
(2019) 10 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 437 Of 2000

Dakhu And Ors

APPELLANT

Vs

R S R T C And Ors

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Citation : (2019) 10 RAJ CK 0045

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : RJ Punia, ML Khatri, MR Purohit

Final Decision : Allowed

Judgement

1. This misc. appeal has been filed by the appellants/ claimants challenging the impugned judgment dated 14.3.2000 whereby the claim of the appellants has been rejected.
2. The unfortunate accident happened on 7.2.1996 in the afternoon at about 1:20 PM when the deceased conductor Kishanlal was travelling in the RSRTC bus. When the bus reached at Village Marudi, the door of the bus opened whereupon Kishanlal fell down and sustained injuries resulting into his death.
3. The admitted position in the matter is that late Kishanlal was the official conductor of RSRTC bus and his death has occurred on account of falling from the bus while on duty.
4. The bone of contention in the present appeal is two fold; firstly whether the per month wages taken by the learned Tribunal to be Rs.1,500/- is correct or the learned Tribunal was required to accept the pay as Rs.3,000/- as stated by the family members of the deceased and secondly whether the negligence of the conductor was such that the claimants can be deprived of the compensation.
5. Learned counsel for the appellants submits that clear evidence was rendered on the part of the appellants/claimants that the monthly income of the deceased

conductor was Rs.3,000/- and there was not reason to disbelieve it. Learned counsel for the appellants also submits that in FIR as well as other documents, it is clearly mentioned that the bus was overcrowded and due to the pressure of the passengers, the door got opened resulting into falling of the conductor Kishanlal who ultimately died. Learned counsel for the appellants in this regard relies on the following judgments :-

(I) Smt. Radha Devi vs. M/s. Aluma Gyanchand of Shahpura, District Bhilwara & Ors. reported in 1981 WLN 188 (Raj.), relevant para no.25 whereof read as follows :-

"25. As regards the applicability of the doctrine of *res ipsa loquitur* I am clearly and firmly of the view that this applies to the facts of the present case. It is so clear, patent and obvious that the claimants, who were travelling in the bus could not know as to why the bus has left the road and why the same could not be stopped and continued to travel till it came to rest at a distance of 30 paces. No such knowledge can be attributed to the claimants that the king pin had broken and the breakage of the king pin led to the bus leaving the road and that it further could not be stopped despite application of brakes. For an ordinary traveller it is not possible to hold that he is aware that breakage of king pin can be the cause of accident. The principle enunciated in the *Madhya-Pradesh Case* cannot thus be applied to the facts of the present case and in my view having regard to the evidence in the present case the maxim fully applies. When once it is found that the maxim applies, heavy burden lay on the non-applicants not only to explain, but to prove that the breakage of the king pin resulted into the accident, for which they are not responsible or that they took all reasonable care and caution in the service and maintenance of the vehicle and the defect was so latent that it could not be discovered. In the present case from the side of the owners no such evidence has been led to show that the king pin was subjected to periodical inspection, service and maintenances. There is no evidence to this effect as to when the king pin was last greased, and what is its normal life when timely greased and otherwise. The king pin has not been produced to make out a case that it was not worn out. The vehicle was ten years old. There is no evidence to the effect that in these ten years whether the king pin was ever replaced or serviced. The king pin requires to be greased after every 1000 Kms run, as would appear from *Tata Diesel Vehicles Operator's Hand Book* p. 79. Shri Singhvi, learned Counsel for the respondents, brought the king pin in Court for demonstration. The king pin appears to be a solid, thick pin not liable to be easily broken and appears to have very long life, but still it requires greasing after every 1,000 Kms. It is not known as to whether there were covers to the king pin on both the sides, so as to prevent its fall. There is no evidence worth the name as to how the king pin was broken and fell down. There appears only the bald statement of the driver to the effect that the pin is fixed in the spring and if the pin breaks the vehicle goes out of control. He has not explained as to how the king pin fell down and he has also not explained whether application of brakes would be possible, in case of breaking of the king pin. No expert has been

examined by the owners of the vehicle. It is true that the king pin is not open to inspection from outside, but still it is the duty of the owners to prove by positive evidence that it was properly serviced and maintained. There is complete lack of evidence on this score, in the absence of which the owners cannot be absolved from liability. I may also refer here that a reasonable inference on facts can be drawn regarding rashness on the part of the driver. Admittedly there were pot-holes in the road and the condition of the road was bad. When the bus continued to run up to a distance of 30 paces even after leaving the road and it could even cross the pit three feet deep and five feet wide and then cross the mount, the conclusion, to my mind is irresistible that the vehicle must have been driven on the road at an unusual and excessive speed, which was necessarily excessive looking to the condition of the road. The driver ought to have driven the vehicle with a very slow speed having regard to the bad condition of the road, lest the weaker part of the bus may break. Driving the bus at an excessive speed on a pot-holed road and a bad and damaged road might have been the cause of breaking of the king pin. Had the driver avoided such speedy driving, he would have avoided the breakage of the king pin and the accident. Thus the two conclusions are clear, first, that there was rashness on the part of the driver in driving the bus at an excessive speed and the second, that the owners of the bus have failed to prove that all care and caution was taken by them in maintaining the bus and they have also failed to prove that the breakage of king pin resulted into going of the bus out of control and that the brakes could be ineffective and were ineffective on account of breakage of king pin."

(II) Rati Ram Pandey and another. vs. Lalit Kumar and others. reported in 2000 ACJ 901 (M.P.), relevant para no.7 whereof read as follows :-

"7. After perusal of evidence it is apparent that the learned Tribunal has drawn wrong conclusion and committed error in dismissing the claim petition. It is an admitted fact that the deceased was employed with the non-claimant Nos. 1 and 2 as ticket agent and it is also an admitted fact that on the relevant date, his services were utilised as a conductor. It is also stated by the previous driver Suresh, CW 2, in his statement that the latches of the doors of the bus were not working properly; therefore, the deceased, who was working as a conductor, unfortunately fell down because of poor maintenance of bus and got himself killed. This negligence on the part of owner of bus is well established and it is also established that the deceased was working as a conductor at the relevant time. From these facts, the Tribunal has failed to draw the inference of rash and negligent act of the owner and exonerated the non-claimants, this is erroneous approach of the Tribunal."

6. Learned counsel for the respondents have opposed the submissions on the ground that 100% liability of the deceased conductor has been established as he himself was required to maintain the caution while travelling on duty in the bus in question.

7. This Court perused the official certificate given by the RSRTC, produced by the

learned counsel for the appellants which certifies that the pay drawn by the deceased bus conductor at the time of his death as on 7.2.1996 was Rs.3,187/-. The said certificate is taken on record.

8. After hearing the learned counsel for the parties and after perusing the material available on record, this Court is of the opinion that there is a consistency in the FIR and the other evidence rendered that there was pressure of the passengers which resulted into falling of conductor Kishanlal and thus, he cannot be said to be negligent. This Court also finds that the precedent law cited by the learned counsel for the appellant is fully applicable on the facts of the present case. Thus, this Court concludes that the appellants are entitled to compensation while taking the monthly wage of the deceased as Rs.3,000/- as averred by the appellants and reaffirmed by the certificate issued by the RSRTC itself and further, the RSRTC is fully liable to pay the compensation. Thus, learned counsel for the parties were asked to jointly submit the calculation afresh as per the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & Ors. ; AIR 2017 SC 5157, while treating the monthly wages of Rs.3,000/-. Learned counsel for the parties have furnished the same before this Court, which reads as follows:-

Age of the Deceased

39

Multiplier

15

Future Prospects

50%

Deduction on count of Personal Expenses

$\frac{1}{4}$

Monthly Income of the Deceased

Rs.3,000/

Monthly Income after adding Future Prospects

Rs.4,500/-

Monthly Income after deducting Personal Expenses

Rs.3,375/-

Yearly Income of the deceased

Rs.40,500/-

Total Income after applying Multiplier

Rs.6,07,500/-

Other Conventional Heads

70,000/-

Total Compensation

Rs.6,77,500/-

9. Thus, the appellants are entitled to compensation to the tune of Rs.6,77,500/- which shall be payable along with interest @ 6% per annum from the date of filing of claim petition till actual payment is made. The said amount is to be paid within three months from today, failing which the same shall carry interest @ 9% per annum for the subsequent period (i.e. after three months from today) till actual payment is made.

10. Resultantly, the appeal is allowed as aforesaid. All pending applications also stand disposed of.