
(1989) 03 RAJ CK 0043

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 51 of 1985 and 164 of 1984

Banshi Lal

APPELLANT

Vs

Rawat Singh and Others

RESPONDENT

Date of Decision : 01-03-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1989) 2 ACC 328 : (1990) ACJ 89

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Advocate : N.P. Gupta, for the Appellant; P.K. Bhansali and H.R. Panwar, for the Respondent

Judgement

A.K. Mathur, J.—Both these appeals arise out of the judgment and award given by the Motor Accidents Claims Tribunal, Jodhpur dated 1.9.1984. S.B. Civil Misc. Appeal No. 164 of 1984 has been filed by Banshi Lal, driver of the truck and S.B. Civil Misc. Appeal No. 51 of 1985 has been filed by the claimant Rawat Singh for suitable enhancement of the compensation.

2. The brief facts giving rise to these appeals are that on 19.7.1978 the truck bearing No. RRQ 6793 was coming from Rampura to Jodhpur. Rawat Singh boarded the truck from Rampura. When the truck reached near Khokhariya Bera (well) it met with an accident on account of rash and negligent driving of the driver, as a result of which the claimant-appellant Rawat Singh received injuries and he had to be hospitalised for quite some time. Therefore, he filed a claim petition on the ground that he had received these injuries on account of the rash and negligent driving of the driver Banshi Lal. The claim was contested by the driver Banshi Lal, owner Manohar Lal and United India Fire & General Ins. Co. Ltd. (hereinafter referred to as "the insurance company") with whom the truck was insured. The case of the non-claimants was that in fact the truck was carrying drums of milk and near Khokhariya well its tyre rod gave away and it dashed against the pal and turned back in a little tilted position. It was further

submitted that during the course of this accident the injured Rawat Singh jumped out of the truck and as such he received injuries.

3. The learned Tribunal after recording the necessary evidence and hearing both the parties came to the conclusion that the truck was driven in a rash and negligent manner and the injured was given lift by the driver of the truck for hire and reward as the injured Rawat Singh had paid a sum of Rs. 2/- to driver Banshi Lal. The learned Tribunal awarded a compensation of Rs. 5,000/- to the injured Rawat Singh against the driver and absolved the insurance company of its liability as it found that the owner was not responsible for the unauthorised act of the driver of taking Rawat Singh as a passenger for hire and reward. Since the owner was not found responsible, therefore, the insurance company was not held liable to indemnify the injured.

4. Mr. Gupta, learned counsel for the appellant, submitted that Rawat Singh was totally an unauthorised person and the driver has given him lift gratuitously therefore, he cannot be made responsible for his injuries. It is also alleged that the compensation should have been awarded against the insurance company.

5. Mr. Bhansali, learned counsel appearing for the insurance company, has submitted that the learned Tribunal has completely misread the evidence that Rawat Singh had paid a sum of Rs. 2/- to the driver of the truck for reward. Learned counsel submitted that Rawat Singh, claimant, has nowhere stated in his claim petition that he had paid Rs. 2/- to the driver. He has also invited my attention to the statement of Rawat Singh that Rawat Singh has not even said so in his examination-in-chief that he had paid Rs. 2/- as reward. However, in the cross-examination he has deposed that he had paid Rs. 2/- as reward to the truck driver. Learned counsel has also invited my attention to the statement of Banshi Lal, driver, wherein he strongly denied the suggestion and deposed that he did not charge any money from Rawat Singh. He deposed that Rawat Singh who is a police constable had missed the bus, therefore, he wanted to go and join his duties as his leave was expiring. Therefore, he gave him lift. He has also submitted that the insurance company cannot be held liable as no relief against the owner has been prayed for in the appeal and the liability of the insurance company and the owner is co-extensive. As no relief has been claimed against the owner in appeal, therefore, the insurance company is not liable.

6. Mr. Panwar, learned counsel for the appellant Rawat Singh, has strenuously urged that since Rawat Singh was given a lift for reward of Rs. 2/- and he has met with this accident, therefore, the award which has been given by the learned Tribunal is just and fair and does not call for any interference by this court. He has also submitted that his appeal for enhancement of compensation should be accepted as the amount of compensation awarded by the learned Tribunal is inadequate.

7. I have heard learned counsel for the parties and have also perused the record.

8. So far as the appeal filed by appellant Banshi Lal is concerned, I think that in

view of the recent judgment of this Hon"ble Court and the decision of the Hon"ble Supreme Court in Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC) wherein it has been laid down that the owner of the vehicle is also responsible for the unauthorised act of his servant, it has been observed as under:

Vicarious liability? Master and servant? Implied authority of servant? Course of employment and master's business? Car driven by the Manager of the company for the purpose of company's business? Manager permitted a passenger to travel with him in the car? Car met with an accident resulting in the death of passenger? Whether the accident was due to the negligence of the servant in the course of employment and the master is liable-Held: yes.

9. It is not in dispute that Banshi Lal driver was driving the vehicle of owner Manohar Lal for carrying the drums of milk and he has unauthorisedly given lift to Rawat Singh and Rawat Singh had received injuries. Therefore, Manohar Lal being the owner of the vehicle cannot be absolved of his liability for the unauthorised act done by his servant Banshi Lal.

10. The next question which arises for my consideration is as to whether the injured claimant had paid Rs. 2/- for hire or reward to Banshi Lal or not. After going through the statements of the witnesses and specially the statement of the injured and his claim petition, it is apparent that he had not paid a sum of Rs. 2/- to Banshi Lal, driver as reward. The learned Tribunal has believed the story put forward by the claimant and came to the conclusion that the injured paid a sum of Rs. 2/- for reward to the driver Banshi Lal. I am not prepared to accept this finding of the learned Tribunal. From the statement of the injured, it is clear that he did not depose this that he had paid Rs. 2/- in his examination-in-chief, so much so this was not the case of the injured even in the claim petition. It is only in the cross-examination that for the first time the story of reward has been deposed. I have also gone through the statement of the driver Banshi Lal. He has categorically denied the suggestion. The other witnesses who have come in the witness box have also not deposed that they had paid any amount as reward to the driver for travelling in the truck nor they have said that the injured claimant Rawat Singh gave any amount as reward. Thus, this finding of the learned Tribunal is not correct and as such this finding deserves to be set aside.

11. Mr. H.R. Panwar, learned counsel, has submitted that the finding has not been challenged by the appellant Banshi Lal nor the insurance company has filed any cross-objection challenging the finding. Therefore, this court should not disturb this finding of fact. I am not inclined to accept this contention of the learned counsel for the simple reason that when the appeal has been filed and if the appellate court finds that the finding recorded by the lower court is wholly perverse and is not sustainable then it is open for the appellate court to set aside the same. In the present case I am convinced that the finding given by the learned Tribunal that Rawat Singh gave Rs. 2/- as reward is not sustainable. Therefore, this finding is set aside.

12. Now, the next question that comes for my consideration is regarding quantum of compensation. A sum of Rs. 5,000/- has been awarded as compensation to Rawat Singh by the learned Tribunal and he has also filed an appeal for suitable enhancement of the same. Looking to the facts and circumstances of this case, the facts that emerge are that Rawat Singh, police constable who was anxious to go and join his duties, sought lift in the truck which was bona fide given by the driver of the truck. For this bona fide act of the poor driver he cannot be punished to the extent of Rs. 5,000/-. As a matter of fact, a good term cannot be saddled with bad deed. Therefore, I am not inclined to maintain the amount of compensation and it is reduced to only Rs. 1,500/- for the injuries suffered by Rawat Singh and the treatment. Since in Pushpabai Purshottam Udeshi's case 1977 ACJ 343 (SC) referred to above the Hon'ble Supreme Court has already held that the master is liable for all the acts of his servant, therefore, this amount of compensation of Rs. 1,500/- shall be paid by the owner of the truck Manohar Lal to the injured Rawat Singh with interest at the rate of 9 per cent per annum from the date of the application. The insurance company cannot be held liable in view of Santra Bai v. Prahlad 1985 ACJ 762 (Raj) wherein it was observed as under:

Taking in view the entire case law and the provisions of Section 95 of the Act read with Rule 133 of the Rules following principles can be deduced:

- (i) in case of a gratuitous passenger going on joy-ride or on his own responsibility, insurance company is not liable;
- (ii) in case of passenger carried for hire or reward or by reason of or in pursuance of a contract of employment in any vehicle, the insurance company is liable. This would include owner of the goods as well as his employees;
- (iii) the insurer shall not be liable to cover liability in respect of employee of the insured in respect of the death of or bodily injury to, any such employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, if such employee is (a) engaged in driving such vehicle or (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle or (c) if it is a goods vehicle being carried in the vehicle;
- (iv) the insurer shall not be liable to cover any contractual liability.

We have only decided the scope and ambit of the provisions of Section 95 of the Act and the circumstances under which insurance company would be liable or not in the case of a goods vehicle registered as a public carrier.

13. In the result, the appeal filed by Banshi Lal is allowed in part and the appeal filed by Rawat Singh is dismissed, as indicated above. No orders as to costs.