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**(1983) 11 RAJ CK 0010**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 12 of 1974

Krishna Roadways Nathdwara and Others

APPELLANT

Vs

Madanlal and Others

RESPONDENT

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**Date of Decision :** 11-11-1983

**Acts Referred:**

Fatal Accidents Act, 1855 — Section 1A, 2

**Citation :** (1984) RLW 24 : (1983) WLN 556

**Hon'ble Judges :** S.K. Mal Lodha, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

S.K. Mal Lodha, J.—M/s Krishna Roadways, Nathdwara and Saligram, who were non-petitioners Nos. 1 and 2 respectively before the Motor Accidents Claims Tribunal, Udaipur (for short "the Tribunal") have filed this appeal u/s 110D of the Motor Vehicles Act, 1939 (No. IV of 1939) (for short "the Act" herein) against the judgment and award dated October 15, 1973 of the Tribunal. The Tribunal has passed an award for Rs. 11,000/- in favour of the petitioners (Respondents). Respondents No. 1 and 2, are father and mother of one Someshwar. The appellants shall be referred as non-petitioners No. 1 and 2 and respondents No. 1 and 2 shall be referred as the petitioners,

2. Respondents No. 3 Rubi General Insurance Company Ltd., Bapu Bazar, Udaipur, was non-petitioner and it will be referred as non-petitioner No. 3 here in after.

3. Bus RJT 1517 was owned by non-petitioner No. 1. Its driver was non-petitioner No. 2. This bus left Udaipur bus stand for Bhilwara on 21st June, 1969 at 6.45 p.m. Someshwar, aged about 8 years was also going with Dau Lal, Head Master, Phalna Middle School, who is maternal uncle of Madan Lal. Dau Lal was sitting in front near the engine on the left side seat. Someshwar was sitting in his lap. It is not in dispute that the radiator of the engine was also inside the bus

and it was coming out about 6" of the body of the engine. Its mouth was towards the left side where Daulal with Someshwar and a few other passengers was sitting. When the bus reached Eklingji on way to Nathdwara, Saligram, driver opened the head of the radiator and some water was poured in it. Thereafter the lid of the radiator was closed. According to the petitioners after the bus had left Eklingji and had travelled about a mile ahead of Gedgia the Driver drove the bus fast. When it had travelled about ten miles from Eklingji towards Nathdwara all of a sudden the water in the Radiator reached boiling point. The lid (cap) was thrown by the force of the steam and the boiling water fell over Someshwar who was sitting in the lap of Daulal, as a result of which there were scalds which involved face, front of neck, front of chest, upper half of abdomen right forearm and arm in front left arm and forearm front, left though upper, 1/4 penis, etc. of Someshwar. Daulal also received burns. The passengers alighted from the Bus. At that time, the car was seen going from the side of Udaipur and Daulal took Someshwar in that car to Nathdwara Hospital, where first aid was administered, but it was advised that Someshwar should be taken to Udaipur. Someshwar was brought to Udaipur and he was admitted in General Hospital on June 22, 1979, where he died because of the extensive burns on June 23, 1979. The petitioners have alleged that Someshwar was in pain and agony because of the extensive burns till his death. The age of Someshwar at the time of death was eight years. He was studying in 2nd standard in School at Udaipur. He was brilliant boy and had a bright future. The details of the compensation claimed by the petitioners are given in para 11 of the claim petition. Three items, with which I am concerned in this appeal have been stated in para 11 as follows:

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The claim petition was resisted by all the non-petitioners. Non-petitioners No. 1 and admitted that non-petitioner No. 2 was driving the vehicle at the relevant time. This fact has also been admitted that the lid (cap) of the radiator was thrown and the boiling water fell over Someshwar. Amongst others, an objection was taken that this happening is not a motor accident and as such the Tribunal had no jurisdiction to entertain and decide the claim. The amount of compensation was disputed on the ground that it was exaggerated. Non-petitioner No. 3 (Insurance Company) also resisted the claim on the grounds, which were raised by non-petitioners No. 1 and 2. It submitted that it is liable for Rs. 2000/- only. In the judgment and award under appeal, the tribunal has not produced the five issues. On behalf of the petitioners, statements of PW1 Daulal, PW2 Dr. Ramesh Chandra, PW 3 Dr. Uma Kant, PW4 Abdul Rehman, PW5 Madan Lal and PW6 Shyam Sunder have been recorded. On behalf of non petitioners No. 1 and 2 statements of DW1 Saligram, DW2 Girdharisingh, DW3 Bhanwarlal, DW4 Bhimsingh and DW5 Ramlal have been recorded. Documentary evidence has also been placed on record. The Tribunal has recorded the following findings.-

- (1) That the Tribunal, u/s 110 of the Act had jurisdiction to entertain the claim;
- (2) That Someshwar was burnt and died on account of the negligence of non-petitioners No. 2 Saligram;
- (3) That the petitioner is entitled to get Rs. 10,800/-. (Rs. 10,800/- as compensation and Rs. 200 as the expenses on treatment);
- (4) That the liability of the Insurance Company is limited to Rs. 2000/-.

On the aforesaid findings, award of Rs. 11000/- was passed on October 15, 1973. Non-petitioners No. 1 and 2 have filed this appeal as aforesaid.

3. I have heard Mr. A.L. Mehta and Mr. A.R. Mehta for the appellant, Mr. M.C. Bhandari for respondents No. 1 and 2 and Mr. Rajendra Mehta for Respondent No. 3 and have carefully considered the record.

4. Learned Counsel for the appellants argued, in the first instance, that the claim for compensation in this case should not have been entertained by the Tribunal u/s 110 of the Act, as it is not a motor accident as envisaged by s.110 of the Act. He has assailed findings on issue No. 3. Learned Counsel for respondents No. 1 and 2 have supported the finding.

5. The first question that emerges for determination is whether the Tribunal had jurisdiction to entertain the claim

6. Relevant portion of Section 110 of the Act is as follows:

110. Claims Tribunals (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accident Claims Tribunals (hereinafter referred to as Claims Tribunals) for such area as may be specified in that notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both:

Provided that where such claim includes a claim for compensation in respect of damage to property exceeding rupees two thousand the claimant may, at his option, refer the claim to a Civil Court for adjudication, and where a reference is so made, the Claims Tribunal shall have no jurisdiction to entertain any question relating to such claim.

Section 110 A deals with the application for compensation. It provides for procedure and circumstances under which the family of victim of a motor accident can get compensation.

7. "Accident" or "Motor Accident" has not been defined under the Act. In Oxford English Dictionary,

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"accident", has been defined as "an unfortunate event, disaster, a mishap, as also anything that happens without foresight or expectation : an unusual event, which proceeds from some unknown cause, or is an unusual effect of a known cause : a casualty, a contingency". In Webster's Third New International Dictionary, "accident" has been defined as sudden event or change occurring without intent or volition through carelessness, unawareness, ignorance or a combination of cause and producing an unfavorable result; an unexpected happening causing loss or injury which is not due to any fault or misconduct on the part of the person injured but from the consequences of which he may be entitled to some legal relief. In Chambers Twentieth Century Dictionary the "accident" has been defined to mean an unforeseen or unexpected event, a chance." The expression used in Section 110A is "arising out of the use of motor vehicles. The word "use" has been used in wide sense. The word "use" in the Oxford Dictionary has been defined to mean "purpose for which thing can be used", "application to a purpose", "employ for a purpose" and right or power of using. It has been admitted that Someshwar was sitting in the bus and he was sitting on the front seat on the left of the engine of which a portion of the radiator was coming out. The lid (cap) of the radiator was thrown by the force of the steam and the boiling water from the radiator fell on the body of Someshwar, which resulted in causing extensive burns over his body. It cannot be denied that the vehicle was hot in use at that time. This sudden event or unexpected happening or misfortune happened causing burns not due to the fault of Someshwar but from the consequence of which he may be entitled to some legal relief. The vehicle was in use and while it was in use the unexpected event had happened.

8. PW2 Dr. Ramesh Chandra has been examined. From his statement, it is clearly established that Someshwar died due to shock as a result of extensive scalds on the body surface area. In these circumstances, there is no room for debate that Someshwar had died in an accident which arose out of use of the motor vehicle. The Tribunal has correctly held that the accident in question is motor accident within the meaning of Section 110 of the Act and, therefore, the Tribunal had jurisdiction to entertain it. The first contention issued by the learned Counsel for the appellant is therefore, repelled.

9. It was, then, argued by the learned Counsel for the appellant that the Tribunal was not right in recording the finding that Someshwar was burnt to death on account of rash or negligent act of Saligram. The first question in this connection that arises is whether non-petitioner No. 2 Saligram, had poured the water and placed the lid (cap) on it, On behalf of the petitioners, PW 3 Dr. Uma Kant, who was also a passenger in the bus, has been examined. He has stated that at Eklingji water was poured in the radiator by the Driver & that the Driver put the lid over it. PW6 Shyam Sunder has stated that it was Driver, who had poured the water in the radiator at Eklingji. DW1 Saligram has stated that he stopped the bus at Rani Bawri and "these" water was poured in the radiator. According to PVVT DW 1 Saligram water was poured in the radiator by Khalasi and he put the

cap on it. In the reply it was not alleged that Khalasi had poured water in the radiator and he has also put the lid (cap) on it. DW 4 Bhimsingh is conductor. He is son of non-petitioner No. 2 Saligram. He has stated that he had poured the water in the radiator and placed the lid (cap) on it. No reliance can be placed on the testimony of DW 1 Salig Ram and DW 4 Bhim Singh who is an interested witness -particularly when this fact was not stated in the reply. In these circumstances the Tribunal was justified in not believing non petitioner No. 2 and holding that it was non-petitioner No. 2 who had poured water in the radiator at Eklingji and placed cover on it.

10. The other question is whether Saligram was negligent and on account of that the lid (cap) was thrown and boiling water fell on Someshwar and him. PW 1 Daulal has deposed that the lid (cap) was not placed properly; that there was some leakage of water from the radiator and that he told the driver Saligram but he did not pay any heed to it. A perusal of the statement shows that the bus went ahead and on account of the jerk; the lid (cap) was thrown and the boiling water fell on Someshwar and on him. PW 3 Dr. Uma Kant has stated that when the bus left Eklingji, after the driver had poured water in the radiator, there was some leakage from the radiator. A complaint was made in this regard by one of the passengers to the driver but he did not pay any heed, and when the bus had travelled a little distance, the lid (cap) was thrown and the boiling water fell over the child (Someshwar). To the same effect is the statement of PW 6 Shyamsunder. He has stated that he had complained to the driver that he has not placed the lid (cap) properly but no heed was paid by the driver. In rebuttal, DW Saligram has denied that any passenger complained to him. He has introduced the cause of the water falling on Someshwar and PW 1 Daulal, that the shaft of the water body had been broken and that was the reason of the engine's becoming hot. It has been admitted by him that the water was poured in the radiator and this is the usual practice as the engine becomes hot because of the level being higher and the bus had to climb it. No copy of the report has been filed by any of the parties. However PW4 Abdul Rehman was examined by the petitioners. He has stated that the bus was inspected on July 16, 1969, but he did not find any defect. He has also deposed that the water only reaches boiling point when the circulation system of the radiator is defective. DW5 Ramlal has deposed that if the shaft of the water body is broken, the circulation stops and the water in the radiator in the engine becomes hot. The Tribunal has not believed this statement for the reason that he has not inspected the bus after the accident and, therefore, on the basis of this statement it cannot be said that the shaft of the water body was broken. From this evidence, it is clear that the Tribunal was not unjustified in holding that DW2 Saligram, the Driver, has not placed the cap properly. There appears to be some defect as the water in the radiator reached boiling point and the steam through the lid (cap) leaked and boiling water fell on the body of Someshwar. It may be recalled here that the mouth of the radiator was towards the left side where Daulal together with Someshwar and few other passengers were sitting. He should have placed the lid

(cap) properly. This was an act of negligence on the part of the driver Saligram, for he has not put the lid (cap) on the radiator properly.

11. "Negligence" is the omission to do which a reasonable man, guided upon the consideration, which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. Negligence is not a question of evidence it is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which could be reasonably foreseen to be likely to cause physical injury to persons. Saligram (driver) should have kept the lid (cap) properly and as a reasonable and prudent man should have foreseen that the lid (cap) might be shown by the force of steam and the boiling water could come on Someshwar causing burnt injuries. In my opinion, the Tribunal was right and justified in holding that it was the negligence of the driver Saligram, which resulted in the accident.

12. P.W. 2 Dr. Ramesh Chandra has examined the injuries on the person of Someshwar. He has stated that there were scalds involving the body surface area. He has also stated that the death was due to shock as a result of extensive scalds on the body of surface area. It has, therefore, rightly been concluded by the Tribunal that Someshwar was burnt to death on account of the negligent act of Saligram No valid exception can be taken to the finding recorded by the Tribunal in this regard.

13. Now I come to the question of compensation.

14. The Tribunal has awarded Rs 11,000/- as compensation (Rs. 10,800/- being loss of the future pecuniary benefits and Rs. 200/- as the amount incurred over the treatment of Someshwar). It is established from record that Someshwar was 8 years of age at the time of the accident; and that he was only son of his parents. It appears from Someshwar's report Ex. 7 issued by the St. Mary's Convent Higher Secondary School which was admitted by the non-petitioners, counsel, that Someshwar was a brilliant and intelligent boy. He (P.W. 5) has stated that he wanted Someshwar to become a Doctor and Someshwar would have paid him Rs. 400-503 per month to him.

15. While considering Sections 1A and 2 of the Fatal Accidents Act, 1995, in a case relating to death of boy about 8 years involved in an accident, their Lordships in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, observed as follows:

Compulsory damages u/s 1A Of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each

case. The life expectancy of the deceased or of the beneficiaries which ever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority.

The Tribunal, after noticing the principles laid down in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, has opined that in the facts and circumstances of the case, it would be reasonable to award Rs. 30/- per month for a period, of 30 years. While arriving at this figure, it has examined statement of PW 5 Madanlal. Had Someshwar not died, he might have paid some amount to his father and mother after attaining the age of 23-25 years. The Tribunal has taken the period of 30 years into consideration and, there fore, it has calculated the amount (30 x 12) @ rate of Rs. 30/- p.m., which comes to Rs. 10,800/-. After referring to Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, Hegde, J. speaking for the Court, has expressed himself in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., in the following words-

The pecuniary Joss to the aggrieved party would depend upon data which cannot be ascertained accurately out must necessarily bean estimate or even partly a conjecture.

The figure of Rs. 10,800/- has been arrived at by the Tribunal in accordance with the principles laid down in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, and Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., . In fixing quantum of compensation in accident cases, there is bound to be some element of arbitrariness because, after certain salient features are indicated, the matter would normally be left to the Tribunal to take a reasonale view of these facts and to fix the quantum of compensation. It will not be disturbed unless the High Court is satisfied (i) that the Tribunal has applied a wrong principle of law or has misdirected itself, or (ii) the amount awarded of either is so inordinately low or is so inordinately high that it must be held to be erroneous. In these circumstances, the amount of award Rs. 10,800/- awarded as pecuniary loss to the petitioner does not call for any interference by this Court.

16. Learned Counsel for the appellant argued that the Tribunal has no jurisdiction to award the amount, more than what has been claimed by the appellant I have already stated above that in the claim petition, in para II Rs. 60,000/- has been assessed as pecuniary Joss on account of the death of Someshwar. Item of Rs. 3,000/- is merely with respect to ordinary future loss which the deceased cut of

earnings would have contributed. Having regard to para II of the claim petition as a whole, this contention of the appellants is without substance.

17. In the last, it was argued that the petitioners are not entitled to the Rs. 200/- as expenses over treatment of Someshwer. It may be mentioned that this point has not been specifically taken in the memo of appeal. Even otherwise, learned Counsel for the appellants could not satisfy me as to why this sum should not have been awarded to the petitioners. The finding on issue No. 2 is also correct

18. The liability of the Insurance Company is limited to Rs. 2,000/- in this case. The Tribunal has referred to Section 95(2)(b) of the Act, which provides that the statutory liability of the insurer to indemnify the insured in the case of vehicle allowed to carry more than 6 passengers extends to only Rs. 2000/- in respect of each passenger, though the total liability may go upto Rs. 20,000/- Reference in this connection may be made to Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.,

19. No other point survives for my consideration in this appeal.

20. For the reasons mentioned above, this appeal fails and it is, here by dismissed.

21. There will be no order as to costs.