

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2342 -1996 (O&M)

Date of decision: 15.07.2019

Kanta and others

.....Appellants

versus

Gurdev Singh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Vinod Gupta, Advocate for the appellant
Mr.Neeraj Khanna, Advocate for the insurance company

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

This is claimants' appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Hisar for short, ('the Tribunal') vide award dated 15.1.1996.

Facts of the case are that Krishan Kumar, aged about 25 years, was travelling in Matador bearing Registration Number DL-3-CH-6083 from Barwala to Hisar along with some other persons. When the Matador reached in area of village Sarso, the driver of the Matador tried to over take the bus at high speed and could not control the Madator and lost its control. The Matador hit the tree and turned turtle. As a result of the accident, Krishan Kumar suffered injuries in the spine. A criminal case was registered against the driver of the Matador.

Respondent nos.1 and 2 admitted the accident but it was stated

that Matador was driven at a moderate speed. It was following the Haryana Roadways bus and a stray cow came in front of the bus. Driver of the bus applied sudden brakes and turned it to the right side. On seeing this, the driver of the Madator also applied brakes and stopped the vehicle in *Kacha* portion of the road. The deceased slipped due to jerk and was removed to the hospital. Insurance company also denied the claim. From the pleadings, following issues were framed:-

1. Whether the injuries to the claimant was the result of rash and negligent driving of vehicle No.DL 3 CB-6083 by respondent No.1? OPP

2. To what amount of compensation, the claimant is entitled and against whom? OPP

2.A. Whether Krishan Kumar died of injuries received by him in the accident? OPP

3. Relief

The Tribunal held that the Matador was being driven rashly and negligently. While deciding issue no.2A, the Tribunal held that there is no connection between death of Krishan Kumar on 17.10.1994 during pendency of the case and the injuries received by him in the accident and accordingly decided this issue against the claimants. While deciding issue no.2, the Tribunal allowed the medical expenses to the tune of Rs.2,74,025.12. Award was accordingly passed.

Against the said award, the claimants have come in appeal.

Learned counsel for the claimants-appellants has argued that in this case, the Tribunal erred in holding that the death has no connection with the injuries received by him. In fact, Krishan Kumar was injured on 29.4.1993. He was 100% disable. He was a young boy of 25 years and due to the complications arising from being bed ridden for such a long time, he

died.

Counsel has referred to the medical evidence as well as evidence of Shakuntla, mother of the deceased. Mother of the deceased appearing as PW2 has specifically stated that during hospitalization and till death, deceased remained confined to bed. He was crippled and could not perform daily routine of his life. Dr.Parveen Chawla (PW3) made the following statement in examination-in-chief:-

On 29.4.1993 Krishan Kumar s/o Gaje Singh, 25 years male, of Bobua (Barwala) was admitted for diagnosis of fracture cervical spine with quadriplegia. He was given treatment in the form of traction; clinically examination revealed complete transaction of cord. Finally he was discharged on 3.5.1993. There was no question of recovery because there was complete transaction of cord. Quadriplegia means paralysis of all the four limbs with loss of bowel bladder control. It is possible that the person may die because of this injury directly or indirectly.

It goes to show that there was a complete transaction of the spinal cord and the deceased suffered from quadriplegia which is paralysis of all the four limbs with loss of bowel bladder control. The doctor has specifically stated that patient may die because of this injury, directly or indirectly. Dr. Anjana (PW4), who had also treated the patient in her hospital from 3.5.1993 to 29.6.1993 specifically stated that the patient did not recover from the disease of quadriplegia. Further, the Tribunal lost sight of the fact that the deceased was declared 100% disable vide disability certificate (Ex.P3). The Tribunal also ignored the death certificate (Ex.P4), in which, the reasons for the death are given. It is stated in the death certificate that after the accident on 29.4.1993 and after long treatment in the hospital, Krishan Kumar died on 17.10.1993. Admittedly, the patient

did not recover from the said disease and remained confined to bed. He was a young boy of 25 years. All his vital organs had collapsed. Due to being bed ridden for such a long time and the organs failure, he was unlikely to survive. There is no other possible reason of death. Therefore, I reverse the findings of the Tribunal and hold that Krishan Kumar died during pendency of the proceedings before the Tribunal because of the injuries received by him in the accident occurred on 29.4.1993.

Now, coming to the compensation. It comes out that nothing was awarded to the legal heirs of the deceased on account of death of the deceased nor anything was awarded on account of transportation and attendant charges. The Tribunal allowed only medical bills. Since, the deceased was driver by profession, his income in the year 1993 was likely to be around Rs.2200/- per month. 40% are added on account of future prospects i.e. Rs.880/-. The total income comes to Rs.3080/-. Since, there are four dependents, 1/4th i.e. Rs.770/- are to be deducted as personal expenses. Dependency of the claimants comes to Rs.2310/-. Multiplier of 18 is to be applied. The amount of compensation comes to Rs.2310x12x18 = Rs.4,98,960/-. Rs.70,000/- under the conventional heads are allowed. Rs.40,000/- to the minor on account of loss of love and affection of father are allowed. Rs.10000/- on account of transportation in the different hospitals are allowed. Since, the deceased remained confined to bed for 18 months till death, Rs.2000/- per month for the attendant charges are allowed. The said amount comes to Rs.36000/-. Total amount of compensation comes to Rs.6,54,960/-. Said amount is allowed over and above the compensation allowed by the Tribunal. Since, the offending vehicle was insured with the insurance company, insurance company is

liable to pay the compensation at the initial stage, subject to outcome of the appeal filed by the insurance company claiming recovery rights. 7.5% per annum interest from the date of filing claim petition till realization is also allowed.

Out of the enhanced compensation, a fixed sum of Rs.one lakh shall go to the parents of the deceased, if alive. Out of the remaining amount, 50% shall go to the widow of the deceased, who is to run day to day affairs of the family and remaining 50% shall go to the child of the deceased, who might have become major by now.

Appeal is accordingly allowed.

15.07.2019

gk

(Kuldip Singh)

Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No