a general rule, the parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition, they may receive compensation for the loss of pecuniary benefits reasonably to be expected after the child attains majority. No doubt, there can be exactor uniform rule for measuring the value of human life and measure of damages cannot be arrived at by precise mathematical calculations. However, the Courts cannot in this behalf lose sight of the fact that the girls in ever-increasing number are joining professions and taking up employment and that too in almost all fields. There can be no manner of doubt that had she lived, she would have been provided the best possible education and this in turn would have made available to her the opportunity of a career in one of the leading professions and services. In this situation, if the family were ever to be in need, it is very unlikely that she would not have extended financial support to them. Thus, keeping in view the young age of the deceased, the long period for which the appellant has looked the pecuniary benefits, an amount of Rs. 50,000 would be adequate to be awarded to the appellant. It is ordered accordingly.

14. Deceased, Santosh Nathani, was also an Ayurvedic practitioner along with her husband Dr. K.G. Nathani. There are no copies of accounts to prove the income. Admittedly, they were also not income tax payees. A W-2 Dr. K.G. Nathani has stated

that they used to earn Rs. 3/4,000 per month from their joint practice. He has also stated that there are three surviving daughters aged 6,414 and 3 years. This shows that prior to the accident, there were four daughters. It cannot be overlooked that Santosh Nathani would have spent most of the time to look after her daughters along with other household affairs. The Tribunal in this situation has rightly held the income of the deceased Santosh Nathani to be Rs. 1,500 per month. Dr. K.G. Nathani though has stated that his wife was aged 26 years but the postmortem report, Exhibit A-14, suggests that her age to be 32 years. Therefore, multiplier of 16 applied by the learned Tribunal is adequate. Award of Rs. 1,92,000, thus, does not require any interference.

15. In the case of Sulekha Devi, her husband Rajesh Singh was employed as Winder in J.C. Mills, Gwalior. A.W. 1 Sulekha Devi though has stated that her husband was drawing salary of Rs. 1,100 per month but the same is exaggerated one. Exhibit A-1 is the certificate indicating monthly salary of the deceased at Rs. 910.17. It is on this basis the learned Tribunal has awarded the compensation. The only argument is that the deceased was a part-time driver as well, getting Rs. 400 per month which was not taken into account by the Tribunal. In my view, the learned Tribunal had rightly not taken into consideration the said income. The reason was obvious. Had the deceased been a part-time driver getting Rs. 400 per month, the same would have been pleaded by the claimants in the claim petition. However, there is no such pleading with regard to alleged part-time employment with Dr. K.G. Nathani at a monthly salary of Rs. 400. Even A.W. 1 Sulekha Devi also does not say that her husband was getting Rs. 400 per month from Dr. Nathani. The learned Tribunal has rightly held that it was only a part-time arrangement whenever it was needed. Otherwise also, Dr. K.G. Nathani contradicts himself in his own statement. He in first breath stated that he used to take him along whenever he had to go out and in the second breath he says that he used to call him only on alternative days. In this way, he has exaggerated his statements in order to help the claimants.

16. There is a variation in age as per statement of the claimants and the postmortem report. However, the driving licence of deceased Rajesh Singh, Exhibit A2, shows that he got recorded his age as 25 years as on 3.5.1985. He was more than 26 years at the time of his death. Multiplier of 16 as applied by the learned Tribunal being correct, calls for no interference.

17. Expenses on transportation and last rites are the natural consequence in death cases. To my mind, the claimants are entitled to receive Rs. 25,000 in each death claim. It is ordered accordingly.

18. Coming to the rate of interest, previously it used to be 12 per cent, however, in the recent years the bank rates have been considerably reduced and the, rate of interest is being awarded @7♦ per cent in view of the judgment of the Supreme Court in Tamil Nadu State Transport Corporation Limited v. S. Rajapriya and Ors. II (2005) ACC 476 (SC) : (2005) 2 PLR 650. Therefore, in that backdrop of the situation,

the enhanced compensation in this case shall carry interest at the flat rate of 9 per cent per annum from the date of filing of the claim petition till its payment.

19. In view of the above, the impugned award stands modified in the manner indicated above. The appeals stand disposed of accordingly. No costs.