

(1996) 05 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 221 of 1991

Amba Lal and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 217

Citation : (1998) ACJ 279 : (1996) 3 WLC 336

Hon'ble Judges : D.C. Dalela, J

Bench : Single Bench

Advocate : Sandeep Mathur, for the Appellant; V.S. Gujar, for the Respondent

Judgement

D.C. Dalela, J.—A claim petition was filed by the appellants before the Motor Accidents Claims Tribunal, Tonk, on account of the death of their son Har Lal in an accident on 2.5.1987 involving a car No. BAN-85-B 9708 owned by the respondent No. 1. Respondent No. 2 was driving the car. It is alleged that car hit the deceased Har Lal resulting in severe injuries and thereby caused his death.

2. The respondents denied these facts and it was contended that the boy aged about 5-7 was standing on the right side of the road all alone and when the vehicle came near the boy all of a sudden the boy crossed the road from right side to the left side and in this attempt he hit the left side bumper of the vehicle. According to the respondents, the accident took place without any rashness and negligence on the part of the driver.

3. The claimants-appellants examined Amba Lal, appellant, as AW 1 and Ram Kishore as AW 2, whereas the respondents examined Khima Ram, respondent No. 2 as NAW 1 and Dharma Ram as NAW 2. During the proceedings before the learned Tribunal, an amount of Rs. 15,000/- was awarded to the appellants as interim compensation on the principle of no fault. The learned Tribunal, after considering the evidence of both the sides, dismissed the claim petition, since the negligence of the respondent No. 2 was not proved. Feeling aggrieved by

this, this appeal has been preferred by the appellants.

4. I have heard the arguments of both the sides.

5. I broadly agree with the finding of the learned Tribunal that the deceased boy aged about 5-7 years all of a sudden crossed the road and got hit by the vehicle in question and thereby he sustained injuries and expired. In the case of Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, it has been held that where the appellate court agrees with the views and conclusion of the trial court, the former need not enter upon reappraisal of the evidence or to reiterate the reasons given by the trial court and the expression of general agreement with the reasons given by the trial court would suffice. The learned Tribunal, after considering the evidence and arguments of both the sides, has found that the deceased boy had all of a sudden crossed the road and thereby he was hit by the vehicle in question. I broadly agree with the reasons given by the learned Tribunal in support of its aforesaid conclusion which also seem to be correct. In the case of Mahadeo Han Lokre v. State of Maharashtra 1972 ACJ 185 (SC), the Apex Court has held that if a person suddenly crosses the road, the driver of the vehicle, however slow he may be driving, may not be in a position to save the accident and, therefore, it will not be possible to hold that the driver was negligent. In my opinion, the aforesaid decision of the Hon'ble Supreme Court squarely covers the instant case. Therefore, the driver, respondent No. 2, cannot be held to be negligent in the accident in question.

6. Since the driver of the vehicle in question has been held to be not negligent, therefore, the appellants-claimants are obviously not entitled to any compensation that may be payable on account of the negligence of the driver.

7. However, the accident did take place involving the vehicle in question and in that accident, the death of the deceased boy was caused. The learned Tribunal has awarded a sum of Rs. 15,000/- as a compensation on the principle of no fault. The accident took place in the year 1987 prior to the Motor Vehicles Act, 1988. A perusal of Section 140 of the Motor Vehicles Act, 1988, would show that there is nothing to indicate that the section will apply to an accident taking place only after its introduction. In the absence of any expression therein to indicate that the section will apply to an accident taking place only after its introduction the provision of Section 140 has to be applied in present in respect of matters pending before the Tribunals or the courts of appeals as well as in respect of all claims subsisting on the date of coming into force of the provision but preferred thereafter. I find myself unable to agree with the view that Section 92-A of the old Motor Vehicles Act, 1939 or for that matter Section 140 of the new Motor Vehicles Act, 1988 has no application to accidents taking place prior to their coming into force. In the case of Kanhaiya Lal and Another Vs. Kailashi Devi and Others, this Court has held that Section 140 of the Motor Vehicles Act, 1988 and Section 92-A of the old Motor Vehicles Act, 1939 relating to the no fault liability have retrospective application. It has been further held that the provisions of Section 140 of the Motor Vehicles Act, 1988 are applicable to the accident, which

occurred or took place before coming into force of the Act, 1988. In the case of Rajasthan State Road Trans. Corporation v. Ogam, 1992 ACJ 843 (Rajasthan), the Division Bench of this Court has also held that Section 140 of the Motor Vehicles Act, 1988 and Section 92-A of the old Motor Vehicles Act, 1939 have retrospective effect and would be applicable even to the accident that took place before the aforesaid provisions of the Motor Vehicles Act came into force. There is nothing in Section 140 or 217 of the Motor Vehicles Act, 1988 to suggest the exclusion of Section 140 to pending cases. The limit of compensation on principle of no fault in the case of death has since been enhanced to Rs. 50,000/- by means of amending Act No. 54 of 1994 which has been enforced with effect from 14.11.1994. In Lakshmi Narayan Guin and Others Vs. Niranjana Modak, it has been held by the Apex Court that "that a change in the law during the pendency of an appeal has to be taken into account and would govern the rights of the parties". In this view of the matter, I am of the opinion that Section 140 of the Motor Vehicles Act, 1988 as amended by Motor Vehicles Amendment Act, 1994 (Act No. 54 of 1994) shall apply to all claims pending before the Tribunal or appellate court as also the cause of action subsisting on 14.11.1994 notwithstanding that the accident giving rise to the claim had taken place before coming into force of the Motor Vehicles Act, 1988. Therefore, under the no fault law clause, the appellants are entitled to a sum of Rs. 50,000/- less amount already awarded and paid in this behalf, and to this extent, the award of the learned Tribunal deserves to be modified. A compensation under no fault law makes the owner of the vehicle liable for compensation for death even when the accident is not due to the fault of the owner or the driver of the vehicle or even the accident had taken place due to the fault of the victim.

8. In the result, this appeal is partly allowed. While upholding the award dated 1.12.1990 of the learned Motor Accidents Claims Tribunal, Tonk that the claimants appellants are not entitled to compensation u/s 110-A of the Motor Vehicles Act, 1939, it is declared that the appellants are entitled to a compensation on the principle of no fault u/s 140 of [he Motor Vehicles Act, 1988 as amended by the Act No. 54 of 1994 to the tune of Rs. 50,000/- irrespective of the fact that the accident took place before coming into force of the Act, 1988. However, the amount already awarded or paid by way of compensation on the principle of no fault shall be deducted from the aforesaid amount. The owner of the vehicle, respondent No. 1, shall pay the amount as aforesaid along with the interest at the rate of 15 per cent per annum from the date of application till the date of payment.

9. There shall be no order as to costs