

(2013) 04 RAJ CK 0105

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 91 of 2001

Babi (Smt.) and Others

APPELLANT

Vs

Laxman and Others

RESPONDENT

Date of Decision : 27-04-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 168, 173, 2(44)

Citation : (2013) 2 WLN 585

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Rajesh Panwar, for the Appellant; Bharat Singh, Advocate for Respondent Nos. 1 and 2 and Mr. Sunil A. Vyas, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—This appeal under Sec. 173 of the Motor Vehicles Act 1988 ("the Act") has been filed by the claimants aggrieved by the judgment and award dt. 10.11.2000 passed by the Judge, Motor Accidents Claims Tribunal, Sirohi ("the Tribunal"), whereby the application for compensation ("application") filed by them was dismissed by the Tribunal. The brief facts of the case are that the appellants-claimants, who are wife and children of Ganeshaji Ji @ Ganesh Ram filed application before the Tribunal inter-alia with the averments that on 21.04.1995 when in the agriculture field owned by said Ganeshaji, a thresher, which was propelled by the tractor bearing No. RJ-24-R-0175 was in the process of chaffing wheat and the said Ganeshaji was involved in the process of chaffing through thresher, when suddenly driver of the tractor Laxman accelerated the speed of the tractor, which resulted in the thresher also suddenly gaining speed and sucking the hand of Ganeshaji whose hand was entangled in the said thresher, which was cut into pieces and he also sustained injuries on his face, neck etc. The accident occurred on account of rash and negligence act of Laxman, the driver of the tractor. Ganeshaji was immediately taken to the Hospital at Sirohi, but despite treatment he succumbed to the grievous injuries

suffered by him in the said accident.

2. In the application it was claimed that Ganeshaji was healthy person of 35 years of age and he used to earned Rs. 3,500/- per month by working as Carpenter and Mason in addition to undertaking agricultural operations. Under various heads a sum of Rs. 16,76,000/- were claimed from Laxman, the driver of the tractor; Hazarimal, the owner and the New India Assurance Company Limited, the insurer of the said tractor.

3. A reply to the claim petition was filed by the driver and owner and the averments made in the application were denied. It was inter-alia stated that thresher belonged to the deceased and the accident occurred on account of negligence of the deceased. In additional pleas, it was stated that thresher is not a part of a tractor and the tractor was not in motion and therefore, the respondents were not liable for payment of compensation. It was also claimed that the accident did not take place at "public place" and was a private place belonging to the deceased. It was prayed that the application be dismissed.

4. The respondent-insurance company also filed its reply and stated that the owner did not give any information about the accident whereas the same was necessary in terms of the policy conditions. The plea relating to the thresher being not a part of tractor and the same having not been insured by the insurance company was also raised. It was claimed that the accident has not occurred on account of use of tractor and, therefore, the insurance company was not liable. The allegations regarding negligence of the deceased and the accident having not occurred at a public place was also raised.

5. The Tribunal framed seven issues and on behalf of the claimants Smt. Babi was examined as AW-1 and Uka Ram, Lila Ram were examined as AW-2 and AW-3 respectively. On behalf of the respondents, statement of Laxman as NAW-1 was recorded.

6. After hearing the parties, the learned Tribunal came to the conclusion that though deceased Ganeshaji died on account of the injuries suffered by him from the thresher, but the claimants failed to prove that the accident occurred on account of rashness and negligence of the respondent No. 1 Laxman, the tractor and thresher were both stationary and, therefore, thresher cannot be treated as a part of tractor and as thresher was not insured, therefore, the respondent-insurance company was not liable. The thresher was being operated from the engine of the tractor and the tractor was not being used as vehicle and, therefore, it cannot be said that the accident occurred from the tractor and, therefore, the insurance company was not liable. The issue No. 4 was not pressed by the respondents and the agricultural field was held to be a public place. Ultimately, in view of its finding on issues relating to rashness and negligence of respondent No. 1 and the finding that the tractor was not in use, the claim application was rejected.

7. It is contended by learned counsel for the claimants that the findings recorded

by the Tribunal are ex-facie baseless and against the record as well as settled position of law and, therefore, the judgment and award deserves to be set-aside and the application deserves to be allowed and the claimants be awarded just and fair compensation in the facts and circumstances of the case.

8. It was submitted that a bare reading of the statement of AW-3 Lila Ram, who was available at the time and site of the accident would reveal that the accident occurred solely on account of rashness and negligence of the driver of the tractor, inasmuch as, when the agriculture produce was being fed in the thresher, he suddenly accelerated the speed of the tractor which resulted in the thresher sucking the hand of the deceased resulting in grievous injuries and consequential death. It is further submitted that the statement of Laxman, the driver which has been relied on by the Tribunal is full of contradictions and does not inspire any confidence, his statement before the Tribunal and the statement before the Police are mutually destructive. The negligence of the driver is writ large on the record and, therefore, the finding on issue No. 1 deserves to be reversed. It was also contended that the finding about the noninvolvement of insured vehicle-tractor in the accident and consequential exoneration of the insurance company is also baseless. The thresher was being propelled by the tractor and, therefore, the owner and insurer of the tractor were liable for the negligence of the driver.

9. Reliance was placed on judgment of this Court in National Insurance Company Limited vs. Meera and Others, 2010 ACJ 2272. It was further contended that admittedly, the deceased was 35 years of age and from the statement of AW-1 Smt. Babi it is proved that deceased Ganeshaji used to work as Carpenter and Mason and was involved in agricultural operations where he used to earned Rs. 125/- per day and to contribute Rs. 3500/- per month for maintenance of his family and, therefore, applying the principles laid down by the Hon'ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the claimants are entitled to just and fair compensation.

10. Opposing the contentions raised on behalf of the appellant it was submitted by learned counsel for the insurance company that it is proved from the documentary as well as oral evidence that the accident occurred on account of the negligence of deceased Ganeshaji and consequently, even if, thresher attached to the tractor is held to be a motor vehicle, which is insured with the insurance company, there is no question of any liability arising on that account. It was submitted that from the statement of Laxman, it is apparent that the deceased himself was negligent and was trying to hurry up the things which resulted in the accident. AW-3 Lila Ram is apparently a cooked up witness, who cannot be relied on. It was further submitted that there is no evidence on record to support the version of Smt. Babi about the income of deceased Ganeshaji, which she claims and in fact, there is not any evidence in this regard. Consequently, there is no question of awarding any compensation based on averments which are not supported by evidence. It was prayed that the appeal be dismissed.

11. I have considered the rival submissions made by the learned counsel at the Bar.

12. It is not in dispute and has been held proved by the Tribunal also that Ganeshaji died on account of grievous injuries suffered by him on account of his hand getting sucked in by the thresher when the same was involved in threshing of wheat at his (Ganeshaji's) field attached to the tractor belonging to respondent No. 2; which was driven by the respondent No. 1 Laxman and was insured with the respondent-insurance company. What is being disputed is that at the time when the accident occurred Laxman was not driving/on the driver's seat operating and/or regulating the speed of the thresher and the accident occurred on account of negligence of deceased himself and not on account of any rashness or negligence of said Laxman.

13. The present case has to be viewed and examined from the natural course of action/conduct; the accident occurred on 21.04.1995 at about 7:00 a.m.; driver-Laxman gave written information at Police Station Barlut, District Sirohi inter-alia indicating that he (Laxman) had taken the tractor No. RJ-24-R-0175 with thresher to the field of Ganesh Ram for chaffing; he himself was driving the tractor and thresher; while putting the grain in the thresher, hand of Ganesh Ram suddenly went inside the thresher which resulted in amputation; I stopped the thresher and tractor and took him for treatment to Sirohi by car where he died.

14. However, when the said Laxman appeared in the witness-box as NAW-1, he totally changed the version which was submitted by him to the police on 21.04.1995. He disowned the fact that he had gone to the field with his tractor and thresher and changed the version that thresher was already available with Ganesh Ram and also gave out the fact that the thresher was new and there was important instructions indicated relating to safety etc, which he read out to Ganesh Ram. Thereafter, he changed his original version and took plea that after starting the tractor he got down from the tractor and was standing on one side. When the said witness was confronted with the report Ex.-2 and his statement Ex.-10 recorded by the Police at the relevant time i.e. in 1995, he gave stock reply that "he did not remember".

15. The conduct of the driver Laxman and his first unadulterated version to the Police recorded in 1995 was that he was operating the tractor when the accident occurred and he stopped the same as soon as the accident happened clearly goes to show that Laxman in fact was operating the thresher through the tractor at the time of accident and any other plea taken by him while giving statement as NAW-1 in the year 2000 is on its face incorrect and false and has been given only with a view to escape from the liability. Besides the averments made contrary to his original report and statement with the Police, the further averments made in examination-in-chief supporting the version of the Insurance Company regarding the contractor being not in use etc. also goes to show that the witness was tutored and, therefore, it is not safe to rely on his statements.

16. Coming to the issue as to whether the accident occurred on account of negligence of Laxman-respondent No. 1 or not, the sole witness is AW-3 Lila Ram, who has categorically stated that he was handing-over the grain to Ganeshaji, who was feeding the same in the thresher when Laxman accelerated the speed of the tractor connected with thresher, which resulted in the hand of Ganeshaji getting sucked in. The presence of Laxman on the tractor is proved as held hereinbefore from his first unadulterated version vide Ex.-2 and Ex.-10 and fact that the unannounced acceleration took place by Laxman is proved by the statement of AW-3 Lila Ram. The presence of Lila Ram is sought to be dismissed by the respondents on account of the fact that his name does not occur in the statements recorded by the Police post submission of report by Laxman and it is alleged that said Lila Ram is a partner in the agriculture field and was related to deceased Ganesh Ram. However, the said witness Lila Ram has explained his absence at the time of Police enquiry/investigation by saying that he fell ill and, therefore, was not able to appear before the Police.

17. Besides merely raising doubts on the credibility of said Lila Ram, the respondents have failed to elicit anything in the cross-examination from Lila Ram, who was specifically asked about his absence at the time of accident, which was categorically denied by him.

18. In view of the statements of Lila Ram, who is the eyewitness and his presence being partner in the agriculture field at the relevant time is but natural, the negligence of Laxman, the driver is proved whereby he (Laxman) unannounced accelerated speed of the thresher rashly and negligently, which resulted in sucking of deceased Ganesh Ram's hand into the thresher resulting in grave injuries and his consequential death.

19. The issue as to whether the Insurance Company can dispute its liability on the ground that thresher attached to the tractor was not insured and whether the Insurance Company is liable on account of accident while operating thresher attached to the tractor is no more *res integra* in view of the judgment of this Court in National Insurance company (*supra*) where this Court held thus:-

6. In my view, a look at the provisions of Section 2(44) which defines tractor would show that according to this definition, tractor means a motor vehicle which is not itself constructed to carry any load other than equipment used for the purpose of propulsion but excludes a road-roller. Obviously this definition includes equipment used for the purpose of propulsion. Thresher which was being propelled/operated by the tractor in the present case is very much an equipment used for the purpose of propulsion by the tractor, and is contemplated to be carried by the tractor and it cannot be said like trailer or semi-trailer, so as to fall within the meaning of any vehicle, so as to require any separate registration, or separate insurance cover.

7. The case cited at the Bar before the learned Tribunal are on the aspect of the accident occurring by use of trailer with the tractor, or one the aspect of

requirement of the accident taking place by mobile vehicle, as contra distinguished from stationary vehicle, or on a public road, and no judgment has been cited on the side of the appellant to show that in case of such an equipment used for the purpose of propulsion by the tractor does require independent insurance cover in order to fasten liability on the insurer. It is required to be comprehended that thresher apart, there is long list of such equipment which are used for the purpose of propulsion by the tractor for the purpose of carrying agricultural operations which may include different types of plough, equipment as flatten the land, equipment to prepare the watercourses, thresher, instrument to pump water from water boy, and so on and so forth. Obviously, in absence of any provision in the Motor Vehicles Act required separate insurance cover with respect to any one or more such equipment in addition to the insurance cover of the tractor, in order to attract liability of the insurer in the event of accident, it cannot be said that where the tractor is insured, and the victim is a third party, the insurer could not be held liable.

9. This leaves no manner of doubt that the requirement of obtaining additional insurance cover, or requirement of paying additional premium with respect to any equipment used for the purpose of propulsion attached with the tractor, would be a sine qua rum, only in cases where such equipment requires separate registration under the Motor Vehicles Act. Obviously, it is not shown either before the learned Tribunal or before me, that the thresher was an equipment which did require any registration under the Motor Vehicles Act, therefore, also on the evidence of NAWQ 5 it cannot be said that in the present case the appellant is not liable.

20. The reliance place by learned counsel for the respondent-Insurance Company on judgment of Hon''ble Supreme Court in Samir Chandra vs. Managing Director, Assam State Tpt. Corpn., 1998 DNJ (SC) 346 is wholly misplaced and in fact, supports the case of the appellants.

21. Consequently, the findings recorded by the Tribunal on Issue Nos. 1, 3 and 5 are reversed and it is held that the accident occurred on account of rashness and negligence of respondent No. 1 Laxman and that the Insurance Company is also liable on account of accident occurring on account of use of thresher attached with the tractor.

22. Now coming to the question of quantifying the amount of compensation to which the appellants are entitled on account of death of Ganesh Ram, husband of Smt. Babi and father of appellants No. 2 to 5. The appellants have claimed compensation of Rs. 14,70,000/- towards loss of income, Rs. 50,000/- for loss of love and affection and guidance, Rs. 50,000/- towards mental shock, Rs. 600/- towards transportation of the dead body, Rs. 500/- towards treatment and Rs. 5,000/- towards funeral expenses and Rs. 1 lac towards loss of future income and in all Rs. 16,76,000/- from the respondents. It was claimed in the application that deceased was involved in the work of Carpenter and Mason besides involved in agricultural operations and use to contribute Rs. 125/- per

day. Smt. Babi AW-1 in her statement stated that deceased used to contribute Rs. 3,500/- towards maintaining the family and used to earned Rs. 125/- per day. Besides the said oral statement of Smt. Babi, there is no evidence either with regard to the income of the deceased or the expenses incurred under various heads as demanded by the appellants.

23. In absence of determination of income by the Tribunal, the matter in ordinary course was required to be remitted back for consideration but the fact that the deceased was 35 years of age and the accident is of April, 1995, remanding the matter at this stage is not going to serve any purpose particularly when evidence recorded is already on record.

24. It would be relevant to notice that AW-1 Smt. Babi was not cross-examined on the aspect of the income of the deceased. While granting compensation under Sec. 168 of the Act what is required to be determined is just and reasonable compensation which in-turn can only be examined from material on record, but no hard and fast rule can be laid down. The Hon''ble Supreme Court in the State of Haryana and Another Vs. Jasbir Kaur and Others, observed as under:-

The Courts and Tribunals have a duty to weigh various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all case for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. See Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another,

25. The State of Haryana was a case where income of the deceased could not be proved on the basis of documentary evidence, but the Tribunal arrived at the figure Rs. 4,500/- per month and no reason was indicated to arrive at that figure, but the Hon''ble Apex Court on the basis of material on record considered Rs. 3,000/- per month as the income and accordingly computed just compensation for the family of deceased towards loss of income after deduction for personal expenses.

26. It is apparent that besides the statement of Smt. Babi, there is no material available on record and her statement has remained uncontroverted. The material on record may not result in determination of actual income of the deceased, but it cannot be ruled out that the deceased had source of income for

maintaining his family of wife and four children by working as Carpenter and Mason besides agricultural operations which apparently are good attending circumstances to determine reasonable compensation apart from the fact that he was 35 years of age and his income would not have been frozen for all times to come but would have been reasonably enhanced, future prospects of advancement in life are also required to be noticed in terms of money to augment the multiplicand.

27. In the light of what has been discussed above for just compensation the income can be estimated in the absence of documentary evidence. Even as per the Schedule under Sec. 163A of the Act with regard to non-earning members from whom Rs. 15,000/- per annum has been considered to be the financial dependency of the family, taking into consideration over all conspectus of the material on record and other ancillary aspects the monthly income of the deceased is assessed at Rs. 2,500/- per month and after deducting 1/4 towards the personal expenses the dependency of the family comes to Rs. 1,875/- per month and looking to the age of deceased multiplier of 16 will be appropriate to be adopted, the compensation towards loss of income qua dependency of the family is accordingly determined at Rs. 3,60,000/-. As regards compensation towards love, affection and consortium a sum of Rs. 25,000/- is awarded to the claimants and towards mental shock, transportation of dead body and funeral expenses etc. they are entitled to a sum of Rs. 15,000/-.

Consequently, the appeal is allowed. The Judgment and award passed by the Tribunal is set-aside and in view of the findings arrived at by this Court hereinbefore the application for compensation filed by the claimants is allowed and the claimants are entitled to compensation of Rs. 3,60,000+25,000+15,000 i.e. Rs. 4,00,000/- which amount shall carry interest @ 6% p.a. from the date of claim petition i.e. 28.07.1995 till actual payment from all the three respondents jointly and severally. The appellant No. 1 wife of the deceased would be entitled to 60% of the amount of compensation and rest four appellants-children of the deceased would be entitled to 10% each of the amount of compensation awarded. The Insurance Company would deposit the amount of compensation with the Claims Tribunal within a period of two months from the date of this judgment.

No costs.