
(1991) 05 RAJ CK 0009
In the Rajasthan High Court

Babulal Jain

APPELLANT

Vs

Gajanand and Others

RESPONDENT

Date of Decision : 14-05-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1991) 2 ACC 413

Hon'ble Judges : S.C. Agrawal, C.J

Bench : Single Bench

Judgement

K.C. Agrawal, C.J.—This is an appeal u/s 110-D of the Motor Vehicle Act, 1939 (old provision) against the award of the Accidents Claims Tribunal, Kota dated 17.8.1983 in case Nos. 31/80, 40/80 and 52/80. All these three cases were consolidated by the order of the Tribunal dated 28.11.1981. The facts of all the three cases are the same and, therefore, it is not necessary to mention them separately.

2. Jagan Nath was the driver of bus no. RJR 5967 and Babu Lal Jain was the owner of the same. On 5.3.1980, at 1.30 p.m., the accident took place while the aforesaid bus was on its way from Kota to Sangod. As a result of this accident, three persons died, namely, Sitaram, Banshilal and Allah Noor. While Sitram and Banshilal were the Cleaner and Khalasi of the bus, Allah Noor was a passenger. When the bus reached near the bridge, known as Gandhi Pani Ki Pul, all of sudden it turned turtle and overturned.

3. Claimants of Case No. 31/80 were the legal representatives of Sitaram, claimants of case No. 40/80 were the legal representatives of Allah Noor and that of 52/80 were the legal representatives of Banshilal. They claimed a sum of Rs. 128,000 ; Rs. 97,000 and Rs. 1,75,000 respectively.

4. The claim was contested by the driver as well as owner of the bus by filing a joint written statement. The driver pleaded that he was not at fault when the accident took place and the assertion of the applicant claimants that the bus was

being run at a very high speed was incorrect.

5. The Tribunal vide its award dated 17.8.1983, held the driver of the bus responsible for the accident being negligent and awarded compensation of Rs. 30,000 in case No. 31 of 1980; Rs. 12,000 in case No. 40 of 1980 and Rs. 20,000 in case No. 52 of 1980. Aggrieved by the award, the owner of the bus, namely, Babu Lal Jain has preferred this appeal

6. In the grounds of appeal, the appellant has challenged the award of the Tribunal with the assertion that the Tribunal committed an error in applying the rule of *Res Ipsa Loquitur*. Learned Counsel for the appellant contended that there was no case for applying the aforesaid principle inasmuch as the cause of accident was pleaded and noted in the pleadings.

7. From the evidence on record, it appears that the cause of accident was due to mechanical defects and the appellant had raised the plea that the defects were latent and non-discoverable by use of reasonable care. In fact, due to breaking of rough rod and hanger, the bus was turned towards the left side causing sudden accident. But, the driver knew about such defects and without caring for the consequences, which it could meet, he drove rashly and negligently. The Tribunal discussed the evidence led by the parties from paragraph 14 to 23 of its award on the point as to who was responsible for the accident and it came to the conclusion that it was due to the rash and negligent driving and not due to the sudden defects, as alleged by the appellant, which could not be discovered by use of reasonable care. The burden of proof was on the driver and the owner of the bus that the mechanical defects were such which could not be discovered by reasonable care and the accident was for the reason of such mechanical defects, but no such evidence had been brought on record to establish the same, as held by the Tribunal in paragraph 20 of its award.

8. So far as the compensation is concerned, the Tribunal discussed every piece of evidence and decided all the three aforesaid cases in the manner, mentioned above. The claimants were entitled to the compensation and the contention of the appellant to the contrary has no force.

9. So far as liability of insurance company-respondent No. 10 is concerned, no evidence has been brought on record that the bus was insured with the National Insurance Co, Kota. In the absence of such evidence, it cannot be pleaded that the insurance company was also liable for payment of compensation.

10. For what has been said above, I find no force in this appeal and it deserves to be dismissed.

In the result, the appeal fails and is dismissed without any order as to costs.