

Rajinder Kumar and ors. Vs. Soma Devi and ors.

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Court : Himachal Pradesh

Decided On : May-12-2000

Reported in : 2001ACJ307

Judge : Kamlesh Sharma and; Lokeshwar Singh Panta, JJ.

Appeal No. : F.A.O. (MVA) No. 335 of 1992 with Cross-objection No. 278 of 1993

Appellant : Rajinder Kumar and ors.

Respondent : Soma Devi and ors.

Advocate for Def. : K.D. Sood and; Harish Behal, Advs.

Advocate for Pet/Ap. : H.K. Bhardwaj, Adv.

Disposition : Appeal dismissed

Judgement :

Kamlesh Sharma, J.

1. Appellant Nos. 1 (a) to 1 (e) are the legal representatives of original appellant No. 1, namely, Ram Nath, who died during the pendency of the appeal. He was owner and appellant No. 2, who is his son, was the driver of tractor No. HPG 616. Respondent-claimant No. 1 is the widow and respondent-claimant No. 2 is the minor son of deceased Tek Singh who succumbed to the injuries received by him

on 12.4.1990 in the accident of tractor No. HPG 616. Their case has been that on the day of accident Tek Singh and his brother Kuldip Singh, PW 4, were standing at Basal Puli on Dera Baba Rudru-Nari Road waiting for the bus for village Nari. Seeing the tractor in question, deceased gave signal for lift and in return got struck and fell on the road at a distance of 5-7 feet and sustained number of injuries as a result of rash and negligent driving of the tractor by appellant No. 2. Thereafter, he was brought to the hospital at Una where he breathed his last at 9.00 p.m.

2. The respondents-claimants filed the claim petition which was allowed by the impugned award dated 19.10.1992 passed by Motor Accidents Claims Tribunal, Una, District Una. The Tribunal on the appreciation of evidence on record has come to the conclusion that fatal injuries inflicted on the person of deceased Tek Singh were caused when he was struck by the tractor in question which was being driven rashly and negligently by appellant No. 2. Taking into consideration that deceased Tek Singh was matriculate and a skilled worker having diploma of machinist, his income was assessed at Rs. 1,500 and the dependency was worked out to be at Rs. 900 per month or Rs. 10,800 per year. Taking age of deceased Tek Singh as 26 years and the age of his widow as 24 years, multiplier of 20 has been applied and loss of income is determined at Rs. 2,16,000 to which an amount of Rs. 5,000 each has been added as loss of consortium and shortening of life. Accordingly, an amount of Rs. 2,26,000 along with interest at the rate of 12 per cent per annum from the date of petition, i.e., 30.6.1990 to the date of payment has been awarded. The amount has been apportioned as under:

Respondent-claimant No. 1, widow : Rs. 1,00,000 Respondent-claimant No. 2, minor son : Rs. 1,26,000

While apportioning the lesser sum to the widow the Tribunal has taken into consideration the possibility of her contracting second marriage. The Tribunal has held original appellant No. 1, Ram Nath and appellant No. 2, the owner and driver of the tractor, respectively, liable to pay the award amount jointly and severally absolving respondent No. 3 insurance company and respondent No. 4 Karam Chand, the original owner of the tractor. On the basis of evidence on record it is held by the Tribunal that the tractor in question was not insured with the insurance

company at the time of accident on 12.4.90 as the cover note pertaining to the tractor in question Exh. R-1, carbon copy of which is Exh. R-3/2, was issued on 16.4.1990 and not on 6.4.90 and that too in the name of Karam Chand, respondent No. 4, whereas the tractor stood sold to appellant No. 1 as far back as on 26.7.88. As such Karam Chand, respondent No. 4, has not been held liable to pay or share the award amount. These findings have not been assailed in the present appeal.

3. The challenge in the present appeal is to the findings of the Tribunal on the issue of negligence as well as quantum of compensation. On the other hand, respondents-claimants have filed Cross-objection No. 278 of 1993 for the enhancement of the amount of compensation. The appellants have also moved an application (C.M.P. No. 362 of 1993) under Order 41, Rule 27, Code of Civil Procedure, for adducing additional evidence to bring on record the documents as stated therein, alleging that these will enable this court to come to a right conclusion. The respondents-claimants have opposed this application by filing reply alleging that these documents were very much within the knowledge of the appellants but they have failed to produce the same before the Tribunal after exercising due diligence. The authenticity and genuineness of these documents has also been denied. By another application (C.M.P. No. 316 of 1996) appellants have brought on record the factum of remarriage of respondent-claimant No. 1 Soma Devi with younger brother of her deceased husband Tek Singh on 15.1.1993, which has been admitted in the reply filed on behalf of respondent-claimant Soma Devi who has further asserted that it would not have any effect on her right to get the compensation as awarded by the Tribunal.

4. We have heard learned counsel for the parties and gone through the record.

5. The first submission made by the learned counsel for the appellants is that if deceased Tek Singh had already noticed that tractor was being driven rashly and negligently by appellant No. 2, as stated in para 23 of the claim petition, why did he ask for lift, which shows that a false story of accident has been fabricated in order to claim compensation. Learned counsel has made an attempt to convince us that the deceased being under influence of liquor and in a bid to run after the

tractor, has tumbled down, fell on the road and sustained fatal injuries but in the reply filed by the appellants, their stand is that,

in fact the alleged deceased never gave any signal to stop to respondent No. 2 nor the tractor in question struck him as alleged. Perhaps the deceased ran after the tractor and tumbled down and fell on the road due to which he sustained injury and on making noise by the people standing by the side of the road to stop the tractor, the respondent No. 1 stopped the vehicle. The people there requested respondent No. 1 to remove the injured to the hospital but since about 25 quintals of sugarcane was loaded on the trolley attached with the tractor, so the respondent No. 1 expressed his inability to remove the injured to the hospital. On refusal by respondent No. 1 the people assembled there did not allow him to carry the sugarcane to the mill at village Nari so respondent No. 1 had to take back the tractor to his house leaving the trolley at the spot. F.I.R., if any, lodged against respondent No. 1 is false and no accident took place with his tractor as alleged.

6. The above defence taken by the appellants has neither been stated by appellant No. 2 who appeared as RW 1 nor by his witnesses Yog Raj, RW 2 and Mangat Ram, RW 4. As per appellant No. 2, when at the instance of people he stopped the tractor, he saw deceased lying at a distance of 5-7 feet and he was told by the people that he had tumbled down of his own. For the first time he has stated in the court that sugarcane loaded in his tractor-trolley belonged to Yog Raj, RW 2, who was also sitting on the mudguard of the tractor. Mangat Ram, RW 4, in his anxiety to help the appellants has further added that the deceased was drunk and was trying to run after every vehicle at the relevant time. In the facts and circumstances on record the presence of these witnesses is doubtful, hence their evidence cannot be relied upon to uphold the defence of the appellants. On the other hand, the evidence of eyewitnesses Kuldip Singh, Surjit Singh and Mukhtiar Chand is cogent and reliable that the tractor was being driven rashly and negligently as a result of which it hit the deceased Tek Singh when he gave signal to its driver appellant No. 2 to stop in order to give him lift. These witnesses have categorically denied that deceased had run after the tractor and fell down of his own.

7. Dr. Hans Raj Sharma who conducted the post-mortem on the dead body of Tek Singh has given the cause of death as internal haemorrhage and shock and has stated that the injuries as mentioned in Exh. P-2 could be caused in a motor accident. In his cross-examination he has denied that injuries could be caused as a result of simple fall. Though he has admitted that the possibility of these injuries being sustained by fall with force from a height cannot be ruled out, but it was not the defence of the appellants. From the injuries which are ten in number, as per post-mortem report, Exh. P-2, a suspicion does arise that the respondents-claimants have withheld the correct version how the accident had taken place by alleging that deceased was struck by the tractor and fell down at a distance of 5-6 feet and received injuries, but in view of the direct evidence of eyewitnesses we are not inclined to take a different view than that of Tribunal that the deceased Tek Singh had received fatal injuries when he was struck by the tractor which was being driven rashly and negligently by appellant No. 2.

8. So far the quantum of compensation is concerned, we find that there is no rebuttal to the evidence of respondent-claimant Soma Devi, PW 3, which is further corroborated by Kuldip Singh, PW 4, the brother of deceased Tek Singh, and Balbir Singh, PW 6, that deceased Tek Singh was matriculate and having a diploma as machinist and was earning an amount of Rs. 2,000 to Rs. 2,500 per month by repairing the machines and selling vegetables. We find that the Tribunal has rightly held that deceased Tek Singh was a skilled worker but his income at the rate of Rs. 1,500 per month is on the lower side. Therefore, in the totality of the facts and circumstances on record and keeping in view daily wages of a skilled worker in the year 1990, in our view the income of deceased Tek Singh was not less than Rs. 1,800 per month. No doubt at the time of accident deceased Tek Singh was having only his wife as dependent upon him and his son, the respondent-claimant No. 2 was born posthumously but we can presume that he would have raised his family of minimum two children and would have spent not more than 1/3rd on himself which comes to Rs. 600 per month and the amount of dependency comes to Rs. 1,200 per month and Rs. 14,400 per annum. So far multiplier is concerned, we accept the submission of the learned counsel for the appellants that looking to the age of deceased Tek Singh as 26 years and his wife, i.e., respondent-claimant No. 1 as 24 years, the multiplier of 20 is slightly on the

higher side and the correct multiplier to be applied in the present case should be 15. Accordingly, total loss of income comes to Rs. 2,16,000 (Rs. 1800 - Rs. 600 x 12 x 15) to which Rs. 5,000 each will be added as loss of consortium and shortening of life and total amount will come to Rs. 2,26,000, as awarded by Tribunal. This will be just and fair compensation to be awarded to the respondents-claimants. In the result both the appeal of the owner and driver, and cross-objections filed by the respondents-claimants are dismissed having no merit and the findings of the Tribunal in respect of negligence and the quantum of compensation are affirmed. Respondents-claimants will also be entitled to interest at the rate of 12 per cent per annum from the date of claim petition, i.e., 28.6.1990 to the date of payment.

9. Now coming to the arguments of the learned counsel for the appellants that as a result of admitted fact of remarriage by respondent-claimant No. 1 on 15.1.1993 the quantum of compensation should be reduced substantially. We do not find any substance in this submission. While apportioning the amount of compensation between respondent-claimant No. 1 and her son, the Tribunal has already kept in view the possibility of respondent-claimant No. 1 contracting second marriage in view of her young age of 24 years at the time of accident.

10. Learned counsel appearing for the appellants as well as respondent-claimants have referred to number of judgments on this point. In *Makbool Ahmed v. Bhura Lal* 1986 ACJ 219 (Rajasthan); *Col. K.S. Dhaliwal v. Jagdeep Riar* 1986 ACJ 1073 (P&H); *State of Orissa v. Archana Nayak* 1987 ACJ 772 (Orissa) and *Oriental Fire & Genl. Ins. Co. Ltd. v. Manju Goel* 1991 ACJ 882 (Allahabad), the learned Judges have held that widow or widower is entitled to the compensation for the period from the death of husband/wife till her/ his remarriage. On the other hand, in *Chandan v. Kanwarlal* 1989 ACJ 816 (Delhi); *Regal Sports v. Mohd. Siddique* 1994 ACJ 294 (Rajasthan); *Khairullah v. Anita* 1994 ACJ 1017 (AP); *Nankuram Surajdin v. Member, M.A.C.T., Thane* 1994 (2) TAC 346 and *Halki Bai v. New India Assurance Co. Ltd.* 1999 ACJ 187 (MP), the learned Judges have consistently held that remarriage will not disentitle a widow/widower from compensation as being widow or widower no person of equal status of deceased would come forward to marry a widow or widower. In all these cases the quantum

of compensation has been reduced to some extent. Keeping in view the ratio of these judgments we are of the view that possibility of widow or widower contracting remarriage is one of the considerations while apportioning the amount of compensation between the widow or widower and children and also the parents and the children should be given larger share as on remarriage of their mother or father, as the case may be, they are likely to be put to disadvantage and their future needs to be secured. So far the case in hand is concerned, admittedly, respondent-claimant No. 1 has married younger brother of her deceased husband, as per custom, and that too after about three years from the date of accident. Therefore, we hold that remarriage of respondent-claimant No. 1 will not disentitle her from compensation as awarded by the Tribunal and affirmed by this court. The factum of remarriage has already been kept in view by the Tribunal while apportioning the compensation between the respondent-claimant No. 1 and her son respondent-claimant No. 2 and we need not interfere with it in this appeal.

11. So far the application under Order 41, Rule 27 read with Section 151, Code of Civil Procedure, for adducing additional evidence is concerned, the appellants intend to produce the following documents on record:

(a) OPD register of District Hospital, Una, dated 12.4.1990 in which an entry at Sr. No. 699 is entered against the name of Tek Chand and also the statement of Gopal Dass, father of the deceased which was also entered in the register on 12.4.1990.

(b) Marriage certificate of Soma Devi with the brother of the deceased, Ajmer Singh, son of Gopal Dass, which was celebrated on 15.1.1993, according to the customs prevalent in the community.

(c) Site plan prepared by the police at the spot after the occurrence.

(d) Explanation of Narotam Singh, head constable called by the Superintendent of Police, Una, during that period of alleged accident due to the lodging of wrong F.I.R.

12. So far document at serial No. (b) is concerned, it is not necessary, as the factum of marriage has been admitted by respondent-claimant No. 1. So far as documents at serial Nos. (a), (c) and (d) are concerned, no explanation has been given why these were not produced before the Motor Accidents Claims Tribunal. It cannot be believed that these were not within the knowledge of the appellants, as alleged by them in their application. Their averments in this regard are very vague as they have not stated when they acquired the knowledge of these documents. Otherwise also, these documents are not required by us for pronouncing the judgment in the appeal. The judgment, Ram Gopal v. Madhya Pradesh State Road Trans. Corporation 1995 ACJ 845 (MP), cited by learned counsel for the appellants is of no assistance to him as in that case the application for additional evidence was allowed in view of the order of remand passed in the appeal. Again in United India Insurance Co. Ltd. v. Beena Rawat 1995 ACJ 862 (Delhi), the insurance company was permitted to produce the insurance policy on record by way of additional evidence again in view of remand of the appeal for adjudication on the limited question of deciding the quantum of compensation of insurance company. In the result, there is no merit in this application and the same is dismissed.

13. Therefore, the result of the above discussion is that the appeal and cross-objections are dismissed having no merit. No costs.