

Krishna and ors. Vs. Himachal Pradesh Public Works Department and ors.

Krishna and ors. Vs. Himachal Pradesh Public Works Department and ors.

SooperKanoon Citation : sooperkanoon.com/890756

Court : Himachal Pradesh

Decided On : Dec-23-1994

Reported in : I(1995)ACC695,1996ACJ1064

Judge : Bhawani Singh and; L.S. Panta, JJ.

Appeal No. : F.A.O. Nos. 100 and 101 of 1984

Appellant : Krishna and ors.

Respondent : Himachal Pradesh Public Works Department and ors.

Advocate for Def. : R.M. Bisht, Asstt. A.G.,; D.K. Khanna and; G.D. Verma

Advocate for Pet/Ap. : A.K. Goel, Adv.

Judgement :

Bhawani Singh, J.

1. We propose to decide both these appeals (F.A.O. No. 100 of 1984, Krishna v. Himachal Pradesh Public Works Department and F.A.O. No. 101 of 1984, Himachal Pradesh Public Works Department v. Krishna by a common judgment since they arise out of the same accident between the same parties.

2. The deceased was talking to a passenger of stationary bus at Theog Bus Stand on 16.10.1982. Truck No. HPS 3890 of the Himachal Pradesh Public Works

Department (hereafter HP PWD) came from Matiana side. It was being driven rashly and negligently and crushed the deceased. He was shifted to Civil Hospital, Theog, where he died soon thereafter. According to the claimants, the accident is attributable to the negligence of the driver of the truck, an employee of the HP PWD. At the time of accident, the deceased was 40 years old and was serving as Veterinary Assistant Surgeon in the Veterinary Hospital, Matiana. Compensation to the extent of Rs. 9,00,000/- has been claimed.

3. The petition has been opposed by respondent Nos. 1 and 2. Taking place of the accident has been admitted, but it has been denied that it was the result of rash and negligent act of their driver. They have also taken the plea that they were not liable for the accident since Santosh Lal was deputed to drive the truck on the date of accident in the absence of driver Bhajan Lal, who was on leave. It was not being driven by Santosh Lal, but Roop Chand who was merely a conductor with the truck of respondent Nos. 1 and 2, HIM 4900. Since Roop Chand was driving the truck unauthorisedly, the accident did not take place during the duty of truck driver Santosh Lal. Roop Chand has denied that he was driving the truck in question. It is also stated that the claimants were not the legal representatives of the deceased.

4. On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the petitioners are the legal representatives or dependants of deceased Sohan Lal? OPP.

(2) Whether the accident in question was the result of rash and negligent act on the part of the driver of the vehicle? OPP.

(3) To what amount of compensation, if any, the petitioners are entitled? OPP.

(4) Whether respondent Nos. 1 and 2 are not liable to pay any compensation? OPR 1 & 2.

(5) Relief.

The Tribunal held that the claimants were competent to file the petition and the accident was attributable to the rash and negligent act of Roop Chand, an

employee of HP PWD. It also held the claimants entitled to compensation, fixing the liability of respondent Nos. 1 and 2. These two appeals arise out of this award. The State has assailed it on the ground that it is not liable to pay the compensation and in case this contention does not find favour with the court, the award is on higher side, therefore, deserves to be reduced. The claimants have stated that the Tribunal has not assessed the income of the deceased correctly despite clear evidence to this effect and use of lower multiplier has further affected the quantum of compensation. Looking to the age of the deceased, his existing and future increase in the salary and horticulture income, the Tribunal has not assessed the same correctly and thereafter a very low multiplier has been applied to the case reducing the quantum of compensation enormously.

5. We have considered the whole matter with utmost care. Learned Counsel for the parties took us through the entire evidence recorded in this case while making their submissions. We proceed to deal with the submissions raised before us by them.

6. The first question to be settled is whether the accident is the direct result of the rash and negligent driving by Roop Chand. Though it has been pointed out that the actual driver of this truck was Bhajan Lal, but he was on leave on this day. The truck was assigned to Santosh Lal for driving. However, it was being driven by Roop Chand at the relevant time. Who is Roop Chand? It is stated that he was the conductor with another truck HIM 4900 of HP PWD, Theog. He was driving the truck and was seen doing so by R.C. Kapil, RW 1, Junior Engineer, HP PWD, Theog. At that time the accident had not taken place. Why did he not ask Roop Chand to stop driving the truck, if it is accepted that it had been entrusted to Santosh Lal on that day. There is no evidence pointing out that he started driving the vehicle immediately before the accident. Rather, it is in evidence that he was carrying material for metalling the road at Theog Bazar from Matiana, located at a distance of about 16 km. The accident took place at 3 p.m. It can legitimately be concluded that Roop Chand was driving the vehicle on the day of occurrence under the very nose of his employers and he was not prevented from doing so, in case he had no authority from them to drive it. So, the contention that he had no such authority and, therefore, respondent Nos. 1 and 2 were not responsible for

the accident and consequently for the payment of compensation, is totally misconceived and is, therefore, rejected [See: Putchala Achayamma v. Pelava Ramakrishna Rao 1988 ACJ 951 (AP); Sampath Reddy v. Gudda Meddi Suchi Venkatamma 1990 ACJ 626 (AP); State of Punjab v. Raj Rani 1987 ACJ 333 (P&H); Inderjeet Singh and Co. v. Kamal Prakash Pawar 1989 ACJ 132 (Bombay); and Motor and General Finance (India) Ltd. v. Mary Mony 1991 ACJ 101 (Kerala)].

7. Another fact of the question is whether Roop Chand was rash and negligent in driving the vehicle at the time of the accident. Yes, he was. Look at the fact situation. The bus was going from Shimla to Shilaroo. It had stopped at Bus Stand, Theog. The deceased was talking to Bardass Kashyap, P.W. 7, Assistant Conservator of Forests, through the window by standing on the road. Roop Chand came driving the truck and crushed him despite the fact that there was sufficient space for him to drive the truck. Bardass Kashyap, P.W. 7, stated that the road at the place of accident was about 29 ft. wide and there was no question of the accident taking place. Chamal Lal, P.W. 6, is an eyewitness. He also states that the width of the road at the place of accident was 30 ft. Similarly, Rama Nand, P.W. 5, has stated that Roop Chand drove the vehicle rashly and negligently by driving it so closely with the bus that the deceased was crushed in between the two vehicles. The evidence as to rash and negligent driving by Roop Chand is clear and convincing. Rash and negligent driving by Roop Chand is, therefore, established convincingly. There is no doubt about it since it is writ large in the fact situation explained by the witnesses.

8. We turn to the question of compensation. It is in evidence that the deceased was working as Veterinary Assistant Surgeon in the Veterinary Hospital at Matiana. He was 41 years old. At that time his salary was Rs. 1,929.50 as per the statement of Dharampal Sharma, P.W. 3, a Senior Clerk in the office of District Animal Husbandry, Shimla. This witness has also stated that since the pay scales of this category had been revised in Punjab, they were likely to be given in Himachal Pradesh since this State follows Punjab pay pattern for its employees. By that increase, the deceased would have drawn Rs. 3,000/- per month. Krishna, P.W. 1, is the widow of the deceased. She states that the family has an apple

orchard out of which the deceased was also earning income. Dhian Singh, P.W. 2, is the father of the deceased. He has also stated that the family has an apple orchard of 250 trees with income of Rs. 25,000/- per annum. He has not said that the deceased was not being paid anything out of it nor any suggestion was put to him by the respondents that the deceased was not getting anything out of the orchard.

9. In the aforesaid background, the salary of the deceased can appropriately be fixed at Rs. 2,000/- p.m. His income from orchard can be Rs. 400/- per month, total coming to Rs. 2,400/- per month. The deceased would be spending at least Rs. 400/- towards personal expenses. In this case, the multiplier method would be more relevant as compared to the unit system since the income of the deceased from the two sources is quite clear from the evidence. So far as the multiplier is concerned, Mr. A.K. Goel emphasises strenuously that it should be 16½ and places reliance on decisions like *Swaran Kaur v. Maghar Singh* 1994 ACJ 45 (P&H); *Halima Khatoon v. N.D.M.C.* 1994 ACJ 95 (Delhi); *Darshana v. Raj Shah Singh* 1994 ACJ 668 (P&H); and *Hardeo Kaur v. Rajasthan State Road Trans. Corporation* 1992 ACJ 300 (SC). Mr. R.M. Bisht, learned Assistant Advocate General, submits that the multiplier used by the Tribunal is on the higher side.

10. Looking to the decisions cited by Mr. A.K. Goel and the facts that the deceased had quite good prospects in his service career for higher salary and the family has history of longevity of life- grandfather died at the age of 95 and the father of the deceased was alive with age of 64 in November, 1983-it would be quite reasonable to fix the multiplier of 14. Thus concluded, the claimants would be entitled to compensation of Rs. 3,36,000/- (Rs. 2,000/- x 12 x 14 = Rs. 3,36,000/-). To this would be added the conventional amount of Rs. 3,000/- for loss of expectancy of life, increasing the total compensation to Rs. 3,39,000/-. Motor Accidents Claims Tribunal has awarded interest at the rate of 6 per cent per annum from 13.3.1984 till payment. Mr. A.K. Goel prays for 15 per cent interest whereas Mr. R.M. Bisht, learned Assistant Advocate General, submits that the rate of interest paid to the claimants by the Tribunal is quite reasonable and so is the date of payment. We think, the rate of interest should be increased from 6 per cent per annum to 12 per cent per annum. It would be payable from 18.3.1983 till the

date of payment/deposit of the amount.

11. F.A.O. (M.V.A.) No. 100 of 1984, Krishna v. H.P. Public Works Department, is allowed and the award would stand modified to the aforesaid extent. F.A.O. (M.V.A.) No. 101 of 1984, H.P. Public Works Department v. Krishna, is dismissed.

12. Mr. A.K. Goel submits that all the minors have become major and a direction for the payment of the amount be made. We direct the payment of the award amount to the claimants through their Counsel Mr. A.K. Goel within one month from today.

The parties are left to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com