

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 3131 of 1996 (O&M)

Date of decision: 12.08.2015

Amarjit Kaur and others

... Appellants

versus

Kuldip Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Amanpreet Kaur, Advocate for
Mr. H.N.S. Gill, Advocate for the appellants.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate for respondent No.4.

K.Kannan, J.

The appeal is against the dismissal of the petition for compensation arising out of the death of a male aged 35 years. The accident had taken place on 28.06.1989 when the deceased was travelling in a scooter when he was hit from back by the bus bearing registration No. PAB-1004. The accident was said to have taken place within the town and the FIR registered on the same day showed that the bus had hit the deceased from back but no registration number had been given. At the trial, a witness spoke to the fact that he was travelling behind the bus in his own car and seeing that there was an accident, he admitted him in the hospital and left him there. According to him, there were no injuries on the deceased person. It turned out that there were several injuries and he

succumbed to the same, the next day namely, 29.06.1989, there were, however, certain discrepancies in the name as entered in the bed head ticket where the name was entered as Dilbag Singh but his name was Bhupinder Singh. The postmortem was carried out showed the name as Bhupinder Singh and therefore there was no doubt that Bhupinder Singh actually had died. It cannot therefore be an argument that a living person was faking himself to be dead and making a story through his wife and children. The Tribunal however, was impressed about the argument made by the Insurance Company about the discrepancies and proceeded to dismiss the petition, finding that the discrepancies had not been properly reconciled.

I find the approach of the Tribunal to be wholly untenable. If a witness stated that he picked him up from the place and said that he had no injuries, he was obviously not stating the correct situation, for, the man died the next date. The postmortem certificate reveals that the death had taken place on account of the accident injuries. I will make no bones out of the discrepancy about the name of the patient in the bed head ticket and the postmortem certificate. Evidently, the person at the trial had not taken care to summon the correct bed head ticket. For our purpose it was sufficient that there was death recorded in the postmortem certificate was of the person Bhupinder Singh and the opinion was that the death was on account of injuries sustained in the accident. I will also not make an issue about the fact that the so-called eye witness was not giving the correct information about the nature of the injuries. I will also not make much of the fact of non-mention of the registration of the bus, for, if the petitioner

would rely on the FIR for a fact of accident involving the bus and the postmortem for the fact of death and bring the particulars of the vehicles in the petition. Unless it was a case of collusion between the claimant and the driver, there was no escape from an obvious inference that the driver who knew the facts was not prepared to come to the Court to deny the accident. The non-examination of the driver, in the absence of proof of any collusion was material and the Tribunal failed to draw an obvious inference, to the culpability of the driver of the vehicle. The driver and the owner were liable and consequently, the liability of the insurer was clearly made out. Under the above circumstances, I reverse the finding of the trial Court and hold the 1st respondent as the person responsible for the accident and 2nd respondent as the owner is vicariously liable. The Insurance Company is bound to indemnify the claim for damages arising out of the death of the person that was killed in the accident.

The deceased was said to be 35 years of age who was a Manager of a small time engineering company and earning Rs. 3,000/-. He was also said to have some agricultural land through which he was earning about Rs. 1,000/- per month. There is simply no evidence with reference to both but taking the fact that the accident took place in the year 1989, and he could have, over a period of time, obtained a gradual escalation of his income. I will take the average income with all prospect of increase to be Rs. 3,500/-. I will apply a deduction of 1/4th and adopt multiplier of 16. Considering that accident was of the year 1989 and there is a fair component of interest accumulation. I will scale down the amount of loss of consortium and loss of love and affection to half of what is now being

provided. The total amount will come to Rs. 7,11, 500/-. The amount awarded will attract interest @ 6% from the date of the petition till the date of payment. The amount shall be distributed amongst the widow, children and the mother of the deceased in the ratio of 2:2:2:2:1.

The appeal is allowed on the above terms.

(K.KANNAN)
JUDGE

12.08.2015

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