

(2013) 08 P&H CK 0745

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 4097 of 2012

Jaspal Kaur and Others

APPELLANT

Vs

Sach Khand Bricks Gram Udyog
and Others

RESPONDENT

Date of Decision: Aug. 1, 2013

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2013) 172 PLR 489

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: Naveen Sharma, for the Appellant; Suvir Dewan, Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Vijender Singh Malik, J.

This is an appeal brought by the claimants for enhancement of compensation. The claimants brought a claim petition u/s 166 of the Motor Vehicles Act, 1988 seeking compensation in a sum of Rs. 20,00,000/- for the death of Karnail Singh in a road side accident that took place on 06.09.2009. Learned Motor Accidents Claims Tribunal, Rup Nagar (for short "the Tribunal"), vide award dated 29.10.2011 allowed the claim petition in a sum of Rs. 1,90,000/-. He originally assessed a sum of Rs. 3,80,000/- to be the loss on the death of Karnail Singh but taking Karnail Singh to be contributing 50% to the cause of the accident, a sum of Rs. 1,90,000/- alone has been allowed as compensation to the claimants against the respondents. On 06.09.2009 Karnail Singh was going on his scooter bearing registration No. PB-12J-1135 from his fields situated in village Jhinjri towards village Mindhwan (Thoda Majra). Surjit Singh and Charan Singh were following him on another scooter. Karnail Singh was 50 yards ahead of scooter of Surjit Singh and Charan

Singh. He was driving the scooter at a slow speed and was observing the traffic rules. At about 8.30 PM when they were in the area of village Jhinjri in front of milk dairy, a truck bearing registration No. GJ-W12AF-6996 having new registration No. HP-72-1423 was found parked by respondent No. 2 on the pucca road without flashing any indicator or lights. As a result of the same, the scooter driven by Karnail Singh had hit the said truck. Karnail Singh fell down on the road and suffered multiple injuries on his head and other parts of the body and he died on account of those injuries. Karnail Singh was aged 34 years and he was working on daily wages in the forest department and was earning Rs. 3200/- per month. He was also earning Rs. 8000/- per month by doing agricultural work. A sum of Rs. 50,000/- was spent on his last rites.

2. The claim petition has been resisted by the respondents. They have denied the accident to have occurred in the manner alleged by the claimants. It is claimed that tyre of the truck was punctured and as such it was stopped at a puncture shop. It is also claimed that parking lights of the truck were on and there was street lights on the road itself.

3. Learned Tribunal has found under issue No. 1 that accident has been an outcome of rashness and negligence on the part of the deceased as well as respondent No. 2 and their negligence is apportioned as 50:50. Assessing a sum of Rs. 3,80,000/- as compensation, learned Tribunal, thus, allowed a sum of Rs. 1,90,000/- as compensation to the claimants with interest @ 7 % per annum.

4. Learned counsel for the appellants has submitted that the deceased was working in the forest department and was getting Rs. 3200/- per month. According to him, learned Tribunal was not justified even in not taking Rs. 3200/- per month as income of the deceased. He has further submitted that the deceased was 34 years old and 50% should have been added to the income of the deceased in the name of future prospects. According to him, learned Tribunal should have made deductions at the rate of 1/4th instead of 1/3rd because the number of dependent family members in this case are five.

5. Learned counsel for respondent No. 3, on the other hand, has submitted that adequate compensation has been awarded by the Tribunal. According to him, no fault can be found on the question of rashness and negligence. He has, thus, submitted that no enhancement is admissible in this case.

6. It is a case where the deceased was driving his scooter and he had hit the back side of a truck, which was standing parked. There is no evidence on record that the truck was parked on the metalled road. Some portion of it might have been there on the metalled road but at the same time there is no iota of evidence to prove that any other vehicle at the time of the accident was coming from the opposite side having head lights in high beam by which the deceased was blinded and he could not see the truck. In these circumstances, learned Tribunal has rightly taken it to be a case

of contributory negligence where responsibility for the accident is equal on both the deceased and respondent No. 2.

7. Though the claimants have claimed that the deceased was working with forest department and was getting Rs. 3200/- per month, yet nothing is there on the record to prove that he was employed anywhere. His income taken at Rs. 3000/- per month is, therefore, adequate. However, in view of the ratio of [Rajesh and Others Vs. Rajbir Singh and Others](#), 50% has to be added to this income in the name of future prospects and adding the same the amount comes to Rs. 4500/- per month. In this case, the father may not be a dependent of his deceased son but his mother had been and as there are four dependents, 1/4th has to be the deduction. Applying the said yardstick and multiplying the remainder with 12, I assess a sum of Rs. 40,500/- as the annual dependency of the claimants. There is no dispute between the parties regarding the multiplier adopted by the Tribunal in this case. So, multiplying the annual dependency with 15, the multiplier adopted by the Tribunal, I find a sum of Rs. 6,07,500/- as the amount lost by the claimants in the death of Karnail Singh. Adding to it, a sum of Rs. 20,000/- in the name of loss of consortium, loss of estate and expenses on last rites, I find a sum of Rs. 6,27,500/- as due to the claimants. However, as 50% responsibility for the accident was of the deceased, the claimants are entitled to the remaining 50% at Rs. 3,13,750/-. Resultantly, the appeal succeeds and is allowed enhancing the compensation from Rs. 1,90,000/- to Rs. 3,13,750/-, which shall be payable to the claimants with interest @ 7% per annum as well as in the proportion as given by the Tribunal.