
(1990) 04 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 88, 110 and 139 of 1985

Bhera Ram and Another

APPELLANT

Vs

Bhiya Ram and Others

RESPONDENT

Date of Decision : 02-04-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1991) 1 ACC 39 : (1990) ACJ 724

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : D.K. Parihar, for the Appellant; R.K. Mehta, B.L. Maheshwari and D.C. Sharma, for the Respondent

Judgement

Milap Chandra, J.—These appeals have been filed u/s 110-D, Motor Vehicles Act, 1939 against the judgment of the Motor Accidents Claims Tribunal, Jodhpur dated January 10, 1985, awarding Rs. 9,280/- and Rs. 15,000/- to the claimants Dr. Prem Singh (appellant in appeal No. 110 of 1985) and Bhera Ram (appellant in appeal No. 88 of 1985) respectively with interest at the rate of 9 per cent from the date of filing of the claim petitions against the respondent No. 1 Bhiya Ram (in short "the driver") only. The facts of the case giving rise to these appeals may be summarised thus.

2. On October 26, 1980, claimant Bhera Ram was going from Bhopalgarh to Pipar City on his motor cycle No. RSN 4351 and Dr. Prem Singh claimant was sitting on the back seat. When the motor cycle was passing through Sathin Crossing, Jonga jeep No. RSQ 9980 came from its wrong side and dashed against the motor cycle resulting in an accident. It occurred due to rash and negligent driving of the Jonga jeep by its driver Bhiya Ram, respondent No. 1. The claimants Bhera Ram and Dr. Prem Singh received injuries. They were immediately taken to and admitted in the M.G. Hospital, Jodhpur. On April 23, 1981, both the claimants filed separate claim petitions against non-petitioner No. 1, Bhiya Ram, non-petitioner No. 2, Ram Narain Doodi and non-petitioner No. 3, New India

Assurance Co. Ltd., Chopasani Road, Jodhpur, driver, owner and insurer of the said Jonga jeep respectively, claiming Rs. 37,980/-and Rs. 14,179/-. They filed their separate replies, seriously opposing the claim petitions. Bhiya Ram driver admitted in his reply that the accident took place at Sathin Crossing but denied other averments of the claim petition. He has also stated that Ram Narain Doodi owner had sold the Jonga jeep to him. The owner and insurance company either denied the averments of the claim petitions or pleaded their ignorance about them. The owner has also stated in his replies that he got the said Jonga jeep transferred in the name of the driver on June 8, 1981 and the latter became its owner. The owner and driver have also stated in their replies that the Jonga jeep was insured with the New India Assurance Co. Ltd., Chopasani Road, Jodhpur on the date of the accident and they duly mentioned the particulars of the insurance policy and certificate. The insurance company denied to have insured the Jonga jeep. After framing necessary issues and recording the evidence of the parties, the Motor Accidents Claims Tribunal, Jodhpur gave the awards as said above.

3. It is contended by the learned Counsel for the claimant-appellants that the learned Judge, Motor Accidents Claims Tribunal, has seriously erred to hold that the Jonga jeep No. RSQ 9980 was not insured with New India Assurance Co. Ltd. They further contended that the Tribunal also committed a serious error to hold that on the date of the accident, the jeep stood transferred by its owner Ram Narain Doodi to its driver Bhiya Ram and as such the insurance company was not liable. They also contended that the Tribunal has also seriously erred in not awarding the amount of expenditure incurred by the injured Bhera Ram in going daily to the hospital for taking physiotherapeutic exercises in a taxi and also the amount paid by him to his servant Nona Ram for attending to him during his treatment. They lastly contended that the Tribunal should have awarded the amount equivalent to the salary of the period of medical leave taken by Dr. Prem Singh.

4. The learned Counsel for Bhiya Ram driver contended that the accident occurred on account of the rash and negligent driving of the driver of the motor cycle, i.e., Bhera Ram claimant and not on account of the driver of the Jonga jeep, i.e., Bhiya Ram, appellant (appeal No. 139 of 1985), the Jonga jeep was stationary at the said crossing when the motor cycle happened to pass therefrom and if a little precaution would have been taken by the motor-cyclist, accident would not have occurred. He also contended that the Jonga jeep driver Bhiya Ram had been acquitted by the criminal court and this finding should have been taken into consideration by the Tribunal. He further contended that the Tribunal seriously erred to hold that on the date of the accident Jonga jeep stood transferred in the name of its driver Bhiya Ram and insurance company was not liable. He lastly contended that the amount awarded by the Tribunal is excessive.

5. The first question for consideration in these appeals is whether the Tribunal was justified to hold that the accident in between the motor cycle No. RSN 4351 and Jonga jeep No. RSQ 9980 took place on account of the rash and negligent

driving on the part of the Jonga jeep driver Bhiya Ram. The injured Bhera Ram, PW1 and Dr. Prem Singh, PW2, have deposed that the accident took place at the Sathin Crossing while the motor cycle was passing through the crossing, at that time the motor cycle was going on its correct side and the Jonga jeep No. RSQ 9980 came from the opposite direction on its wrong side and collided with the motor cycle. They have categorically stated on oath that the Jonga jeep did not move around the circle as was required but wrongly crossed the circle, at that time its speed was 60-70 km. per hour and the speed of the motor cycle was only 20-25 km. per hour. The Jonga jeep driver Bhiya Ram, DW 1, does not deny in his statement that he crossed the circle from its wrong side. He has simply said that his Jonga jeep was standing on the crossing and motor cycle came with an excessive speed from the opposite direction and dashed with the Jonga jeep. He has further deposed that Shyam Singh, DW 2 and Bhiya Ram, DW 3 (another person) were travelling in his Jonga jeep at that time and it was stopped for them as they wanted to go to Jodhpur from this crossing. No reliance can be placed on the testimony of Bhiya Ram, DW 1, Shyam Singh, DW 2 and Bhiya Ram, DW 3. It has not been pleaded in the written statement by Bhiya Ram driver, or owner or insurer that Jonga jeep was standing stationary at the crossing when the accident took place. Shyam Singh, DW 2 and Bhiya Ram, DW 3, were travelling in it and it was stopped at the crossing to enable them to get down there to go to Jodhpur. The testimony of the injured Bhera Ram, PW 1 and Dr. Prem Singh, PW 2, finds corroboration from the site plan, (paper No. C7/4) and the site inspection note, (paper No. C7/5), whose formal proof had been dispensed with by the learned Counsel for Bhiya Ram driver and Ram Narain Doodi owner. The learned Tribunal has rightly held that the accident took place due to rash and negligent driving on the part of the Jonga jeep driver, Bhiya Ram.

6. The next question for consideration is whether on the date of the accident(26.10.1980) the Jonga jeep was insured with the New India Assurance Co. Ltd., Chopasani Road, Jodhpur (non-petitioner No. 3). The insurance company has filed a true copy of the policy No. 4539401484, paper Nos. C19/1 to 3, mentioning that the certificate is No. 852234/ 576 and the registration No. of the vehicle insured is RSQ 9880. Admittedly, the registration number of the offending Jonga jeep is RSQ 9980. On the basis of this discrepancy in the registration number, it was contended by the learned Counsel for the insurance company that it did not relate to the offending Jonga jeep. There is no great force in this contention. The non-petitioner Nos. 1 and 2 have filed photostat copies, paper Nos. C21/ 2-3, of the particulars of the registration in respect of the vehicle Nos. RSQ 9880 and RSQ 9980. These papers were issued by the R.A. and D.T.O., Jodhpur. It is clear from them that the vehicle bearing number RSQ 9880 is a Lambretta scooter and the vehicle bearing No. RSQ 9980 is an open jeep. It is also mentioned in the particulars that this Jonga jeep was transferred by non-petitioner No. 2 Ram Narain Doodi to the non-petitioner No. 1 Bhiya Ram on June 9, 1981. The insurance company has also filed a photostat copy, paper No. C22/2, of the proposal form submitted by the non-petitioner No. 2 of

insuring his Jonga jeep from April 16, 1980 to April 15, 1981. In it, registration number of the vehicle has been mentioned as RSQ 9880. On account of this mistake in mentioning wrong registration number in the proposal form, the insurance company accordingly issued policy with wrong registration number. During arguments before this court, the learned Counsel for the non-petitioner Nos. 1 and 2 filed original letter dated September 3, 1981, issued by the non-petitioner No. 3 to the non-petitioner No. 2. Its copy was duly given to the learned Counsel for the insurance company. No reply has been filed. The issuance of this letter by the non-petitioner No. 3 was not denied. It would be best to quote it here. It runs as under:

THE NEW INDIA ASSURANCE CO. LTD.

(A subsidiary of the General Insurance Corporation of India)

Branch: Chowdhary Bhavan,

Chopasani Road, Jodhpur-342001.

In Reply please quote Phone: 22531 Ref. Telex: Telegram: NIASURANCE 3rd September, 1981 Shri Ram Narayan,

S/o Shri Gangaram,

Vill. RATKHURIA

Distt. Jodhpur.

Dear Sir,

Re: Insurance of Jonga jeep No. RSQ 9980.

Your abovementioned vehicle was insured with us vide our policy No. 4539401484 during the last year and we have received a notice from MACT Court, Jodhpur in which one person has been injured.

This year we have allowed you 20 per cent no claim bonus amounting to Rs. 14/-. Since you are not entitled for any no claim bonus, we would request you to kindly remit us Rs. 14/- so that we can regularise the policy soon.

Thanking you,

Yours faithfully,

Sd/

-Asstt. Branch Manager.

This leaves no doubt that for the period from April 16, 1980 to April 15, 1981 the insurance policy, paper Nos. C-19/1-3 relates to the Jonga jeep No. RSQ 9980 and not to the scooter RSQ 9880. It may also be mentioned here that the basic

premium for a Jonga jeep was Rs. 67/- and for a scooter Rs. 48/- only during those days. Admittedly, the policy, paper No. C19/1, issued in favour of the non-petitioner No. 2 Ram Narain Doodi mentions the basic premium of Rs. 67/- and not Rs. 48/-. The payment of this amount of Rs. 67/- also proves that it relates to a Jonga jeep and not to a scooter. This policy, paper No. C19/1, also mentions that it relates to a Jonga jeep. It is thus well proved that the offending jeep No. RSQ 9980 was insured with the non-petitioner No. 3 on the date of the accident.

7. The next question for consideration is whether the offending Jonga jeep was transferred by the non-petitioner No. 2 Ram Narain Doodi to the non-petitioner No. 1 Bhiya Ram before the date of accident, i.e., October 26, 1980. The non-petitioner No. 1 Bhiya Ram admits in his written statement para Nos. 8 and 9 of the claim petition, giving registration number and names of the driver, owner and insurer of the offending Jonga jeep. He has, however, added in para No. 8 of his written statement that he had purchased Jonga jeep from the non-petitioner No. 2 and on the date of the accident he was in possession of it. He has not disclosed in it the date of the purchase of the Jonga jeep. He has also not stated that he was in possession of the Jonga jeep as its owner on the date of the accident. Similarly, the non-petitioner No. 2 Ram Narain Doodi admits para Nos. 8 and 9 of the claim petition in his written statement. He has specifically stated in its para No. 8 that he transferred his Jonga jeep No. RSQ 9980 to the non-petitioner No. 1 Bhiya Ram on June 8, 1981 and since then the non-petitioner No. 1 Bhiya Ram has become its owner. At the risk of repetition, it may also be mentioned here that particulars of the vehicle No. RSQ 9980 obtained from the RA and D.T.O., Jodhpur clearly mention that the vehicle stood transferred in favour of Bhiya Ram with effect from June 9, 1981. The non-petitioner Bhiya Ram, PW1, has stated in his cross-examination that when the jeep was got released from the court its registration was in the name of the non-petitioner No. 2 Ram Narain Doodi. He has further disclosed that registration was not in his name as the entire amount was not paid by him by that time. Admittedly, the non-petitioner No. 2 Ram Narain Doodi has not come in the witness-box. These facts and circumstances leave no manner of doubt that on the date of the accident, the Jonga jeep was owned by the non-petitioner No. 2 Ram Narain insured and it was not transferred by him by that date. As such the insurance company continued to be liable to make payment of the amount of compensation. The learned Tribunal committed serious error in exonerating the insurance company.

8. Now the question about the enhancement of compensation survives. The injured Bhera Ram has claimed Rs. 150/-, spent by him in going to hospital for several days for taking physiotherapeutic exercises in taxi and Rs. 2,170/- for employing Nona Ram as a servant to attend to him in the hospital. The Tribunal has not awarded any amount under these heads on the ground that it has not been disclosed by the claimant Bhera Ram as to how many times he went to hospital in a taxi to take physiotherapeutic exercises and he did not produce his servant Nona Ram. The claimant Bhera Ram has deposed that after his discharge from the hospital, he used to go there in a taxi for physiotherapeutic exercises and

used to pay Rs. 5/- per day to the taxi driver. He has also deposed that he remained in the hospital for eight months for his treatment and engaged Nona Ram on daily wages at the rate of Rs. 12/- to look after him there. It may be mentioned here that he has not at all been cross-examined on these points. Nothing has been said on these points by any witness of the non-petitioners. As such this statement of the claimant Bhera Ram has gone unchallenged and unrebutted. The amount claimed under these heads cannot thus be said to be excessive or unreasonable. As such his compensation deserves to be enhanced from Rs. 15,000/- to Rs. 17,320/-(Rs. 15,000/- plus Rs. 150/- plus Rs. 2,170/-).

9. The claimant Dr. Prem Singh has claimed Rs. 2,800/- on account of loss of privilege leave. He has deposed that he had to be on medical leave for 1 1/4 months for his treatment. This statement has gone unrebutted. It is thus proved that for the treatment of his injuries received in the accident, he had to take medical leave for 1 1/4 months. It is also a loss to him. For want of medical leave to his credit in future, he may have to take privilege leave which is now encashable. He has claimed Rs. 2,800/- under this head. It includes the amount of travelling and daily allowances. These amounts are not admissible as during the period of his medical leave there was no question of his going on tour for official purpose. He has deposed that his monthly pay during those days was Rs. 2,000/-. As such he is entitled to get Rs. 2,400/- under this head. The Tribunal was not justified to reject his claim under this head on the ground that he had been paid his pay of this period. As such his compensation deserves to be enhanced from Rs. 9,280/- to Rs. 11,680/-(Rs. 9,280/- plus Rs. 2,400/-).

10. Consequently, the appeal No. 139 of 1985 filed by Bhiya Ram, driver is dismissed with costs and the appeal Nos. 88 of 1985 filed by the claimant Bhera Ram and No. 110 of 1985 filed by Dr. Prem Singh are allowed with costs. The appellants Bhera Ram and Dr. Prem Singh will get Rs. 17,320/- and Rs. 11,680/- respectively as compensation with costs and interest at the rate of 12 per cent per annum from April 23, 1981 to the date of recovery. All the three non-petitioner respondents are jointly and severally liable to pay these amounts. The composite award of the Motor Accidents Claims Tribunal is accordingly modified.