

Charan Singh Vs. Joginder Singh and anr.

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Court : Himachal Pradesh

Decided On : Jan-02-2002

Reported in : II(2002)ACC368,2002ACJ1250

Judge : Lokeshwar Singh Panta and; Arun Kumar Goel, JJ.

Appeal No. : F.A.O. (MVA) No. 111 of 1996

Appellant : Charan Singh

Respondent : Joginder Singh and anr.

Advocate for Def. : Sanjeev Kuthiala, Adv.

Advocate for Pet/Ap. : N.K. Thakur, Adv.

Judgement :

Arun Kumar Goel, J.

1. Appellant is aggrieved with the award passed by Motor Accidents Claims Tribunal, Una in M.A.C. Case No. 69 of 1994 on 8.3.1996. He has been held liable to pay the compensation in the sum of Rs. 1,49,000 with 12 per cent interest from the date of filing of petition, i.e., 26.10.1994 till the date of the award. Further interest has been made payable if the amount is not deposited within 30 days of the date of the passing of the award till its realisation at the said rate. In addition to this a sum of Rs. 330 has been assessed as lawyer's fees.

2. Respondent Nos. 1 and 2 are parents of the deceased Tarlochan Singh who died as a result of motor vehicular accident. According to the respondents the deceased along with other persons was on way to Baba Bharbhag Singh at village Mairi on 25.5.1994. All of them were travelling in truck No. CHW 6567. When it reached near village Rainsary, truck driver Hardeep Singh stopped it and asked the passengers to take meals. Meanwhile he asked the deceased to put water in the radiator.

3. From opposite direction appellant came in his Contessa car bearing registration No. PIL 17. Respondents claimed that it was being driven in a rash and negligent manner which has resulted in the car first striking against a cyclist who was dragged for some distance with the cycle and thereafter it having collided against the truck No. CHW 6567, which resulted in causing injuries to the deceased. He was extricated after putting a jack below the truck as well as by deflating the front tyres of the car. In an injured state he was taken to P.G.I., Chandigarh where he died. Deceased was working as a driver earning Rs. 1,800 p.m., in addition to this he used to get Rs. 800 to Rs. 900 p.m. as allowance, etc. Deceased also used to work as an agriculturist. He used to earn Rs. 800 to Rs. 900 p.m. from his such pursuit. In this background compensation was claimed from the appellant. It is admitted case of the appellant that vehicle in question was not insured when the accident took place. Another fact that needs to be noted here is that above referred cyclist survived. He had filed a claim petition against the appellant. This was compromised and a sum of Rs. 75,000 was paid to him. This position was not disputed on behalf of the appellant.

4. When appellant was put to notice by the Tribunal, while admitting the factum of accident he specifically denied that it was on account of either rash or negligent driving on his part. According to him truck was parked on the road, when suddenly a cyclist appeared from behind the truck. Despite having made an attempt to apply brakes to stop the car, cyclist struck against the car. This resulted in cyclist as well as car turning towards parked truck when a person from the truck jumped on the road. Thus the claim made by the respondents that accident was due to any act attributable to him, i.e., the appellant was disputed by the latter.

5. Tribunal on the aforesaid pleadings of the parties framed following issues:

(1) Whether Tarlochan alias Tarlok Singh died in a motor vehicle accident on 25.5.1994 due to rash and negligent driving of car No. PIL 17 by respondent No. 1 as alleged? OPP

(2) If issue No. 1 is answered in the affirmative, whether the petitioners are heirs and legal representatives of Tarlochan deceased and are entitled to compensation if so to what amount and from whom? OPP

(3) Relief.

6. Learned Tribunal below after recording evidence has allowed compensation as aforesaid.

7. Respondent No. 1 examined Gur-charan Singh, PW 1, constable No. 237. He has proved F.I.R. No. PW 1/A. PW 2 is the respondent-claimant No. 1 Joginder Singh. Driver of the truck Hardeep Singh appeared as PW 3 who stated that he lodged the report Exh. PW 1/A with the police. PW 4 Shamsher Singh has been examined as an eyewitness. PWs 3 and 4 were the persons who were in the truck along with the deceased and other persons. PW 5 is Mehma Singh with whom the deceased was allegedly employed as a driver on his truck.

8. On the other hand, appellant appeared as his own witness. He made an attempt to dislodge the claim of the claimants as set out in the claim petition before the Tribunal below.

9. At the time of hearing of this appeal, learned Counsel for the appellant submitted that findings recorded under issue Nos. 1 and 2 as also the relief granted on the basis of such findings, cannot be sustained as there is no legal evidence to uphold the same. Alternatively and without conceding it was submitted by Mr. N.K. Thakur that even if what is alleged is admitted to be correct still the compensation awarded is too extravagant and excessive. Therefore it needs to be curtailed substantially. Two reasons were advanced in support of this submission. Firstly, the respondents are the parents and secondly keeping in view their ages.

10. On the other hand, Mr. Sanjeev Kuthiala, learned Counsel appearing for the respondents controverted all these pleas and urged that the learned Tribunal below has erred in not assessing just, reasonable and fair compensation as was required of it in accordance with the provisions of Section 168 of the Motor Vehicles Act, 1988. According to him this Court on being satisfied that the compensation assessed is not in accordance with law, is required to assess the same as per provisions of Section 168 (supra), even in the absence of either cross-objections and/or a cross-appeal for enhancement of the compensation. Further as per him, there is no prohibition in the Motor Vehicles Act or the Rules framed thereunder as well as the Code of Civil Procedure so as to exclude the applicability of the provision of Order 41, Rule 22 and/or 33 of the Code of Civil Procedure. These provisions of Civil Procedure Code are in no way in conflict with the provisions of Motor Vehicles Act, 1988. As such he prayed for assessing just compensation which was liable to be enhanced.

11. So far assessment of compensation is concerned, unit system by now is well recognised and well accepted mode of assessing the same. Once the income of the deceased is spelt out, multiplier is to be selected keeping in view the number of years of dependency of the various dependants, the number of years by which the life of the deceased was cut short and various imponderable factors such as early death of the deceased, his becoming incapable of supporting the dependants due to illness or any other natural handicap or calamity, the prospects of remarriage of the widow, the coming up of age of the dependants and their developing their independent sources of income as well as the pecuniary benefits which might accrue to the dependants on account of the death of the person concerned.

12. This court in Himachal Pradesh Road Trans. Corporation v. Jai Ram 1980 ACJ 1 (HP), speaking through T.U. Mehta, C.J., held as under:..As we have already pointed out above, no method is final and only that method is best which serves best the purpose of justness contemplated by Section 110-B of the Motor Vehicles Act. It may, however, be noted that the possibility of the deceased earning more emoluments in future can be properly taken care of by selecting a suitable multiplier.

xxx xxx XXXThe difficulty which the courts are generally facing is, however, with regard to the choice of a suitable multiplier on the basis of years' purchase. As already noted above, this multiplier is to be chosen having regard to the peculiar facts of each case...

13. What was held by a five-Judge Bench of Punjab & Haryana High Court in the matter relating to assessment of compensation and is relevant for the present case needs to be noted. In *Lachman Singh v. Gurmit Kaur* 1979 ACJ 170 (P&H;), in para 24 it was held as under:

(24) The second stage is as to how to convert the same into the total amount of compensation. For this purpose, the relevant factors are obviously the number of years by which the unfortunate life has been cut short. In order to determine the same, the average life expectancy has to be worked out. Along with this, the ages of the dependants have also to be kept in view. The total amount of compensation due to old parents who may be expected to live for about five or ten years more cannot be the same as in the case of children and the widow who may have a long life still to go though the victim who has met the tragic end may be young. Besides this, the other relevant considerations are the uncertainties of life such as the victim may have died a natural death on account of any disease or ailment earlier even if the accident had not taken place. The widow may remarry and thus may not be dependent on the earnings of her husband. The children after getting education may get employed and may become self-employed. Trade and business of the victim may not flourish and may be the victim of recession and other uncertain factors. According to the Apex Court, the determination of the amount of compensation is basically a net balance of the loss and gain to the survivors or the dependants. In this calculation, in the very nature of things, it is not possible to visualise and measure in exact terms all the uncertainties, hazards and the windfalls of life. According to their Lordships of the Supreme Court, there is bound to be some sort of general estimate, but mere speculations or wild guesswork has to be avoided. In order to do justice between the parties, the method of multiplying the annual dependency by the number of years by which the life has been cut short without any further reduction is unreasonable and unrealistic. The amount of damages or compensation should not serve as windfall to the dependants. This

amount would have been available to them if the accident had not taken place only from month to month and from year to year. That is why, in some cases, the method of making some percentage of deduction from the lump sum so arrived at, was adopted, but the same is too arbitrary and vague to serve the purpose of award of just compensation. The principle of working out the suitable multiplier with which annual dependency be multiplied and capital amount arrived at appears to be the only just and reasonable method because the same takes into consideration not only the age of the victim, but also the ages of the dependants and all uncertainties of life, both in the realm of enhancement in the income as well as factors justifying reduction in the amount of compensation. For the purpose of determining this multiplier, no exact and mathematical calculation can be provided. The English courts have held in some cases that 16 times multiplier was quite sound and reasonable. The Apex Court have gone further and in one case even 20 times was considered to be a suitable multiplier.

14. Before proceeding further in this case whether Order 41, Rule 22 or Rule 33 applies or not it will be proper to refer to the evidence on record and then determine whether the income of the deceased and dependence of the respondents has been properly assessed or not. This will go a long way in deciding this appeal.

15. There is oral evidence of PW 2, i.e., father of the deceased, namely, Joginder Singh who has gone on record to state that deceased was employed on a monthly salary of Rs. 1,800 as a driver with a brickkiln owner. This person was produced as PW 5 during the course of trial before the Tribunal below. He in fact did appear and gave his part statement on 24.8.1997. As PW 5 with whom deceased was stated to be employed on a salary of Rs. 1,800 p.m. beside Rs. 20 to Rs. 30 per day night halt. After his part cross-examination, it was deferred when he admitted that logbook was filled by the driver and was available with the witness. He was asked to produce the same on the next day. This witness appeared on 6.9.1995 but did not bring the logbook. Thereafter, this witness did not appear. Time was allowed for production of logbook. Finally, on 20.11.1995 a statement was made on behalf of the respondents which when translated into English, reads as under:

Statement of counsel for petitioner (without oath).

Mehma Singh is not available as such his statement may not be read in evidence. Exh. P-1 passport, Exh. P-2 driving licence, Exh. P-3 identity card, Exh. P-4 to Exh. P-14 NAC receipts of barriers, Exh. P-15 post-mortem report, Exh. P-16 school leaving certificate (objected to) are tendered in evidence and evidence closed. RO&AC; Sd/- (illegible)(Ramesh Chand), Sd/- MACT, Advocate Una.

16. In the face of this position, statement of PW 5 cannot be looked into for any purpose. Therefore, is excluded from consideration.

17. Thus there is only statement of PW 2 regarding the income of the deceased which is to be examined. He has spoken about the deceased getting a salary of Rs. 1,800 p.m. as driver besides T.A. of Rs. 800 to Rs. 900 p.m. and also saving from agriculture Rs. 800 to Rs. 1,000 p.m. Thus total income according to him works out to Rs. 3,700 p.m. This is the best what can happen if what has been stated by this witness is accepted. So far his statement that the deceased was earning Rs. 1,800 p.m. plus Rs. 800 to Rs. 900 as driver is concerned, it cannot be accepted on its face value.

18. The reason being that the evidence regarding employment was available with the respondents. They did produce the witness, i.e., PW 5 with a view to substantiate this plea but when called upon to produce the record after his cross-examination was deferred, he appeared once and then statement was made as noted herein above.

19. In case this witness, PW 5, was reluctant, there was nothing that prevented the respondents to have got his presence procured through coercive process. To this extent the provisions of Code of Civil Procedure are applicable as per provisions of the Motor Vehicles Act. For reasons best known to them, respondents did not care to produce this witness. Here plea of Mr. Kuthiala that because driving licence of the deceased, Exh. P-2, is on record, therefore minimum wage of a driver at least needs to be applied. This argument cannot be accepted for want of proof of driving licence Exh. P-2 whether it was genuine or fake. This could only be established by producing the official concerned from the Registration and Licensing Authority

particularly when production of these documents was objected to as is evident from the statement noted herein above.

20. Though, Mr. Kuthiala vehemently urged because these documents have been exhibited therefore the court has to place reliance on those. This argument is wholly misconceived and ill-founded. Merely because the document is exhibited does not dispense with its proof. This what was held in *Sait Tarajee Khimchand v. Yelamarti Satyam* AIR 1971 SC 1865, in para 15 as under:

(15) .. .The mere marking of an exhibit does not dispense with the proof of documents. It is common place to say that the negative cannot be proved...

21. To similar effect are the observations made in *Ramji Dayawala & Sons (P) Ltd. v. Invest Import* AIR 1981 SC 2085. Its para 16 is as under:

(16) ...Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents as stated would have to be proved by admissible evidence, i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue....

22. In the face of this legal position documents, Exhs. P-1 to P-16 cannot be looked into.

23. Another argument addressed by Mr. Kuthiala was that the deceased was likely to go abroad and for that purpose he had procured passport. Mere holding a passport by itself is not a proof of one's going abroad. In the instant case PW 2 father of the deceased has nowhere stated that his son intended to go abroad and for that purpose he had obtained the passport or had applied to embassy of the country where deceased intended to go for getting visa. In the absence of there being such an evidence, this plea, such plea urged cannot be accepted.

24. So far income from land is concerned, it has come in the statement of PW 2 that he has 3 killas of land which is irrigated. In his cross-examination he has

stated that his son Bahadur Singh carries on the agricultural pursuits with the witness over the land in question. In his cross-examination he has further admitted that his wife Dharam Kaur gave birth to four children. Their marriage took place in the year 1949. Witness was 25-26 years of age and his wife was 20 years. His statement was recorded on 16.6.1995. It is at pages 33 to 35 of the trial court file. Thus, on the date of his statement age of the respondent No. 2 was about 65 years whereas he himself was about 70/71 years old. According to him first child was born to them after one and half years of the marriage. The other three children were born after a gap of three years each. Thus deceased was born somewhere around 1960.

25. So far loss of the income that being derived with the help of deceased from agricultural land is concerned, it is being derived as per PW 2, with the help of Bahadur Singh which position is admitted by respondent No. 1 father of the deceased.

26. Now it remains to be further seen that is for want of evidence, how the court is to determine what the deceased would have earned as a skilled or semi-skilled labourer. Though Mr. Kuthiala vehemently urged that in no case the income of the deceased can be put less than Rs. 1,800 p.m. On the basis of what legal evidence being there on record, this statement was being made, he was unable to point out to us anything. Though it has come in the impugned award that minimum wage of a labourer at the time of death of Tarlochan Singh was Rs. 42. However, keeping in view the fact that a private labourer would fetch more than what was being paid as minimum wage by the Government. Thus we take income of the deceased at Rs. 50 per day, or say Rs. 1,500 p.m.

27. We may also notice here that taking cue from recent decision of the Supreme Court in *Donat Louis Machado v. L. Ravindra* 1999 ACJ 1400 (SC), we presume that the deceased would have earned Rs. 3,000 p.m. at the fag end of his career. Mean of Rs. 1,500 and Rs. 3,000 comes to Rs. 2,250 p.m. or say Rs. 27,000 p.a. Looking to the age of the deceased, we feel that multiplier of 18 needs to be applied. This is in consonance with the decision of the Apex Court in *U.P. State Road Trans. Corporation v. Trilok Chandra* 1996 ACJ 831 (SC), the total

compensation comes to Rs. 4,86,000. To this sum Rs. 12,000 is added by way of conventional damages and loss to estate, the total amount works out to Rs. 4,98,000.

28. Admittedly deceased was a bachelor. He was to marry in course of time and in such a situation, he was to look after, maintain as well as rear his own family. Thus this entire aforesaid sum of Rs. 4,98,000 was not to be available to the respondents. This is one side of the matter.

29. Another relevant factor while assessing compensation is the age of the claimants-respondents. As per statement of PW 2 father of the deceased, he was about 70 years of age, whereas his wife respondent No. 2 was about 65 years of age when her statement was recorded on 16.6.1995 in court. No doubt PW 2 has stated that his father died at the age of 85 years and his mother when she was 80 years old.

30. In these circumstances, what was held in case of *Donat Louis Machado v. L. Ravindra* 1999 ACJ 1400 (SC) and is relevant for the present case is as under:

(3) We have heard the learned Counsel for the appellants-claimants as well as learned Counsel for the insurance company, who is the real contesting party at this stage and who has to bear the burden of the total amount of compensation made payable to the claimants. We may note certain salient features of the case which are not in dispute. The deceased was earning Rs. 2,500 p.m. in his vocation as a journalist at the relevant time. He was aged 31 years when his life was cut short because of the unfortunate accident. Learned counsel for the claimants contended that he was also earning extra income, but as there is no clear evidence, we will proceed on the basis that he was earning Rs. 2,500 p.m. at least. As he died at a comparatively younger age of 31 years, he had a very lucrative career before him for a number of years had he survived. Therefore, we can easily visualize that his total earnings would have gone up by at least Rs. 5,000 p.m. by the time he would have rested on his oars and given up his work as a journalist after exhausting his full earning career. Consequently, the total amount would work out at Rs. 7,500 p.m. during the whole span of future career and taking an average at 50 per cent, his future monthly income during the rest of the life

could have worked out at Rs. 3,750. On that basis, 12 months' earning would have been Rs. 45,000 and adopting multiplier of 15 looking to the young age of the deceased the total economical gain to his estate would work out at Rs. 6,75,000 at least. But taking a conservative figure of Rs. 6,00,000 it can easily be visualised that claimants who are the parents and the unmarried sister and who are dependent on him would have got at least 1/3rd amount as he would have spent the rest of 2/3rd amount from his earnings on his own family which he would have raised and on himself. This would come to a figure of Rs. 2,00,000. This can easily be treated to be the appropriate compensation payable to the claimants on account of the economic loss suffered by them as a result of the unfortunate accident to their breadwinner. The High Court has granted compensation of Rs. 1,27,000 so that the remaining amount which can be assessed as payable by the respondents would be Rs. 73,000 more.

(4) We, therefore, allow this appeal partly by directing the respondents to pay an additional amount of Rs. 73,000 jointly and severally with 9 per cent interest on the additional amount of Rs. 73,000 from the date of filing the claim petition till payment of this additional amount. Respondent No. 3 insurance company will, therefore, have to pay the additional amount of Rs. 73,000 with 9 per cent interest as aforesaid to the claimants. This amount shall be deposited in the Tribunal by respondent No. 3 insurance company towards the full and final satisfaction of the appellants' claim within a period of eight weeks from today. The appellants will be entitled to withdraw the same from the Tribunal on giving due identification of the claimants concerned. There shall be no order as to costs in the facts and circumstances of the case.

31. As such the amount payable to the respondents is Rs. 1,66,000 as per Supreme Court decision. But we feel that it also needs to be scaled down by another Rs. 26,000 on account of the age of the respondents-claimants. This is as per observations made in the Full Bench decision of the Punjab & Haryana High Court in *Lachman Singh v. Gurmit Kaur* 1979 ACJ 170 (P&H;). Thus the total amount becomes payable to them is Rs. 1,40,000 in all. They shall be entitled to interest on it at the rate of 12 per cent per annum from the date of filing of the claim petition, i.e., 26.10.1994 till its deposit/payment. This amount will be

inclusive of amount, if any, paid/deposited under Section 140 of the Motor Vehicles Act, 1988.

32. Here contention urged on behalf of the respondents regarding not being entitled to any relief in the absence of their filing cross-objections/cross-appeal urged by Mr. Thakur needs to be dealt with. According to him no relief can be granted to the respondents.

33. A Division Bench of this Court in *Manjit Singh v. Rattan Singh* 1997 ACJ 1204 (HP), has held that the provisions of Order 41, Rule 33, Civil Procedure Code are applicable to the proceedings under Motor Vehicles Act.

34. Similarly an earlier Division Bench of this Court in *Himachal Pradesh Road Trans. Corporation v. Jai Ram* 1980 ACJ 1 (HP), speaking through the Chief Justice has held that the provisions of Order 41, Rule 22, Civil Procedure Code are applicable. Regarding applicability of Order 41, Rule 22 and Rule 33 of the Code of Civil Procedure, reference can be made to a Constitution Bench and other decisions in *Panna Lal v. State of Bombay* AIR 1963 SC 1516; *Sarmaniya Bai v. Madhya Pradesh Rajya Parivahan Nigam* 1990 ACJ 862 (MP); *New India Assurance Co. Ltd. v. Sudesh Bhalla* 1991 ACJ 225 (Allahabad); *Dheeran Chinnamalai Trans. Corporation Ltd. v. Donald Vassou* 2000 ACJ 1076 (Madras); *Kishan Lal v. Mehndi Hasan* 2001 ACJ 332 (Allahabad); *Divisional Controller now General Manager, Kar-nataka State Road Trans. Corporation v. J.D. Sigamany* 1999 ACJ 977 (Karnataka) and *Humera Bhanu v. Cholan Roadways Corporation* 1995 ACJ 325 (Madras). To similar effect is the decision of this Court in *Himachal Road Trans. Corporation v. Saroj Devi* 2002 ACJ 1146 (HP).

35. We may point out that there is neither any prohibition under Motor Vehicles Act nor under Code of Civil Procedure so far applicability of Order 41, Rule 22 or 33 thereof to the proceedings under the Motor Vehicles Act is concerned. We may also note in this behalf that the procedure in appeal under Motor Vehicles Act is by and large governed by Order 41 of the Civil Procedure Code, though right of appeal is given under Section 173 of the Motor Vehicles Act for maintaining the same. As already noted provisions of Order 41 of Civil Procedure Code do not in any manner come in conflict with any of the provisions of the Motor Vehicles Act or

the Rules framed thereunder.

36. No other point is urged.

37. In view of the aforesaid discussion this appeal is partly allowed and thereby compensation is reduced from Rs. 1,49,000 to Rs. 1,40,000, which is inclusive of the amount, if any, paid/deposited under Section 140 of Motor Vehicles Act and shall carry interest at the rate of 12 per cent per annum from the date of filing of the claim petition, i.e., 26.10.1994 till deposit/payment. Any amount paid/deposited under the orders of this Court or in execution proceedings it shall be adjusted and interest on such deposit(s)/payment(s) shall cease from the date of such deposit. No costs.

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