
Rekha Chhabra and Another Vs Gurmail Singh and Others

FAO No. 526 of 2011 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 4, 2013

Citation: (2014) ACJ 1476 : (2013) 171 PLR 352

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Mrigank Sharma, for the Appellant; D.R. Bansal for the Insurance Company and Mr. Deepak Balyan, Additional Advocate General, Punjab, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The appeal is for enhancement for claim for compensation for death of a male, aged 55 years. He was an Assistant

Manager in the Food Corporation of India-a Public Sector Corporation, drawing the income at Rs. 16,800/-. The accident took place by a

collision of a taxi car in which the deceased was travelling, with the stationary truck. The stationary truck had already been involved in yet another

accident earlier and it had been seized by the police. The Court found that the State through its police functionaries had not taken proper steps to

keep the vehicle away from the motor-able section of the road and it had also failed to place barricades or reflectors for anyone using the road to

know that there was a stationary vehicle. The driver of the taxi gave evidence to the effect that he dashed against the stationary vehicle only on

account of the wrong parking of the vehicle (truck) under the control of the police. The Court did not accept this contention in full and held that the

driver of the car himself had contributed to the accident equally and, therefore, while assessing the compensation, provided for 5 as multiplier,

perhaps reckoning 3 years of remaining service he had, upto to the age of retirement and made a partial abatement of the claim upto 50% and

awarded the compensation to be payable only by the State. In so holding, the Tribunal had exonerated the owner and the driver of the truck which

had been stationed on the road. In the manner in which the accident had taken place and how the liability was restricted, the Tribunal had

committed an error in understanding the petitioner to have himself contributed to the accident. The deceased was traveller in the taxi and the

negligence of the driver of the taxi cannot be attributed as negligence of the deceased to suffer an abatement of claim. In this case, the Court found

that the accident had been occasioned on account of the fact that the police had not fended off the prospect of collision with the stationary vehicle

by keeping appropriate safety props like boulders or reflectors at the place where the truck had been stationed. As far as the claimants are

concerned, it was a case of composite negligence of the driver of the taxi car and the negligence of the State attributed to the faulty parking of the

vehicle. No part of the claim could have been allowed to abate. I, therefore, set aside the reasoning relating to the contributory negligence and I

will find that in the absence of the driver and owner of the tax car being made as parties, avail to the petitioners the entire right of realization of the

claim against the State.

2. The quantum of compensation as assessed is also a subject of challenge before this Court. The Tribunal was in error in providing for the

contribution of income to the family only during the possible period of service, by applying a multiplier of 5. On the other hand, as a uniform scale

of compensation to be granted in all motor accident cases, the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation

and Another, has provided for a multiplier of 11 for persons aged between 51 to 55. It was not as if the Supreme Court was not aware of the

normal period of superannuation for governments employees. However, a relatively higher multiplier is taken only by duly factoring the usefulness

of a male as a contributor to the family even after retirement. A person on retirement does not cease to exist. He could be resourceful in so many

ways and securing alternative employment or provide a moral support to the family. That precisely is the reason why a multiplier number is

provided larger than the remaining years of service. I would take the income as stated already after tax as Rs. 16,800/- per month, provide a 1/3rd

deduction and take the contribution to the family at Rs. 11,200/-. After annualize the sum and applying a multiplier of 11, the loss of dependency

will be Rs. 14,78,400/-. Adding Rs. 10,000/- towards loss of consortium and for loss of love and affection for the children, and a further amount

of Rs. 5,000/- towards funeral expenses and Rs. 5,000/- towards loss to estate, the total compensation will be Rs. 14,98,400/- which I round off

to Rs. 15 lakhs. The additional amount of compensation over what has been determined already by the Tribunal shall attract interest at 7.5% from

the date of petition till date of payment. The entire liability shall be on the State and the State shall be at liberty to make its own efforts for obtaining

apportionment in an independent action against the owner and driver of the taxi. Any negligence attributed to the driver of the taxi by the Tribunal

shall not be taken conclusive, for, such a finding has been rendered in the absence of the party in the petition, although cited as a witness. It will be

open in an independent action for the driver and the owner to prove the extent of negligence or total absent of negligence, as the case may be, that

resulted in the accident.

3. Having regard to the fact that I have applied a multiplier of 11 for an accident that had taken place in 2004, I will provide for 75% of the amount

to be released and 25% of the same shall be put in a fixed deposit for 3 years, equated in 3 portions, the first portion for a period of one year,

second portion for a period of two years and the third portion for a period of three years. The amount shall be paid to the claimant on the

respective date of maturity. The second petitioner who was minor at that time, must have termed a major now and the son's share also shall be

dealt with in the same way viz., 75% of the amount shall be directed to the released forthwith and the remaining 25% be dealt with in the same

manner as referred to above. The award stands modified and the appeal is allowed to the above extent.