

Maninderjit Singh and others v. Sardar Singh and others
(S. S. Sodhi, J.)

I am in respectful agreement with the aforesaid view of the Gujarat High Court. The Labour Court having found the respondent-workman to have indulged in fraud, his reinstatement justifiably could not be ordered to the post of a Conductor. If the punishment had to be mitigated, it being harsh so as to suggest victimization, it could be brought down to other milder forms. But this did not mean that necessarily the respondent-workman had to be put to the same job or, for that matter, a job in all events. As said by the Gujarat High Court, and in my view rightly, following of such course would depend on the facts and circumstances of each case. And whether the present is a case of that kind would have to be redetermined by the Labour Court afresh in the right perspective of things.

(5) For the view above taken, there is no escape but to allow the writ-petition, quash the impugned award so far as it relates to the finding on issue No. 2 and the relief granted thereunder. The matter is accordingly remitted back to the Labour Court, Patiala, to redécide the question in accordance with law, keeping in view the observations aforesaid. In the circumstances, there shall be no order as to costs.

N. K. S.

Before S. S. Sodhi, J.

MANINDERJIT SINGH AND OTHERS,—Appellants
versus

SARDAR SINGH AND OTHERS,—Respondents.

First Appeal from Order No. 218 of 1978.

April 25, 1984.

Motor Vehicles Act (IV of 1939)—Sections 110-B & 110-D—Motor accident resulting in the death of a person—Compensation payable to dependants of the deceased—Principles governing the assessment—Widow of the deceased remarrying soon after the accident—Whether entitled to any compensation—Factum of remarriage—Whether of any consequence in assessing her entitlement to compensation.

Held, that the compensation to be assessed is the pecuniary loss caused to the dependants by the death of the deceased and for the purpose of calculating the just compensation, annual dependency

of the dependants should be determined in terms of the annual loss accruing to them due to the abrupt termination of life. For this purpose annual earnings of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependants will be the determining factor. This basic figure will then be multiplied by a suitable multiplier. The suitable multiplier shall be determined by taking into consideration the number of years of the dependency of the various dependants, the number of years by which the life of the deceased was cut short and the various imponderable factors such as early natural death of the deceased, his becoming incapable of supporting the dependants due to illness or any other natural handicap or calamity, the prospects of the remarriage of the widow, the coming up of the age of the dependants on account of the death of a person concerned.

(Para 7)

Held, that it cannot be canvassed that remarriage of a widow was not a matter of any consequence in assessing her entitlement to compensation on account of the death of her husband. After remarriage, she would not be entitled to compensation to the same extent and in the same manner as if she had not so remarried. It would be imputing absurdity to the law as also to the Court that has to apply it, to have the fact of remarriage treated as a mere imponderable after such remarriage stands established on record. Therefore, the fact that the widow of the deceased had remarried soon after the death of her husband and there being no material on the record to show that any loss was suffered by her thereby she could not be held entitled to any compensation.

(Paras 9 & 12).

First Appeal from order of the Court of Shri Amarjit Chopra, Motor Accident Claims Tribunal, Faridkot, dated 30th January, 1978 allowing the claim application to the extent that a sum of Rs. 73,500 shall be payable to the claimant Maninderjit Singh and another sum of Rs. 5,000 to Shri Gurdial Singh, by the Insurance Company to the extent of Rs. 50,000 and the rest by Shri Sardar Singh alias Sardara Singh respondent No. 1, apart from a sum of Rs. 200 in equal shares, as cost of litigation and further directing the respondents to pay this amount within two months from today, failing which, interest thereon, until realization will be payable by the defaulter at the rate of 6 per cent per annum.

Ram Singh, Bindra, Senior Advocate, with Rajiv Bhalla, Advocate, for the Appellant.

Munishwar Puri, Advocate, for the Respondent Nos. 1 & 2.

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JUDGMENT

S. S. Sodhi, J.

(1) In an accident between a truck and a scooter at a crossing in Faridkot, Captain Narinderjit Singh, who was driving the scooter, received injuries, as a result of which, he later died. This accident occurred at Chowk Cinema Gate, Faridkot at about 12 Noon on April 23, 1972.

(2) It was the finding of the Tribunal that the accident here had been caused by the negligence of the truck driver, but at the same time the deceased too was guilty of contributory negligence. The negligence of the truck driver was taken to be two third ; while the contributory negligence of the deceased was assessed at one third. A sum of Rs. 73,500 was awarded as compensation to the minor son of the deceased and Rs. 5,000 to his father.

(3) In appeal the finding recorded by the Tribunal on the issue relating to negligence was sought to be challenged. The case of the claimants being that the negligence here was entirely and wholly that of the truck driver ; while the contention sought to be raised by the other side was that it was the deceased who was entirely to be blamed for this accident.

(4) There is no dispute in this case that the accident had occurred at a crossing and further that the scooter had come on to the crossing from the right side of the truck. In a situation such as this, the provisions of both Regulations 6 and 7 of the 10th Schedule of the Motor Vehicles Act stand attracted. Regulation 6 casts a duty upon the driver of a motor vehicle to slow down while approaching a road inter-section and to enter it only in the knowledge that he can do so without endangering the safety of persons thereon. Such persons include the driver of the vehicle himself and any other person who may be travelling in his vehicle. Regulation 7 casts the further duty upon such driver that on entering the inter-section he must give way to traffic proceeding on the road, if any, designated as a main road and in other cases to that approaching the inter-section from his right hand side. In other words, both the driver of the truck as also the driver of the scooter were under an obligation to slow down on approaching the

crossing and to proceed to enter it only if they could do so with safety to themselves and others. As for the truck driver, there was the further duty cast upon him to give right of way to the scooter as it was coming from his right. It is apparent from the evidence on record that both the truck and the scooter came on to the crossing in disregard of what Regulation 6 has prescribed. Indeed if the deceased had exercised due care and caution before entering the crossing, he would undoubtedly have noticed not only the truck, but also the speed and manner in which it was being driven. The sheer instinct for self preservation would have impelled him to allow the truck to pass before entering the crossing. In the case of the truck, the circumstances and evidence clearly indicate that it came on to the crossing at the fast speed at which it had been coming without any slowing down and in total disregard of the safety of others who may be there in the crossing. The manner in which this accident has taken place also shows that the scooter had come on to the crossing before the truck got there. There is also evidence of dragging of the scooter. These being the circumstances in which the accident occurred as per the evidence on record, no exception can be taken to the findings of the Tribunal that this was a case of contributory negligence or with the apportionment of the blame for the accident, namely, two-third of the truck driver and one-third of the deceased which was indeed correct.

(5) The question next arises as to the amount payable to the claimants as compensation on account of the death of the deceased. The deceased was 35 years of age at the time of his death and was a serving Officer in the Army, holding the rank of Captain. It was the testimony of AW. 10 Captain A. S. Sidhu that the total emoluments of the deceased at the time of his death worked out to Rs. 985 per month. Subsequent to his death, however, there had been revision in the pay scales of Army Officers with the result that a Captain of the standing of the deceased would now get around Rs. 1,550 per month. In about four years time from the date of his death, he was likely to have been promoted as substantive Major in the pay scale of Rs. 1,700—1,950. This evidence establishes not only what the deceased was actually receiving at the time of his death, but also his future prospects of advancement in his service.

(6) It has also come on record that the deceased owned land too which his minor son has since inherited.

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(7) The principles governing the assessment of compensation payable to dependants of the deceased in such cases are those as laid down in the Full Bench of this High Court in *Lachhman Singh v. Gurmit Kaur*, (1) where it was observed that the compensation to be assessed is the pecuniary loss caused to the dependants by the death of the deceased and for the purpose of calculating the just compensation, annual dependency of the dependants should be determined in terms of the annual loss accruing to them due to the abrupt termination of life. For this purpose annual earnings of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependants will be the determining factor. This basic figure will then be multiplied by a suitable multiplier. It was further observed that the suitable multiplier shall be determined by taking into consideration the number of years of the dependency of the various dependants, the number of years by which the life of the deceased was cut short and the various imponderable factors such as early natural death of the deceased, his becoming incapable of supporting the dependants due to illness or any other natural handicap or calamity, the prospects of the remarriage of the widow, the coming up of the age of the dependents on account of the death of the person concerned.

(8) A sum of Rs. 5,000 had been awarded as compensation to the father of the deceased. There is, however, no material on record to show that any financial loss had been suffered by this claimant on account of the death of the deceased and, therefore, the Tribunal clearly fell in error in awarding compensation here.

(9) As regards Smt. Kamaljit Kaur, the widow of the deceased, it has come on record that she married the younger brother of the deceased Captain Abjit Singh only ten days after the death of her deceased husband. It was on this account that no amount had been awarded to her by the Tribunal as compensation. Here Mr. Ram Singh Bindra, counsel for the claimants with his usual ingenuity for raising novel points buttressed with much learning and lavish use of observations from various authorities of little or no relevance, sought to canvass the proposition that remarriage of a widow was not a matter of any consequence in assessing her entitlement to compensation on account of the death of her husband. He argued that even after remarriage, she would be entitled to compensation to the same extent and in the same manner as

(1) A.I.R. 1979 Punjab and Haryana 50.

if she had not so remarried. The contention being that according to the judgment of the Full Bench in *Lachhman Singh's case* (supra) remarriage of a widow was but one of the imponderables to be taken into consideration in assessing the compensation payable. As the relevant date for this purpose was the date of the death of the deceased and not any other thereafter remarriage of the widow must always be taken to be an imponderable only, even if evidence on record establishes that she had in fact later remarried, before after or during the trial. By its very nature, this is a contention to be noticed merely to be repelled without further ado. It would be imputing absurdity to the law as also to the Court that has to apply it, to have the fact of remarriage treated as a mere imponderable after such remarriage stands established on record.

(10) The authority upon which Mr. Ram Singh Bindra had founded the contention raised was the judgment of the High Court of Patna in *Sobha Jain and another v. Bihar State Tribunal Co-operative Development Corporation Ltd., Ranchi and others*, (2) where it was held that on remarriage the widow does not forfeit her claim for compensation if it is shown that by remarriage her loss has not been compensated. In the present case no such plea was ever raised and there is no suggestion much less evidence that by remarriage she was now in any different position financially than during the life time of her deceased husband.

(11) The other limb of the argument advanced by Mr. Ram Singh Bindra was that the remarriage of the widow could not be treated as an event accruing to the benefit of the tortfeasor to reduce thereby the compensation payable by him. No reduction in the compensation payable by the tortfeasors is envisaged in this case in the presence of the minor son of the deceased and this aspect of the case thus calls for no further discussion.

(12) Keeping in view, therefore, the fact that the widow of the deceased had remarried within ten days of the death of her deceased husband and there being no material on record to show that any loss was suffered by her, thereby she could not be held entitled to any compensation.

(13) Turning now to the minor son of the deceased, evidence shows that he was only four years of age when his father died.

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The dependency of the son on the father would continue atleast until he had completed his education. Considering the status and circumstances of the family to which the deceased and the claimant belong, it is reasonable to assume that the education in this case would have continued till atleast Graduation, if not higher. 16 in the circumstances must, therefore, be taken to be the appropriate multiplier here. As regards the loss to the son, this must be taken to comprise the balance after deducting what the deceased would have spent upon himself. So considered, the loss here deserves to be computed at Rs. 7,000 per annum. On this basis compensation payable would work out to Rs. 1,12,000.

(14) The compensation payable to Maninderjit Singh claimant is consequently hereby enhanced to Rs. 75,000 making it a round figure after making an allowance for the amount to be deducted on account of the contributory negligence of the deceased. The claimant shall be entitled to the amount awarded along with interest at the rate of 12 per cent annum from the date of the application to the date of the payment of the amount awarded. The liability for the amount awarded shall be joint and several of the respondents driver, owner and Insurance Company.

(15) In the result, the appeal filed by the claimant is hereby accepted ; while the other appeal is hereby dismissed. The claimant shall be entitled to his costs in both these appeals. Counsel's fee Rs. 500 (one set only).

N. K. S.

Before R. N. Mittal, J.

PUNJAB FINANCIAL CORPORATION, CHANDIGARH,—
Petitioner.

versus

M/S. STYLO INDUSTRIES AND OTHERS,—*Respondents*

First Appeal from Order No. 965 of 1983.

May 4, 1984.

State Financial Corporations Act (LXIII of 1951)—Sections 31(6) and 9—Appeal filed in High Court by Corporation—Cross-objections in the said appeal filed by borrower—Such cross-objections—Whether maintainable in appeal under the Act.