

(1988) 04 RAJ CK 0002
In the Rajasthan High Court

Krishna Rathore and Others

APPELLANT

Vs

Hqs. 12 Infantry Division and Others

RESPONDENT

Date of Decision : 14-04-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A(3)

Citation : (1989) 1 ACC 507 : (1989) ACJ 943

Hon'ble Judges : S.M. Jain, J

Bench : Single Bench

Judgement

Sobhagmal Jain, J.—This appeal is directed against the award dated October 17, 1984 of the Motor Accidents Claims Tribunal, Jodhpur, awarding compensation of Rs. 36,000/- each to appellants No. 2 to 4 and disallowing the claim of appellant No. 1, as being barred by limitation.

2. The accident took place on November 23, 1980 by an Army Jeep-75B-15858-M, belonging to the Union of India, involving death of Capt. Khushal Singh. The jeep was coming from Naseerabad to Jodhpur. Its regular driver was Ram Naresh Singh but at the relevant time it was being driven by Capt. Gopinath. On the way, on account of the rash and negligent driving by Gopinath the jeep overturned near Banad, resulting in the accident. Capt. Khushal Singh received injuries in the accident and was shifted to the Military Hospital, Poona, where he died on December 6, 1980.

3. A claim petition was filed by his widow and minor children. Appellant No. 1 is the widow and appellants No. 2 to 4 are the daughters and the son. The Tribunal, by the award dated October 17, 1984, accepted the claim petition of the minor children but dismissed the claim filed by the widow Smt. Krishna Rathore. The Tribunal held that the accident was the result of rash and negligent driving by Capt. Gopinath, who was driving the vehicle at the time of the accident. Aggrieved by the aforesaid award of the Tribunal, appellants Nos. 2 to 4 have filed the present appeal for enhancement of the amount of compensation and appellant No. 1 has appealed that the decision of the Tribunal to disallow her

claim on the ground of being barred by limitation, was erroneous.

4. Mr. Maheshwari, counsel for the appellants, submits that the Tribunal has committed an error in disallowing the claim of Krishna Rathore on the ground of being barred by limitation. Appellant No. 1 is the widow of the deceased. Since claimants Nos. 2 of 4 were minor children, their independent right to claim compensation could not be and was not held to be barred by limitation. On account of the death of her husband Smt. Krishna Rathore had to confine herself in the house for some time to mourn the death of husband. Her case was that she was a "Pardanasheen" lady and was illiterate and nobody guided her to file the claim petition within time. The delay in filing the claim petition can be condoned u/s 110A(3) of the Motor Vehicles Act, by the Tribunal, on being satisfied that there was sufficient cause for not filing the petition in time. The accident, in the present case, took place on November 23, 1980, and the claim petition was filed on September 17, 1982. It will not be fair, in the facts and circumstances of the present case, to deprive an illiterate widow, compensation merely on the ground of delay in filing the petition. Her just claim should not be defeated merely on the ground of delay, which to my mind stands explained. In the facts and circumstances of the present case, I am satisfied that Smt. Krishna Rathore has shown sufficient cause for not filing the claim petition in time and the delay in filing the claim petition deserves to be condoned. The Tribunal, therefore, was not right in disallowing her claim for compensation on the ground of being barred by limitation.

5. The Tribunal has found that the jeep was being driven by Capt. Gopi Nath. He was driving the vehicle rashly and negligently. The accident was the result of rash and negligent act on the part of Gopi Nath, who was driving the jeep belonging to the Army.

6. On the question of quantum of compensation, learned Counsel for the appellants has not been able to show any mistake in the principles adopted or the calculations made by the Tribunal. The Tribunal has held that the dependency of the family on the income of the deceased was Rs. 1,000/- per month. The family consisted of 5 members and each of them was dependent on the income of the deceased to the extent of Rs. 200/- per month. The deceased was above 35 years of age on the date of the accident. The Tribunal applied a multiplier of 15 and by doing so awarded a compensation of Rs. 1,08,000/- to the claimant-appellants Nos. 2 to 4. I do not find any error in the award of the Tribunal as regards the quantum of compensation allowed to the appellants Nos. 2 to 4. As regards the claim of appellant No. 1, since I have held that her claim petition was wrongly dismissed by the Tribunal, on the ground of being barred by limitation, her claim also needs to be allowed. As the other claimants have been awarded Rs. 36,000/- each as compensation, based on their dependency on the deceased, I consider it just and proper to allow the same amount of compensation to appellant No. 1 also.

7. Accordingly, the appeal of appellant No. 1 is partly allowed and the award

passed by the Tribunal shall be modified to the extent that Smt. Krishna Rathore appellant No. 1, shall also be awarded Rs. 36,000/- as compensation. She will be entitled to interest at the rate of 8% per annum from the date of application. The appeal filed on behalf of appellants Nos. 2 to 4 shall be dismissed.

8. The parties shall bear their own costs of this appeal.