

(1988) 03 AHC CK 0048

In the Allahabad High Court

Case No : F.A.F.O. No"s. 301, 302 and 309 of 1980

Hardev Kaur and Others

APPELLANT

Vs

Rajasthan State Road Trans. Corpn. and Others

RESPONDENT

Date of Decision : 02-03-1988

Acts Referred:

Citation : (1990) ACJ 173

Hon'ble Judges : R.K. Gulati, J;K.C. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—These three connected appeals have arisen out of the Motor Accident Claim No. 55 of 1977 and Motor Accident Claim No. 5 of 1978. Out of these two claims, Motor Accident Claim No. 55 of 1977 has been preferred by Hardev Kaur and her children, whereas Motor Accident Claim No. 5 of 1978 has been filed by Lt. Col. Avinash Bhalla. Both of these claims were preferred against Rajasthan State Road Transport Corporation and Ramesh Chandra Sharma, its driver.

2. The aforesaid two claims were in respect of the accident which took place on 30.7.1977 at about 3.30 p.m. when the Ambassador car No. UPS 5843 driven by Major Dalip Singh was dashed against by Ramesh Chandra Sharma, the driver of the bus No. RSG 7487 of Rajasthan State Road Transport Corporation.

3. On 30.7.1977, Major Dalip Singh was going to Delhi by his Ambassador car, along with his wife Hardev Kaur and his minor sons Jasinder Singh and Balwinder Singh. He had picked up Lt. Col. Avinash Bhalla from the Mess for going to the Ordnance Depot. Avinash Bhalla was to be dropped at Narhauli crossing where the occurrence took place. Major Dalip Singh was going to Delhi by National Highway when the bus No. RSG 7487 collided on left hand or western side of the National Highway as a result of which Major Dalip Singh received serious injuries and ultimately succumbed to death in the same evening. His two

sons as well as his wife were also injured. Lt. Col. Avinash Bhalla, who filed Claim Petition No. 5 of 1978, also received injuries. In the accident, the Ambassador car was badly damaged.

4. For the accident, following are the details of compensation of Rs. 5,50,000/- claimed by Hardev Kaur:

(a) Rs. 5,00,000/- on account of death of Major Dalip Singh.

(b) Rs. 50,000/- on account of injuries sustained by Hardev Kaur, Master Jasinder Singh and Master Balwinder Singh.

5. In the claim petition, Hardev Kaur and others alleged that Major Dalip Singh was an Army Officer and he had a very bright future. He was 36 years of age at the time of accident and was drawing Rs. 2,200/- per month and was nearly spending Rs. 1,400/- per month on the claimants, who were solely dependent on the deceased.

6. Claim No. 5 of 1978, as stated above, was filed by Lt. Col. Avinash Bhalla for compensation for the injuries which have been received by him, on the ground that the accident occurred due to rash and negligent driving of the bus by Ramesh Chandra Sharma.

7. The Rajasthan State Road Transport Corporation and Ramesh Chandra Sharma filed two separate written statements but pleaded a common case. It was denied that the accident took place on account of rash or negligent driving of the driver of the bus. On the other hand, the bus was being driven very carefully and at slow speed but as the driver of the car was negligent and was driving it at a very high speed, the car dashed against the left hand side of the bus in the middle when half of the bus had already crossed the National Highway. The respondents denied that Lt. Col. Avinash Bhalla was also travelling in the car or that he received any injury in the occurrence.

8. Before the Motor Accidents Claims Tribunal, the parties led oral evidence on the controversy as to whether the accident occurred due to negligence of the bus driver or because of rashness of Major Dalip Singh. Hardev Kaur, PW1, Lt. Col. Avinash Bhalla, PW 2 and Dr. Y.K. Dubey, PW 3, appeared for the claimants of the two cases, whereas Ramesh Chandra Sharma and Prem Singh, OPW 1 and 2, appeared for the Rajasthan State Road Transport Corporation.

9. The learned Judge also made local inspection of the spot on 24.12.1979 in the presence of the counsel for both the parties. The inspection note is on the record as paper No. 47-A The inspection was made at the request of the Rajasthan State Road Transport Corporation.

10. Holding that the accident took place on account of the rash and negligent driving of Ramesh Chandra, driver of the bus, the learned Judge awarded Rs. 1,80,000/- as compensation to Hardev Kaur and her two sons, whereas Rs. 10,000/- was determined as damages payable to Lt. Col. Avinash Bhalla in his

Claim No. 5 of 1978.

11. The decisions of the two claim cases have given rise to these three appeals. Out of these three appeals, F.A.F.O. Nos. 301 and 302 have been filed by the Rajasthan State Road Trans. Corpn., whereas F.A.F.O. No. 309 of 1980 has been preferred by Hardev Kaur and others. In order to fix the responsibility of this accident, reference may be made to the driving regulations 6 and 7 as given in the 10th Schedule to the Motor Vehicles Act. They provide as follows:

(6) The driver of a motor vehicle shall slowdown when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

(7) The driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

12. From the above, it is clear that it was the duty of the bus driver to slow down his vehicle when approaching the crossing and should not have entered the road intersection with a view to cross the National Highway unless he had ensured that he could cross the highway without endangering the safety of the persons thereon. Major Dalip Singh was going to Delhi by the National Highway whereas Ramesh Chandra was coming by the side road going to Bharatpur from Mathura. Both the witnesses, examined by the claimants, stated that Major Dalip Singh was driving the car with care and caution but the accident occurred due to the bus suddenly entering the highway from eastern or Mathura side without giving any horn so that besides all efforts made by Major Dalip Singh to avoid the accident by moving towards the western side, the car and the bus collided with sufficient force so much so that the car was badly smashed, its door flung open and the inmates (including Hardev Kaur) were thrown out on the road and received injuries, but the driver of the bus could not stop it until it had gone upto a distance of 80 feet in the west. Even the statements of Ramesh Chandra Sharma, OPW 1 and Prem Singh, OPW 2, go to establish that the occurrence took place on account of rash and negligent driving of the driver of the bus. Ramesh Chandra Sharma stated that before entering the bypass he had seen on both sides of the National Highway and after passing half of the bypass and before entering the western lane of the bypass he had seen towards his left in order to ensure whether any vehicle was coming from that side, yet he could not see the car with which this accident took place. Evidently, this statement was false. If Ramesh Chandra Sharma would have cared to see towards his left hand side before entering the second lane of the National Highway, he must have seen the Ambassador car, coming down the slope from Agra side and should not have proceeded until the car had passed the crossing.

13. The Motor Accidents Claims Tribunal found from the spot inspection as well

as the site plan that the driver of the bus could see on the straight highway upto a distance of 1 1/2 or 2 furlongs, i.e., upto uppermost point of the bridge. Evidently, his rashness was the result of the accident. The distance, where the car and bus were found after this accident, has been shown in the site plan (Exh. 3) as 81 feet. Ramesh Chandra Sharma did not dispute the distance but he stated that he took the bus further and stopped it on one side of the road, meaning thereby that he deliberately took the bus upto a distance of 81 feet and then parked it on the left hand side of the road. This statement is incorrect. The position in which the bus was found after the accident and the report of the Head Constable Motor Transport (Exh. Ka), did not leave the least doubt that the driver of the bus had not deliberately parked the bus at that spot but the bus reached upto that distance as it was running at a high speed and was not within the control of Ramesh Chandra Sharma, driver. It is not necessary for us to mention all other circumstances which were found against the Rajasthan State Road Transport Corporation by the Tribunal for rejecting the pleas taken in defence and for accepting that the accident occurred due to the negligence of the bus driver.

14. So far as the quantum is concerned, the counsel appearing for the appellant urged that the Tribunal incorrectly held that the deceased Major Dalip Singh must have been spending 50 per cent of his income on himself and making available the remaining to his family. Coming to the question of damages, the appellant claimed damages under two heads:

(i) A sum of Rs. 5,00,000/- has been claimed as damages on account of the death of Major Dalip Singh.

(ii) A sum of Rs. 50,000/- has been claimed as damages in respect of the injuries received by Hardev Kaur, Master Jaswinder Singh and Master Balwinder Singh.

15. In the cross-examination, the evidence was that Major Dalip Singh was drawing monthly salary at the rate of Rs. 2,200/- who died leaving a wife and 3 minor children. The court below held that the deceased Major Dalip Singh had been spending half of his salary on himself while remaining half was spent on his family. He was aged 36 years at the time when the occurrence took place. The normal span of life was estimated as 56 years as that was the age when Major Dalip Singh would have retired. On that basis, he calculated the damages as Rs. 2,64,000/- and after deducting one-third by way of lump sum payment, the balance of Rs. 1,76,000/- was found payable to his heirs and legal representatives. We are in agreement with the view taken by the court below.

16. Bingham's Motor Claims Cases, 5th Edn., page 340, says about the principles/ measures of damages:

The damages which are to be awarded for a tort are those which "so far as money can compensate, will give the injured party reparation for the wrongful act". Admiralty Commissioners v. Susquehanna Owners, the Susquehanna. The words "so far as money can compensate" point to the impossibility of equating money with human suffering or personal deprivations. A money award can be

calculated so as to make good a financial loss. Money may be awarded so that something tangible may be procured to replace something else of like nature which has been destroyed or lost. But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation.

17. In the instant case, the learned Judge has taken into account the relevant consideration while determining the just compensation which the appellants were entitled to receive. He neither committed any legal infirmity nor any error which could entitle us to interfere. With regard to the appellate court's power to interfere, it has been stated in *Greenfield v. London and North Eastern Rly.* (1944) 2 All ER 438:

The principle on which the Court of Appeal reviews the assessment of damages, whether too high or too low, is not because the Court of Appeal might have given rather more or rather less, but only (a) if the judge has omitted some relevant consideration or admitted some irrelevant consideration, or (b) if the amount is so excessive, or insufficient, as to be plainly unreasonable.

18. An appellate court should be disinclined to reverse the findings of a trial judge as to the amount of damages merely because it thinks that if the case would have been tried by the appellate court in the first instance, the claimants would have been given a lesser sum. If the court below would have acted on some wrong principles of law or that the amount awarded was so extremely high or very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damages to which the claimants are entitled, but such is not the position in the instant case. Consequently, we are unable to accept the arguments.

19. The counsel further urged that the court below committed an error in making 33 per cent deduction out of the total compensation calculated by it for lump sum payment. We are unable to accept the submission. The courts have made deductions of 33 per cent in cases where circumstances of the same require it. The principle adopted in some cases is: higher the compensation, higher the deduction. On the facts of this case, we do not wish to enter into this controversy further.

20. So far as the First Appeal No. 301 is concerned, the learned counsel for the appellant, Rajasthan State Road Transport Corporation, could point out nothing which would justify our interference with the amount of compensation awarded to the respondents.

21. Consequently, all the 3 appeals fail and are dismissed with no order as to costs.