

(2012) 01 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 645 of 1997

Banwari Lal and Others

APPELLANT

Vs

Nasir Hussain and Others

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Citation : (2012) 3 WLN 113

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Sandeep Mathur, for the Appellant; Vinod Tyagi, for the Respondent

Judgement

Mohammad Rafiq, J.—This appeal has been filed by the claimants for enhancement of compensation and for reversal of finding of contributory negligence recorded by the learned Motor Accident Claims Tribunal, Tonk vide award dt. 17.2.1997. Shri Sandeep Mathur, learned counsel for the appellants has made three fold submissions. His first submission is that since there are six claimants hence as per the judgment of Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 1/4th should have been deducted towards the own expenses of the deceased whereas, in the instant case, learned Tribunal has deducted 1/3rd. His second argument is that the driver could not have been held negligent of contributory negligent to the extent of 50% because he was driving the car, which had hit the truck from behind and the accident took place because truck driver suddenly stopped the truck and truck was halted in the middle of the road on its left side. Truck did not give indication from the backlight. Backlight indicators were not properly working. In this connection, learned counsel referred to the statement of AW3-Ranveer Singh. He has also cited the Division Bench judgment of this Court in Sohan Lal and Another Vs. Bal Swaroop Bal Bhatnagar and Others and argued that in that case a car hit a stationery truck from behind. Contributory negligence of the car driver was held to be 25%, whereas truck driver was held responsible to the extent of 75%. It was argued that in that case, negligence may be more on the side of the

truck driver because he was running the truck, which was suddenly stopped without proper indication. His third submission is that the learned Tribunal erred in law while computing Rs.1500/- deducted 1/3rd income of the deceased, whereas it should be Rs.1700/- (Rs.1200 + Rs.500/-) per month and after making deduction of 1/ 4th, the amount should be 1800-450-1350 and 750-187-563/- (1350 + 563-1913).

2. Learned counsel for the respondents has opposed the appeal and argued that in view of the statement that has been given by AW3 is concerned, that witness has admitted that he was sleeping in the backside of the car, which means that he woke up after the incident took place in that, he could not have witnessed whether the backlights of the truck were not functioning or the indication was not given by the truck before applying the break. Even otherwise, this witness has admitted that speed of the truck was 50 kmph. and speed of the car was between 40-45 kmph. That means that neither of the vehicle were running in a high speed. Once the truck was halted, the car driver would have to be careful, therefore would be in a position to immediately apply the break and control his vehicle. The fact that in such a low speed, car could not be stopped, proves that car driver was not exercising proper care and that he was not maintaining proper distance.

3. Upon hearing learned counsel for the parties and perused the material available on record, I find that in so far as finding with regard to contributory negligence is concerned, same will have to be recorded on the basis of evidence in a given case and evidence in every such case, where one vehicle has hit by another vehicle from behind may vary. Ratio of the judgment of this Court in that case therefore cannot be applied to every case where a car has hit the truck from behind. That was a case, where car hit the stationery truck from behind and the evidence proved that it was a rainy day and that truck was parked on the road without the parking lights or reflector for drive on other traffic. Whatever evidence has been produced in the present case, does not support the claimants to hold that the deceased driver was not negligent. AW3 in his statement has admitted that distance between two vehicles was 20-25 feet and that the truck was running in a speed of about 50 kmph., whereas car was being plied in the speed of 40-45 kmph. With that moderate speed, if the car could not be controlled immediately by applying the break, that means that car driver was held equally negligent if not more than negligent than the truck driver. Secondly, this also shows that distance between the two vehicles was not being properly maintained because if the distance was only 20-25 feet, truck was immediately stopped, there was no reason why the car could not be stopped in time. Moreover with regard to parking/backlights, testimony of this witness does not inspire any confidence because he in his cross-examination stated that he was sleeping in the backside of the car then, how could he notice that the backlights were not on.

4. Coming now to the other arguments with regard to 1/3rd deductions, in view

of judgment of Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, in the event of number of dependents being four to six, only 1/4th amount should be deducted towards self expenses of the deceased whereas, in the present case, 1/3rd amount has been wrongly deducted. By maintaining the award of compensation on all other non-pecuniary heads, the award deserves to be enhanced. In the result, the appeal is allowed in part. The award passed by the Motor Accident Claims Tribunal, Tonk dt. 17/2/1997 is modified in the following terms:-

(a) Income:-Rs.1800/- per month

(b) daily wages @Rs.25/- per day $25 \times 30 = \text{Rs.750}$

(c) $1800 + 750 = \text{Rs.2550}$.

(d) 1/4th deduction of Rs.2550 - 637/-

(e) $2550 - 637 = \text{Rs.1913/-}$

(f) $1913 \times 12 = \text{Rs.22,956/-}$

(g) $22,956 \times 18 = \text{Rs.4,13,208/-}$

(h) Award on all other heads i.e. Rs.15,000/- for loss of consortium, Rs.10,000/- loss of love and affection and Rs.5,000/- for funeral expenses in all Rs.30,000/- is maintained.

(i) $\text{Rs.4,13,208} + \text{Rs.30,000/-} = \text{Rs.4,43,208/-}$.

(j) After minicing 50% thereof on account of 50% contributory liability, the amount comes to Rs.2,21,604/-.

(k) The compensation of Rs.1,77,000/- is thus enhanced to Rs.2,21,604/-The appellants shall be entitled to interest @7.5% on the enhanced amount of compensation from the date of filing claim petition.