

Smt. Kartar Kaur Vs Shiv Darshan Sahney

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 13, 2001

Acts Referred: Motor Vehicles Act, 1939 " Section 110D

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: Maharaj Baksh Singh, for the Appellant; O.P. Goyal and N.P. Sinha and S.S. Aulakh, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

By this common judgment, two F.A.Os. No. 243 and 244 of 1986 as well as cross-objections No. 70-CII and 71-CII

of 1986 can conveniently be disposed of together as both the appeals arise out of the same accident and have been filed by the injured in one case

and the widow of the deceased in the other case.

2. The facts alleged are that on 3.2.1984 at about 5.30 a.m. the offending truck driven by Tara Singh, respondent No. 4, came from the side of

Khanna towards Ludhiana. It was being driven in a rash and negligent manner and in violation of the traffic rules. The truck bearing No. PUK-825

in which deceased Nishan Singh was the cleaner and appellant Harbans Singh was the driver was parked on the G.T. road to its left hand side.

The truck driven by respondent No. 4 rammed into the stationary truck PUK-825. As a result of the accident, Nishan Singh died and Harbans

Singh received injuries. The widow of the deceased Nishan Singh claimed compensation while Harbans Singh claimed compensation as a result of

the injuries, pain and suffering and damages.

3. In the reply filed, Shiv Dass Sahney, respondent No. 1, admitted that he was the owner of the offending vehicle but claimed that he had sold it

to Mohammad Safi, respondent No. 3, on 15.4.1983. So far as other respondents are concerned, the basic plea offered was that the version of

the appellant is not correct. It was denied that the driver of the alleged offending truck was driving the same in a rash and negligent manner.

4. The learned Motor Accident Claims tribunal had framed the issues and held that it was the driver of the offending truck who was negligent but

further concluded that the truck No. PUK-825 had been parked in a negligent manner and, therefore, there was contributory negligence on the

part of Harbans Singh driver of the truck. It was further held that respondent No. 1 continued to be the owner of the vehicle. In the face of these

findings, the learned Tribunal assessed the dependency of the widow Kartar Kaur to be at Rs. 200/- per month and she was awarded a

compensation of Rs. 24,000/- taking the multiplier of 10. Putting into service Section 92-A of the Motor Vehicles Act, the compensation,

however, was assessed at Rs. 15,000/-. So far as Harbans Singh is concerned, he is stated to have received seven injuries including fracture on his

left foot. The learned Tribunal recorded that no independent evidence has been led for the expenses of the treatment. The reasonable estimation of

the treatment was taken to be Rs. 3000/-. Rs. 1200/- was granted for loss of earning for three months: Rs. 2000/- was granted for pain and

suffering; Rs. 1000/- for special diet and Rs. 500/- for conveyance to and from the hospital. The compensation after taking into the contributory

negligence was assessed at Rs. 3850/-.

5. Aggrieved by the same, present appeals have been filed, cross-objections have also been filed on behalf of respondent No. 2-Insurance

Company.

6. Learned counsel for the appellant, in the first instance, urged vehemently that the learned Tribunal was in error in concluding that there was

contributory negligence on the part of the appellant. The witnesses to the accident are Gajjan Singh, PW4, and Harbans Singh, PW5. They both

stated that truck No. PUK-825 was parked at G.T. road within the Municipal limits of Khanna near the house of Gajjan Singh. It had been

brought from Bassi on way to Ludhiana with a load of steel pipes. It has been asserted that the part of the truck was parked at the kacha berm.

The offending vehicle came and rammed into the stationary vehicle. As a result of the same. Nishan Singh died while Harbans Singh received

injuries.

7. In this regard, certain basic facts cannot be lost sight of. The truck had to be parked on one side of the road. The light on the back side had to

be switches on. During the course of statements, no such evidence has been led. On Court questioning, Harbans Singh got wiser and deposed that

lights on the back side of the truck had been switched on. In this process, he twisted the version and it has necessarily to be held that it cannot be

believed that light on the back side had been switched on while the truck was parked at night.

8. Another reason put forward for parking the truck at that time and place was that certain pipes had been placed in the truck. They were slipping

and getting loose. The truck was parked there to arrange the same. This contention cannot be accepted because if both the driver and the cleaner

were arranging the pipes, necessarily they would have been crushed. Harbans Singh received minor injuries. Even in the first information report,

there is no mention about this fact, consequently, the findings of the learned Tribunal must be approved when it is recorded that there was

contributory negligence in parking the truck by the driver and the cleaner with half portion still on the pucca road.

9. So far as the award of the compensation is concerned, in the case of Kartar Kaur appellant, the plea put forward is that the multiplier awarded

by the Tribunal is on the lower side. As mentioned above, the multiplier of 10 was used. This was because of the fact the Kartar Kaur was about

50 years of age. However, the appeal is pending for the last 16 years. What was thought by the learned Tribunal has proved wrong because

Kartar Kaur is still alive. The multiplier necessarily has to be taken care of in the facts and circumstances of each case. Since Kartar Kaur is still

alive i.e. after 17 years of the accident, necessarily the multiplier has to be enhanced and the appropriate multiplier would be 15. Almost identical

was the decision of the Supreme Court in the case of Jyoti Kaul and Others Vs. State of M.P. and Another, . Therein, the deceased was aged

about 50 years. The Supreme Court held that keeping in view the age factor, the multiplier of 15 was appropriate. Consequently, to that extent, the

award of the Tribunal in the present case requires modification and it must follow that the compensation would be Rs. 36,000/- divided by $\frac{1}{2}$ =

Rs. 18,000/-.

10. So far as Harbans Singh is concerned, the evidence is lacking so as to show that he is entitled to more. There was only one fracture and

abrasion. Harbans Singh did not work for three months and presently there is precious little on the record to indicate that he is not able to

discharge his duty. There is no evidence on the record to prompt this Court to modify the compensation.

For these reasons, the appeal filed by Harbans Singh fails and is dismissed. In the appeal filed by Kartar Kaur, the award is modified. She is

entitled to Rs. 18,000/- as compensation against respondents No. 1 and 2 with interest at the rate of 12% per annum from the date of filing of the

petition till payment is made. While/calculating the interest, the amount already paid would be deducted. Cross objections are also disposed of

accordingly.