
(2002) 08 RAJ CK 0054
In the Rajasthan High Court
Case No : C.M.A. No. 381 of 1994

Jagmit Kaur and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Motor Vehicles Act, 1939 — Section 88
Motor Vehicles Act, 1988 — Section 133
Penal Code, 1860 (IPC) — Section 304A

Citation : (2003) 1 ACC 462 : (2004) ACJ 1260 : (2003) 1 WLC 427 : (2003) 2 WLN 180

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : R.K. Singhal, for the Appellant; N.M. Lodha and Vineet Kumar Mathur, for the Respondent

Final Decision : Allowed

Judgement

H.R. Panwar, J.—This appeal is directed against the judgment and award dated 23.3.1994 passed by the Motor Accidents Claims Tribunal, Sri Ganganagar (hereinafter referred to as "the Tribunal") in Civil Misc. Case No. 48 of 1989, whereby the Tribunal dismissed the claim application filed by appellants-claimants (hereinafter referred to as "the claimants"). Aggrieved by the judgment and award impugned, the claimants have preferred this appeal.

2. Briefly stated facts to the extent they are relevant and necessary for the decision of this appeal are that a claim petition for compensation was filed by the claimants before the Tribunal claiming compensation for a sum of Rs. 19,75,000, inter alia, stating therein that on 29.10.1988 at 11.30 a.m., Charanjeet Singh, aged about 28 years was proceeding on a bicycle towards Sukhadia Circle, Sri Ganganagar, at that relevant time, a jeep bearing No. RNL 3214 came from behind, which was driven at a great speed, rashly and negligently by its driver, the respondent No. 2 Nagender Singh hit the cyclist from behind. Due to this

accident, Charanjeet Singh sustained injuries and became unconscious. He was taken to hospital by PW 2 Ranjeet Singh, PW 3 Baldev Raj, Kishan Lal Soni, Sohan Lal and Subhash Chandra, Charanjeet Singh succumbed to injuries in the hospital next day, i.e., on 30.10.88. It was averred that the said jeep was owned by the respondent No. 1. Report Exh. P/1-A of this occurrence was lodged by PW 2 Ranjeet Singh, son of Kripal Singh with the Police Station Kotwali, Sri Ganganagar. After usual investigation, police filed challan Exh. 8-A against the respondent No. 2 in the court of Judicial Magistrate, Sri Ganganagar. The respondent Nos. 1 and 2 filed their written statements, wherein the said accident was denied. The Tribunal framed as many as 4 issues. Issue Nos. 1 and 2 are interlinked and relate to the fact that the said jeep No. RNL 3214 hit Charanjeet Singh on 29.10.1988 at about 11.30 a.m. at Sukhadia Circle, Sri Ganganagar. Both these issues were decided against claimants. Issue No. 3 relates to quantum of compensation. The Tribunal held that since the findings on issue Nos. 1 and 2 have been recorded against the claimants, the claimants are not entitled for any compensation. Issue No. 3A relates to limitation, which was decided in favour of claimants. On these premises, the Tribunal dismissed the claim petition filed by the claimants.

3. I have heard learned counsel for the parties. Perused the judgment and award impugned as also the record of the Tribunal. I have also scrutinised, scanned and evaluated the evidence produced by the parties before the Tribunal.

4. PW 2 Ranjeet Singh, the author of F.I.R. Exh. P/1-A deposed before the Tribunal that on 29.10.1988 at about 11.30 a.m., he along with PW 3 Baldev Raj, Kishan Lal Soni, Sohan Lal and Subhash were standing at Tempo Union near Sukhadia Circle, they saw that a cyclist was hit by jeep No. RNL 3214, he fell down and the jeep driver fled away with the jeep. He along with other persons took the cyclist to the hospital. The jeep was also chased by some of them but could not be caught. Thereafter, the injured cyclist was taken to hospital by them and got him admitted in the hospital where he died. PW 2 stated that he made the statement Exh. P-1 to the police on which police registered a case Exh. P/1-A against the jeep driver Nagender Singh. He has shown the place of occurrence to the police which prepared site map Exh. P-2 in his presence and in presence of PW 3 Baldev Ram and Sohan Lal. The site map Exh. P-2 is on record. He stated that jeep was plied from Birbal Chowk to Jawahar Nagar. He saw the accident from a distance of 30 ft. He deposed that the jeep was at a great speed and it was out of control of the driver. The cyclist and the jeep were in the same direction. The cyclist was hit from behind by the jeep and after the accident, the driver of the jeep reversed the jeep and then fled away with the jeep. He noted down the jeep number soon after the accident.

5. Similarly, PW 3 Baldev Ram also deposed that on 29.10.1980 at 11.30 a.m., he along with PW 2 Ranjeet Singh, Kishan Lal Soni, Sohan Lal and Subhash were standing outside the Tempo Union situated near Sukhadia Circle. They saw that a cyclist was dashed by the jeep and thereafter the jeep driver fled away. He along

with above named persons lifted the injured cyclist and the cyclist was taken to the hospital by Ranjeet Singh PW 2. They had chased the jeep, the number of jeep was RNL 3214, it was driven at a great speed. He proved the site map Exh. P-2. PW 4, Dr. Om Prakash Sharma deposed that on 30.10.1988 he was posted as Medical Jurist at Civil Hospital, Sri Ganganagar. At the request of SHO, Police Station Kotwali, Sri Ganganagar, he conducted autopsy on the body of Charanjeet Singh and prepared post-mortem report Exh. P-3. The certified copy of post-mortem report is Exh. P/3-A. Thus, this witness proved the post-mortem report of deceased Charanjeet Singh. He further stated that Charanjeet Singh was got admitted in the hospital on 29.10.1988 at 11.45 a.m. which is evident from Exh. P-3. Charanjeet Singh was admitted on 29.10.1988 in the Male Surgical Ward "A". He was treated by the doctors of the hospital. However, he succumbed to injuries on 30.10.1988 and accordingly the police was intimated. PW 5 Moti Ram, Assistant Sub-Inspector of Police conducted mechanical inspection of the jeep No. RNL 3214 vide Exh. P-4. PW 6 Berisal Singh is the Investigating Officer. He deposed that he was posted at Police Station Kotwali. On receiving information from the Medical Jurist, Government Hospital, Sri Ganganagar, he went to the hospital and recorded the statement of PW 2 Ranjeet Singh Exh. P/1-A. On the basis of Exh. P/1-A, SHO Richhpal Punia registered Criminal Case No. 442/1988 for the offence u/s 304-A, Indian Penal Code and he was assigned the investigation of the case. He has proved the F.I.R. and the statement Exh. P-1 (Parcha Bayan) and Exh. P/1-A. He went to hospital, Sri Ganganagar and prepared Fardsurathal Laash of deceased Charanjeet Singh. He has also proved the site map and inspection note Exh. P-2 and Exh. P/2-A and inspection note Exhs. 5 and 5-A, seizure memo of jeep and cycle Exh. 6-A. This witness has deposed that the notice u/s 88 of the Motor Vehicles Act, 1939 (corresponding Section 133 of Motor Vehicles Act, 1988) was issued to the owner of the jeep, which was replied by DW 1 Bhanwar Lal Meena vide Exh. 7 and Exh. P/1-A. The owner of jeep endorsed on Exh. P-7 that at the relevant time of accident, the jeep was driven by the respondent No. 2 Nagender Singh who caused the accident while driving the jeep No. RNL 3214 at a great speed rashly and negligently which resulted into death of Charanjeet Singh. PW 1 Bhanwar Lal Meena in his deposition accepted that the police filed a challan against respondent No. 2 Nagender Singh for the offence u/s 304-A of the Indian Penal Code vide Exh. P-8, certified copy of which is Exh. P/8-A. All these documents were proved from the original record of court of Additional Judicial Magistrate, Sri Ganganagar in Criminal Case No. 150 of 1990, State v. Nagender Singh. The defence witnesses DW 1 Bhanwar Lal and DW 2 Nagender Singh were examined.

6. I have carefully gone through the statements of aforesaid witnesses produced by the claimants. From the statements of PW 2 Ranjeet Singh, PW 3 Baldev Raj, who are eyewitnesses of the occurrence, it is amply established that on 29.10.1988 at 11.30 a.m., while deceased Charanjeet Singh was proceeding on a bicycle near Sukhadia Circle, Sri Ganganagar, he was hit from behind by the jeep No. RNL 3214, which was driven at a great speed rashly and negligently by its

driver respondent No. 2, Nagender Singh. The testimony of these two witnesses is fully corroborated by the charge-sheet Exh. P/8-A, F.I.R. Exh. P/1-A, statement (Parcha Bayan) of Ranjeet Singh recorded by the police, Exh. P-1 and the site map Exh. P-2, the site inspection note Exh. P/2-A, Exh. P-4 and post-mortem report Exh. P-3. PW 3 Baldev Raj was also witness to the criminal case and police recorded his statement" u/s 161, Criminal Procedure Code. Certified copies of which are on record. From the statements of PW 4 Dr. Om Prakash Sharma, PW 5 Moti Ram and PW 6 Berisal Singh, it is established that deceased Charanjeet Singh was hit by the said jeep from behind on 29.10.1988 at about 11.30 a.m. near Sukhadia Circle. Due to this accident, Charanjeet Singh sustained injuries and ultimately succumbed to injuries in the hospital. The presence of eyewitnesses PW 2 Ranjeet Singh and PW 3 Baldev Raj, who were standing outside the Tempo Union near Sukhadia Circle cannot be doubted as these persons are the office-bearers of Tempo Union. There is nothing on record to show that these two eyewitnesses are trying to help claimants in any manner or they have not witnessed the accident. These witnesses are independent witnesses and their presence at the site of accident could not be doubted. More so, within 15 minutes of accident deceased was got admitted to the Civil Hospital, Sri Ganganagar which is evident from Exh. P-3 and from the statement of PW 4 Dr. Om Prakash Sharma. Testimony of both these eyewitnesses further finds corroboration from the statements of PW 5 Moti Ram and PW 5 Berisal Singh, who stated that PW2 Ranjeet Singh made a statement Exh. P/A-1 to the police on the basis of which the crime report was registered and on investigation, the police found respondent No. 2 rash and negligent for the said accident and accordingly he was challaned vide charge-sheet Exh. P-8 (certified copy Exh. P/8-A).

7. As against the claimant's evidence, respondents produced DW 1 Bhanwar Lal Meena and DW 2 Nagender Singh, both are employees of the respondents. Both these witnesses are interested witnesses. The respondents did not produce any independent witness to support their version. DW 1 Bhanwar Lal Meena admitted that respondent No. 2 Nagender Singh was the driver of the jeep. He has proved the reply to the notice Exh. 7 and Exh. 7-A to be scribed and written by his own handwriting, wherein he admitted that on 29.10.1988 at the time of accident, the jeep No. RNL 3214 was driven by its driver Nagender Singh. In view of this admission made by DW 1 Bhanwar Singh Meena, it does not lie in the mouth of this witness to say that no such accident has taken place. However, this witness admitted that jeep was seized by the police and he got the jeep released from the criminal court on "supurdaginama". Merely because this witness says that in his presence no accident took place, it cannot be said that the said accident did not take place. It is not the case of the respondents that at the relevant time of accident this witness was with the driver of the jeep or the occupant of the jeep. DW 2 Nagender Singh driver of the jeep admitted that he was the driver on the said jeep. He stated that the said jeep was in the workshop at Sri Ganganagar from 28.10.1988 to 30.10.1988 and the said jeep came out of workshop only on

30.10.1988. The respondents have not produced any record of the workshop. Not only this, the respondents failed to produce logbook of the said jeep, which has record of every movement of the vehicle. The logbook would have been best evidence to support the case of defence and if the respondents refrain from doing so, that would only be on the peril of an adverse inference being drawn against them.

8. In Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, the Hon''ble Apex Court has held that even if the burden of proof does not lie on a party the court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue.

9. In Amarlal v. Devilal 1989 ACJ 275 (Rajasthan), this court held as under:

"As the non-applicants have failed to produce the logbook maintained for this truck, an adverse inference is drawn against the non-applicants. I have pointedly asked this question to the learned counsel for non-applicant-respondents and they have failed to give any explanation as to why the logbook maintained for this truck was not produced either before the I.O. or before the Tribunal or before this court."

10. In this view of the matter even otherwise an adverse inference regarding negligence of respondent No. 2 is to be drawn. More so, there is overwhelming evidence as discussed above by which it has been established that death of Charanjeet Singh resulted due to the accident caused by respondent No. 2 by driving the said jeep rashly and negligently.

11. While deciding issue Nos. 1 and 2, the Tribunal did not rely on the statements of the claimants'' witnesses solely on the ground that the report of the occurrence was not lodged promptly with the police by PW 2 Ranjeet Singh and it was lodged only on next day. Had they seen the accident, they would have promptly lodged the report soon after the accident and on these premises, the Tribunal preferred the evidence of defence witnesses DW 1 Bhanwar Lal Meena and DW 2 Nagender Singh, who are wholly interested witnesses. In my considered opinion, the Tribunal fell into patent error in preferring the evidence of two wholly interested witnesses DW 1 Bhanwar Lal Meena and DW 2 Nagender Singh whose testimony is otherwise not worth reliance in view of the aforesaid discussion as against the statements of the independent witnesses PW 2 Ranjeet Singh and PW 3 Baldev Raj. Not only this, the claimants'' case further finds strength from the statements of PW 4 Dr. Om Prakash, PW 5 Moti Ram, PW 6 Berisal Singh, the Investigating Officer and Exh. 7 and Exh. 7-A and the statement of DW 1 Bhanwar Lal Meena, a senior officer of I.B. Department of respondent No. 1, who admitted the said accident. Even the presence of the claimants'' witnesses have not been disputed. The respondents in their written statements did not plead that the jeep was in the workshop from 28.10.88 to 30.10.1988. It is only for the first time when DW 2 Nagender Singh was examined in the Tribunal, that he came out with the plea that the said jeep was

in the workshop for the afore noticed period. It is settled law that any amount of evidence beyond the pleadings cannot be read in evidence. Even otherwise, scenario of the accident as stated can easily be visualised from the statements of the aforesaid eyewitnesses, which make it clear that the accident was due to rash and negligent driving of jeep by its driver respondent No. 2. More so, hitting from behind itself construed the negligent act of the driver. Any person, proceeding ahead, can well be noticed by the driver of the vehicle coming from behind and in such eventuality there cannot be an accident without being negligence on the part of the driver.

12. Having considered the afore noticed evidence and the material in its entirety, I am of the considered opinion that the claimants succeeded in establishing the fact that deceased Charanjeet Singh was hit from behind by the said jeep, which was driven rashly and negligently by its driver respondent No. 2, Nagender Singh. In this view of the matter, the finding of the Tribunal on issue Nos. 1 and 2 cannot be sustained and is set aside and I hold that the said accident was result of rash and negligence of the jeep driver, respondent No. 2.

13. So far as question of quantum of compensation is concerned, the Tribunal has not computed the damages. However, taking into consideration the long pendency of the matter, I do not propose to remit the matter for computation of compensation to the Tribunal but instead of that, I consider it appropriate to compute the compensation on the basis of evidence which had been led by the parties before the Tribunal, the claimants pleaded in the claim petition that at the relevant time of accident, deceased Charanjeet Singh was a young person of 28 years having monthly income of Rs. 3,000. PW 1, Jagmeet Kaur, wife of the deceased in her deposition, stated that her husband was a healthy person of 28 years and she and her three minor children were dependent on the income of the deceased. The deceased used to run a tractor repairing workshop at village Dheengawali and used to earn sometimes Rs. 200-300 per day and sometimes Rs. 600 per day. She admitted that Dheengawali is a small village and her husband used to run the workshop to repair the tractors. There is no other workshop in the village. The statement of PW 1 remained uncontroverted. The claimants pleaded and proved the age and income of the deceased. Considering the fact that the deceased was running a tractor repairing workshop in a small village, his monthly income can safely be taken to Rs. 3,000. Deducting therefrom Rs. 1,000 towards personal living expenses of the deceased himself, the monthly contribution comes to Rs. 2,000. Thus, the annual contribution works out to Rs. 24,000. This amount is to be multiplied by a multiplier according to the age of the deceased. It is settled law that the multiplier cannot exceed 18 years" purchase factor. Second Schedule of Section 163-A of Motor Vehicles Act, 1988 provides the multiplier in the fatal accident cases for different age groups. Victims of fatal accidents in the age group above 25 years but not exceeding 30 years, the multiplier that is provided is 18 years" purchase factor. Thus, the annual dependency needs to be multiplied of 18 years" purchase factor. Thus, the amount of dependency comes to Rs. 4,32,000 (Rs. 24,000 x

18), added to this a sum of Rs. 20,000 for loss of company, consortium and love and affection. Thus, the total compensation works out to Rs. 4,52,000 rounded off to Rs. 4,50,000. Claimants are also entitled to interest at the rate of 9 per cent per annum on the sum computed from the date of claim application.

14. In view of the aforesaid discussion, this appeal succeeds and is allowed. The claim application filed by the claimants is allowed and award of Rs. 4,50,000 is passed in favour of the claimants and against the respondents jointly and severally. This amount shall carry interest at the rate of 9 per cent per annum from the date of application, i.e., 2.2.1991 till realisation. Appellant Jagmit Kaur shall be paid Rs. 1,50,000 and interest thereon. The minor claimants, namely, Rupender Kaur, Jaspreet Singh and Appu shall be paid Rs. 1,00,000 each and interest thereon. The amount payable to minor shall be invested in a fixed deposit with a nationalised bank in view of the principles laid down by Hon"ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . No order as to costs.