

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

F.A.O. No.1247 of 1993 (O&M)

Date of Decision : 28.05.2016

Smt. Gulzar Kaur and others

..... Appellants

versus

Sh. Diwan Chand Arora (deceased) through his LRs
and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. P.S.Sekhon, Advocate
for the appellants.

Mr. Parvez Chugh, Advocate
for LRs of respondent No.1.

Mr. A.K.Sharma, Advocate
for respondent No.2.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed by the unsuccessful claimants.

At the very outset it has to be acknowledged that in a case where a person died in the year 1989 the claim for compensation is being decided after almost 27 years. The Court does not know how the widow, the two minor sons and the two minor daughters have managed to survive for the last more than quarter century. The appellants-claimants are not rich people. The deceased was claimed to be an agricultural labourer. Did they

have to beg to live, or worse? Were the women folk exploited? Did the children manage to get any education? Were they able to even eat two meals in a day? How would have the minor children lived without their father? Can any compensation which may be now awarded even be of any use?

On 24.12.1989 at about 3.30 p.m. the deceased-Baldev Singh was coming on his cycle, then Jeep bearing registration No.PUB-8521 being driven rashly and negligently at a very high speed by respondent No.1, struck against the cycle, as a result of which the deceased received multiple injuries and died at the spot. The offending vehicle was owned by respondent No.2. Claim petition was filed seeking compensation.

The tribunal dismissed the petition on the ground that both the eye-witnesses were not able to state in testimony as to what was the number of the offending vehicle or the name of the driver. Consequently, it was held that their inability to do so showed that they were not present and consequently neither it was proved that the death was caused due to accident nor was it proved that it was caused due to rash and negligent driving. Learned counsel has argued that within a few hours of the accident DDR-exhibit P-A was recorded and in this the presence of the appellant No.1, respondent No.1 and the two eye-witnesses among other persons was also shown. As per exhibit P-A, the appellant No.1 had got recorded that an accident had occurred with a jeep owned by the respondent No.2 being driven by respondent No.1 but it was an act of God and there was no fault of respondent No.1. Exhibit P-A was duly proved by PW-I. The Respondent

No.1 did not appear as a witness to deny the facts mentioned in the said document. As per learned counsel in these circumstances, presumption raised by the document show that the accident did take place between the jeep and the cycle; and once that is behind us, the inability of the witnesses PW-1 and PW-2 to identify the vehicle or the driver would not lead to the conclusion that they were not present at the site since they admitted that they were both illiterate. They were not confronted in cross-examination with the account given by the appellant No.1 in the exhibit P-A and consequently the accident and the manner in which it occurred was proved, if not beyond doubt, at least by preponderance of probability.

Learned counsel for the respondents have again emphasized the fact that the witnesses were not able to identify the vehicle or the driver. However, they have not been able to rebut the conclusions emanating from the exhibition of the exhibit P-A. Had the respondent No.1 appeared in testimony and denied the statements in exhibit P-A something may have said but his absence does end up showing to the Court that the presumption raised by the exhibit P-A has not been rebutted. Consequently, the finding of the Tribunal to the effect that neither the accident nor rash and negligent driving were proved are reversed and it is held that the deceased died in the accident caused by the rash and negligent driving of the respondent No.1 on 24.12.1989.

Coming to the question of compensation, it is with a sense of great institutional guilt that I proceed to address this issue. The Tribunal held issue No.1 against the claimants and did not decide issue No.2. In the

circumstances one option would be to remand the case back to the Tribunal but the very thought appalls me. What this Court is undertaking is already a travesty of justice and to now send the matter back would be nothing but another turn of the screw.

The un-rebutted facts are that the deceased was a 28 years old agricultural labourer and the claim was that he was earning Rs.1,200/- per month. As per the relevant notification relating to minimum wages the monthly income of an agricultural labourer in the State of Punjab in the year 1989 was Rs.825/- and that is taken to be the monthly income of the deceased. Since he left behind 5 dependents it would be appropriate to impose deduction of 25%. This leaves us with the yearly dependency of Rs.7,425/-. As per *Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298*, multiplier of 17 would be applicable. The compensation amounts to the princely sum of Rs.1,26,225/- say Rs.1,26,500/-. To this I add Rs.50,000/- for loss of consortium to appellant No.1 and another amount of Rs.50,000/- for loss of love and affection to appellant No.1. I similarly, award Rs.25,000/- each to the appellants No.2 and 3-minor sons and an amount of Rs.50,000/- each to the appellants No.4 and 5-minor daughters for loss of love and affection. I further award a sum of Rs.13,500/- towards expenses on last rites.

In normal circumstances Courts grant interest of about @ 8% p.a. in motor accident cases. In the present case I am of the considered opinion that the facts justify award of higher interest. The total compensation amount works out to Rs.3,90,000/- which in today's day and

age is really a pittance. Consequently, I award interest @ 12% p.a. on the awarded amount from the date of claim petition till the date of payment. Apart from the individual amounts awarded the entire compensation would be disbursed to the appellant No.1.

The appeal is allowed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

28.05.2016

pooja sharma-I

**(AJAY TEWARI)
JUDGE**