

(2010) 11 P&H CK 0644

High Court Of Punjab And Haryana At Chandigarh**Case No:** FAO No. 454 of 1993 (O and M)

Smt. Manni Devi and Others

APPELLANT

Vs

Raj Pal and Others

RESPONDENT

Date of Decision: Nov. 12, 2010**Citation:** (2011) 162 PLR 230 : (2011) 3 TAC 231**Hon'ble Judges:** K. Kannan, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

K. Kannan, J.

At the asking of the Court, Mr. Kunal Garg takes notice on behalf of the State Roadways. The appeal is by the claimants seeking for enhancement of the award for compensation, in a case where the Tribunal found that the deceased had himself contributed to the accident when the vehicle which he was driving collided with the Haryana Roadways bus. The Tribunal, after finding that the deceased was himself responsible for the accident, however, determined a compensation of Rs. 25,000/- under no fault basis and directed Rs. 25,000/- to be paid jointly and severally by Respondents 1, 2 and 3.

2. The Appellants have assailed the award on the ground that the Tribunal had merely taken the evidence of the driver of the bus wholly to the exclusion of the evidence tendered on the side of the claimants through PW2, who was a passenger in the same vehicle and who was one of the claimants in his capacity as a son of the deceased. PW2 had stated in his evidence that the vehicle was driven by his father, who was with him on the front side and the car was going at a moderate speed of 40/45 per kilometer per hour on the left hand side of the road while the Haryana Roadways bus was coming at a high speed on the middle of the road on the opposite direction. It was also elicited through him that the road, at the spot of the accident, was wide enough to let two buses pass side by side. He gave evidence to the effect that the bus had come towards the other side of the center of the road

and hit the car and took a turn towards the left to come to the left hand side and dragged the car to a distance of about 15 to 20 feet. After the accident, the bus and the car had come to a stand-still so that half the body of the respective vehicles were on kacha berm of the left side of the road for the bus.

3. The Tribunal, while appreciating the evidence of the driver, stated that the accident must have taken place only by the negligent driving of the car driver viz., the deceased, since the car was seen to be on the wrong side of the road while the bus was seen to be on the left side of the road. The site plan produced had given the location of the vehicles in the manner spoken to by PW2 himself. The Tribunal noticed that there were no serious injuries for any other occupant and the only grievous injury that had been found noticed on the deceased in the post mortem certificate was an injury on the chest which could have been due to the steering hitting the body of the driver and held that if the bus had been driving rashly as spoken to, the driver would have got crushed completely and other passengers would have also suffered very serious injuries. According to the Tribunal, the fact that all other passengers survived with minor injuries itself established that the bus driver could not have driven at a very high speed.

4. I am prepared to accept a part of the reasoning of the Tribunal that the bus driver alone could not have been found guilty for causing the accident. The velocity of impact in the collision with two vehicles could not have also been very severe, as the injuries suffered by the occupants of the car would show. It was admitted to be a head-on collision but an aspect of the case which was brought through the evidence of PW2 namely of the car having been dragged to one corner of the road was not challenged at all in the cross-examination. Even the evidence of PW2 that the bus was being driven westward on the other side of the center of the road was also not impeached in the cross-examination. If the evidence of both PW2 and the driver of the bus were to be taken together, I would take the negligence of the drivers of both the vehicles to be established and I will apportion the same between the driver of the bus and the deceased, who was driving the car, at 75:25. The claim for passenger will have to be, therefore, assessed and an abatement to the extent of 25% will have to be made to factor the contributory negligence of the deceased himself.

5. The deceased was an Advocate as Income Tax practitioner and he was also an income tax Assessee. The assessment for the year prior to his death showed that he had net income of about Rs. 21,000/- and an assessment filed immediately after his death showed that his income was in the range of Rs. 31,320/-. The Tribunal, therefore, took the income at Rs. 30,000/-. He was aged 45 years and it is not uncommon that a person goes to peak of his professional career as an advocate only during his late 40s and early 50s. I would provide for a 30% increase of over Rs. 30,000/- taken as income and take Rs. 39,000/- as his average income annually. He had a large family to support with three sons, two daughters, of whom one son and

one daughter were still minors and a widow and I would provide, therefore, for 1/5th for personal expenses. I would take annual contribution to the family at Rs. 31,200/- and adopt a multiplier of 14 as suggested in the decision of the Hon'ble Supreme Court in [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), and take the loss of dependency at Rs. 4,36,800/-. I will add Rs. 5,000/- for loss of consortium to the wife and Rs. 5,000/- to each one of the minor children and add another sum of Rs. 5,000/- towards loss to estate and Rs. 2,500/- as funeral expenses. The total amount would come to Rs. 4,59,300/- and having regard to the fact that I have found the contributory negligence of the deceased to the extent of 25%, and if the abatement of 25% were to be made, the total amount of compensation will be Rs. 3,44,475/-. The Tribunal has already determined Rs. 25,000/- as the compensation under no fault basis and the amount which is determined in excess shall be borne by the Haryana Roadways with interest at 6% from the date of petition till date of payment.

6. The award is modified and the appeal is allowed to the above extent.