

(2003) 12 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 24 of 1997

Himachal Road Transport Corporation	APPELLANT
Vs	
Ramku and Others	RESPONDENT

Date of Decision : 17-12-2003

Acts Referred:

Citation : (2004) 2 ACC 775 : (2005) ACJ 1432 : (2004) 1 ShimLC 302

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

Bench : Single Bench

Advocate : M.S. Chandel and Raman Sethi, for the Appellant; S.R. Pandeyar and Dinesh Thakur, for the Respondent

Judgement

Arun Kumar Goel, J.—Appellant is aggrieved with the award dated 1.11.1996, passed by learned Motor Accidents Claims Tribunal, Solan. Vide impugned award in M.A.C. Petition No. 22-S/2 of 1994, titled Ramku v. Managing Director, Himachal Road Transport Corporation, compensation has been awarded in the sum of Rs. 3,10,000 with interest at the rate of 6 per cent per annum from 23.12.1993 to 5.9.1994 and from 9.4.1996 till the date of payment, provided the compensation was to be indemnified by the respondent No. 1 on or before 20.12.1996. (Reason for disallowing interest from 5.9.1994 to 8.4.1996 given is that during this period file remained consigned to the records, as it was dismissed for default on 5.9.1994). In case, the appellant failed to pay the awarded amount, as aforesaid, it was to carry interest at the rate of 12 per cent per annum with effect from 10.12.1993.

2. Facts as they emerge from the record are that deceased Mathra was the resident of village Ser-Par-Deora in Tehsil-Arki, District Solan. He was 65 years old. Ramku is his first wife. He married for the second time with Ganga Devi. From this second marriage, he had three daughters who are respondent Nos. 3 to 5 in this appeal. It is the case of respondent Nos. 1 to 5 that on the fateful day, i.e., 13.6.1993, deceased Mathra was travelling in the bus bearing registration No. HIA 1192. This bus was of Himachal Road Transport Corporation,

the appellant, Hans Raj was its driver and Jagdish Chand was its conductor.

3. It was on its way from Solan to Jai Nagar. At about 8 p.m., the deceased had boarded the bus in question at Demehar. Bus reached Jol Khad at about 9 p.m. It was being driven in a rash and negligent manner. At Jol Khad, window of the bus suddenly got opened. Reason for its being opened was that it was not properly closed by the conductor of the bus. Keeping in view terrific speed of the bus and jerks received by Mathra, he got pushed out of the bus and fell out from the door of the bus. He received multiple injuries and died at the spot. When taken to Civil Hospital, Arid, he was declared "brought dead".

4. Deceased was the sole breadwinner so far respondent Nos. 1 to 5 are concerned. Thus, on account of his death, they have been left high and dry. As such, it was pleaded by respondent Nos. 1 to 5 that they were entitled for Rs. 10,00,000 as compensation. Deceased was working as a cobbler in his village besides earning from his agricultural pursuits as per these respondents.

5. Present appellant and respondent Nos. 6 and 7 in this appeal, were put to notice. They contested and resisted the claim of respondent Nos. 1 to 5. According to them, in criminal case, both the driver and conductor have been acquitted, as such, none of them was liable for payment of compensation. Death was attributed to the acts of the deceased. Accident was due to his own acts of omission and commission when he suddenly jumped out from the moving bus without having waited it to stop at Jol Khad. Accident could be a-void-ed if deceased had more patience, as per owner, driver and conductor of the bus.

6. On 7.5.1996, following issues were framed by the Tribunal and resultantly, compensation, as aforesaid, was awarded:

(1) Whether Hans Raj, respondent No. 2, was driving the bus bearing No. HIA 1192 at Jol Khad at 9 p.m. rashly and negligently? OPP

(2) Whether the deceased Mathra was a passenger in the bus and he died on account of rash and negligent driving of the bus by respondent No. 2, Hans Raj? OPP

(3) If issue Nos. 1 and 2 are proved, then what amount of compensation the applicants are entitled to and from whom? OPP

(4) Relief.

7. Mr. Chandel, learned senior counsel appearing in this case submitted that learned Tribunal below has fallen into error by passing the impugned award. According to him, this is a case of clear-cut negligence of the deceased, who without waiting for the bus to stop, jumped when it was in motion. Per him, his client cannot be held liable for payment of any compensation, much-less as assessed by learned Tribunal below. Alternatively, as well as without conceding the claim of respondent Nos. 1 to 5 in any manner, he submitted that the multiplier of 15 has been applied in case of deceased, who was 65 years of age.

This is not only incorrect and unjustified, but perverse also. It appears that the learned Tribunal below either was completely oblivious of the principles as well as law governing the assessment of compensation in such cases like present one or the award was passed on wholly irrelevant considerations. According to him, if his client is held responsible, the maximum multiplier of 5 would subserve the ends of justice.

8. All the pleas have been controverted by Mr. Pandeyar and Mr. Dinesh Thakur, learned counsel appearing for respondent Nos. 1 to 5 claimants. According to them, negligence is writ large in this case. If both the doors rear and front of the bus in question had been properly bolted, there was no question of deceased having fallen down out of it or even in such a situation, if what is alleged by the appellant and respondent Nos. 6 and 7 is accepted to be correct, still door would only open when it is properly not bolted. Both of them further urged that acquittal of the driver and conductor in criminal case is of no consequence. Regarding multiplier applied in this case, it was urged by the learned counsel that keeping in view the age of the minor daughters begotten by deceased from his second wife Ganga Devi, as also her age, award calls for no interference. Thus, they prayed for dismissal of the appeal with costs throughout.

9. So far as findings on issue No. 1 recorded by learned Tribunal below are concerned, keeping in view the nature of the evidence as well as statements of RWs 1 and 2, i.e., Hans Raj driver and Jagdish Chand conductor, I am satisfied that no exception can be taken to such findings. As such, those do not call for any interference in this appeal. Even otherwise, doctrine of *res ipsa loquitur* is attracted to the facts and circumstances of this case. Reasons being that even if deceased had made an attempt to get down from the moving bus, what was the conductor doing, not a single word has been said in this behalf by him, i.e., Jagdish Chand, when he was in the witness-box. It was his responsibility to have ensured that bus stopped at the stoppage. It was further for him to have ensured that no one makes an attempt to open window particularly when the bus was in motion. What precautions he had taken, there is nothing said by him in his statement. In case the stand of appellant as well as respondent Nos. 6 and 7 is accepted, its direct result would be that even the safety and security of the other co-passengers of the bus was put to jeopardy by the acts of the deceased. By merely attributing accident to be the result of acts of omission on the part of the deceased, either appellant or respondent Nos. 6 and 7 cannot be exonerated of their liability. Accordingly findings on issue No. 1 need to be upheld and it is ordered accordingly.

10. Now straightaway coming to the question of compensation. In this case, learned Tribunal below has worked out dependency of the deceased at Rs. 1,500 per month or say Rs. 18,000 per annum and then by applying the multiplier of 15 as assessed, the compensation will come to Rs. 2,70,000. To this amount, a sum of Rs. 20,000 has been added on account of obsequies and another sum of Rs. 2,000 has been allowed for loss of love and affection, besides Rs. 10,000

allowed to both the widows, i.e., Ramku and Ganga Devi (to be shared equally between them), towards loss of consortium and thus, a sum of Rs. 3,10,000 has been worked out.

11. So far as multiplier in this case is concerned, it cannot be sustained in any circumstances. While assessing compensation in a case like the present one, age of each of the claimants is vitally relevant along with that of the deceased. In this case, deceased was admittedly 65 years of age, as per the showing of respondent Nos. 1 to 5. As such, keeping in view the age of the claimants and of the deceased, it is felt that interest of justice will be well-served if multiplier of 6 is applied. This has been fixed looking to the age of the minor claimants as well as the second wife, namely, Ganga Devi. In addition to this, respondent Nos. 1 and 2 being the widows of the deceased are also held entitled to a sum of Rs. 20,000 on account of loss of consortium to be shared by them equally. Rs. 20,000 allowed by learned Tribunal below to defray of expenses of obsequies of the deceased and Rs. 2,000 awarded on account of love and affection is also upheld. Thus, it is held that respondent Nos. 1 to 5 claimants are entitled to a total sum of Rs. $1,500 \times 12 \times 6 =$ Rs. 1,08,000 plus Rs. 2,000 plus Rs. 20,000 plus Rs. 20,000, that is to say total Rs. 1,50,000. In addition to this, they are also held entitled to interest at the rate of 12 per cent per annum from the date of filing the claim petition, i.e., 10.12.1993 till the date of its deposit/payment. Any amount deposited/ paid by appellant under no fault liability shall be deducted out of this compensation. It is further held that on the basis of the decision of the Supreme Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, out of total awarded compensation, Rs. 1,50,000 with proportionate interest, the respondent Nos. 1 and 2 shall get Rs. 37,500 to be shared equally by them, whereas respondent Nos. 3 to 5 will be paid Rs. 37,500 each. Any amount paid to any of the respondents shall be deducted out of this amount. So far as interest already received by respondent Nos. 1 to 5 is concerned, it shall not be recoverable from them in the peculiar facts and circumstances of this case. Orders accordingly.

12. Costs on parties.