

Punjab-Haryana High Court

Inderjit Kaur And Ors. vs Som Nath And Ors. on 12 July, 2006

Equivalent citations: III (2006) ACC 416

Author: A Mohunta

Bench: A Mohunta

JUDGMENT Ashutosh Mohunta, J.

1. The appellant-claimants have filed the present appeal against the judgment of the Motor Accident Claims Tribunal, Ropar, dated 27.2.1987 by which the appellants were awarded a compensation of Rs. 51,000 along with interest at the rate of 12% per annum on account of the death of Jaswinder Singh.

2. Briefly the facts of the case are that Jaswinder Singh was driving jeep No. DBB-8590 and one Tejinder Singh Sidhu was also sitting in the said jeep. They were going from Ropar to Patiala on 19.5.1986 and when they reached near village Charheri, they crossed a Matador bearing registration No. PAT-9357 which was being driven by Som Nath. Thereafter the driver of the Matador tried to overtake the jeep being driven by Jaswinder Singh from the left hand side and the accident occurred as a result of which the left side of the jeep was smashed and Jaswinder Singh died in the accident. Tejinder Singh Sidhu received injuries. An FIR No. 37 dated 19.5.1986 was lodged by one Arjan Singh who had taken the deceased and the injured to the hospital. The appellants who are the widow, two minor children and aged parents of Jaswinder Singh filed a petition under Section 110 of the Motor Vehicles Act claiming compensation of Rs. 5 lacs on account of the death of Jaswinder Singh. Replies were filed by the owner, driver and the Insurance Company of the offending vehicle wherein the stand was that the vehicles were coming from the opposite directions and the accident occurred due to the negligence of the deceased who was driving the jeep. Thus, before the Tribunal there were two conflicting versions with regard to the manner in which the accident had taken place. According to the claimants, the accident had taken place as the driver of the Matador was trying to overtake the jeep being driven by the deceased whereas according to the respondents, both the vehicles were coming from the opposite directions and the accident had taken place because of the negligence of the driver of the jeep. The Tribunal after going through the rival pleas of both the parties, discarded the version given by the respondent driver and found that both the vehicles were going in the same direction and while the driver of the Matador was trying to overtake the jeep the accident took place. It was found that it was a rainy day and the accident could have taken place because of the jeep's skidding. Accordingly, the Tribunal held that the accident had taken place because of the contributory negligence of the drivers of both the vehicles. Thus, the compensation awarded was reduced by 50%.

3. Mr. Pasricha, Counsel for the claimants, has vehemently argued that the accident had taken place because the driver of the Matador was trying to overtake the jeep from the left hand side. There are accident marks on the front left hand side of the jeep. He has placed reliance on the photographs Exs. R1, R2 and R3 which clearly shows that the Matador had hit the jeep on its left hand side and, thus, according to the learned Counsel it was the driver of the Matador who was at fault.

4. I have perused the photographs Exs. R1 to R3 and the photographs clearly depict that the left front side of the jeep has been smashed by the Matador. In fact the Matador is stationed on the left hand side of the jeep which clearly shows that the driver of the Matador was trying to overtake the jeep from the wrong side.

5. In view of the above, I set aside the findings of the Tribunal with regard to the manner in which the accident occurred and hold that the accident occurred not because of the contributory negligence of the drivers of both the vehicles but because of the rash and negligent driving by the driver of the matador.

6. The next question that arises is: What is the amount of compensation that the appellants are entitled to receive?

7. It has come in the evidence of Inderjit Kaur P.W. 3 that her husband was dealer in scrap of old machinery and he also used to earn by plying a truck. She has stated that her husband Jaswinder Singh used to earn a sum of Rs. 3,000 per month. However, in cross-examination, this witness has stated that "Jaswinder Singh never maintained any account of his earnings. He was not income tax assessee".

8. Beant Singh P.W. 4, who is the father of the deceased, has stated that Jaswinder Singh was a scrap dealer and was paying the instalments of a truck which had been purchased by Jaswinder Singh. An agreement with regard to the purchase of truck No. HPS-4768 was also produced in evidence. This witness has also stated that the deceased was earning a sum of Rs. 3,000 per month.

9. The Tribunal has assessed the income of the deceased to be Rs. 800 per month and the dependency has been assessed at Rs. 500 per month.

10. However, the aforementioned findings cannot be sustained because of the fact that not only the deceased was a scrap dealer but was also paying the instalments of a truck purchased by him. This itself shows that the deceased was earning hand-somely although he was not an income tax assessee. The statements of the witnesses have gone un rebutted.

11. Taking all these facts into consideration, I determine the income of the deceased to be Rs. 2,100 per month. If 1/3 rd amount is deducted from the aforesaid amount for personal expenses then the dependency of the deceased comes to Rs. 1,400 per month and Rs. 16,800 per annum. The deceased was a young man of 25 years of age, therefore, it would be appropriate to apply a multiplier of 16 and thus, the amount comes to Rs. 2,68,800. Apart from the above, the appellants are also held entitled to a sum of Rs. 3,000 for funeral expenses and another sum of Rs. 20,000 for loss of consortium. Thus, the total compensation that the appellants are entitled to receive is determined at Rs. 2,91,800.

12. In view of the above, the claimants are held entitled to a compensation of Rs. 2,91,800 along with interest at the rate of 12% per annum from the date of filing of the claim petition till the date of realisation.

13. The appeal is allowed in the above terms.