
(2001) 09 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 469 of 1995

Mangal Singh

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2002) 4 RLW 2065 : (2002) 3 WLN 236

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

Bench : Single Bench

Advocate : Sudhir Saruparia, for the Appellant; Vivek Gupta, for the Respondent

Final Decision : Allowed

Judgement

Panwar, J.—This appeal is directed against the judgment and award dated 14.12.924 passed by learned Motor Accident Claims Tribunal, Chittorgarh (hereafter referred to as "the Tribunal") whereby the Tribunal dismissed the claim petition filed by the appellant.

2. Brief facts, which are necessary for decision of this appeal are that on 27.10.1987 the appellant was travelling in a bus owned by Rajasthan State Road Transport Corporation (hereinafter for short "the Corporation") from Chittorgarh to Fatehnagar. It was averred that while the said bus was plying from Chittorgarh to Fatehnagar in the area of Kakarava at about 6.30 to 7 p.m., a truck came from opposite direction. It was averred that the driver of the Corporation bus did not leave sufficient space while crossing the truck coming from opposite direction and crossed the bus so close to the said truck that the body of the bus and the truck grazed with each other and the appellant, who was near to window of the bus, sustained injury on his right hand from the arm. It was also averred that at the relevant time, he was an employee of M/s. Rajfed Oil Mill, Fatehnagar and his monthly income from the said employment was Rs. 1500/-. The appellant claimed in all a sum of Rs. 1,69,500/- as compensation. The respondent Corporation filed written statement wherein the said accident was admitted.

However, negligence of the bus driver was denied.

3. The Tribunal framed issues and tried the case. While deciding issues No. 1 and 3, the Tribunal reached to the conclusion that the accident has been established and it has also been established that the said accident resulted in amputation of hand of the appellant but held that the appellant failed to establish negligence of the driver of the Corporation's bus and further arrived at the conclusion that it appears that the said accident was due to the negligence of the truck driver. While deciding issue No. 2 regarding quantum of compensation, the Tribunal held that in view of the finding on issues No. 1 and 3, the claimant is not entitled for any compensation. Issue No.4 which relates to period of limitation, was decided in favour of the appellant.

4. Aggrieved by the judgment and award impugned, the appellant preferred this appeal,

5. I have heard the learned counsel for the parties and perused the judgment impugned and the record.

6. The learned counsel for the appellant contended that the Tribunal fell in error in deciding issues No. 1 and 3 against the appellant despite there being sufficient legal evidence on record. He further contended that the Tribunal fell in error in not computing the quantum of compensation.

7. The learned counsel for the respondents supported the judgment impugned.

8. P.W.I Mangal Singh, the appellant stated on oath before the Tribunal that on 27.10.87, he was travelling in a bus owned by the Corporation from Chittorgarh to fatehnagar. When the bus was plying between Bhopal Sagar and Kakarava, it was driven at a great speed. At that relevant time, a truck came from opposite direction and the body of the said bus grazed with the truck while crossing each other. The said accident was due to the fault of the driver of the Corporation's bus. This accident resulted in amputation of his right hand. He remained under treatment for a period of three months. He has produced treatment record Ex.2, medical report Ex.3, Discharge Ticket from hospital Ex.4. He has also placed on record the certificate of his permanent disablement issued by the Medical Board of the General Hospital, Udaipur showing permanent disablement and loss of earning capacity to the extent of 80%. He further stated that at the relevant time, he was employed with M/s. Rajfed Oil Mills, which is a co-operative society and he was paid Rs. 1500/- p.m. as salary.

9. P.W.2 Om Prakash is an eye witness of the occurrence. He stated that there was an accident between the bus owned by the Corporation and the truck while crossing each other. He further stated that the bus driver did not leave sufficient space for the truck coming from the opposite direction while crossing each other and due to this, both the vehicles grazed with each other, further stated that due to this accident, the appellant sustained injury on his right hand, which was in a position of hanging and ultimately resulted in amputation. He took the appellant

to Fatehnagar Hospital and thereafter on the advice of doctor at Fatehnagar, he took the appellant to hospital at Udaipur where he was treated by Dr. Dad, Dr. Lal and Dr. Laddha. He further stated that the accident was due to the fault of the driver of the Corporation bus although the truck driver too was negligent.

10. P.W.3 Dr. G.L. Dad, Medical Jurist of General Hospital, Udaipur has proved the treatment of the appellant and the certificate of permanent disablement issued by the Medical Board of which he was one of the members. Certificate Ex.5 has been proved by this witness. P.W.3 Dr.G.L, Dad clearly stated that the injury resulted in amputation of right hand, which resulted in permanent loss of earning capacity to the extent of 80%.

11. In rebuttal, D.W.I Gauri Shanker, the driver of the Corporation's bus and D.W.2 Sangram Singh, Conductor of the said bus were examined by the respondents. D.W.I Gauri Shanker also admitted that the appellant was a passenger in the bus driven by him and while crossing the truck coming from opposite direction, the appellant sustained injury on his right hand. He stated that the injury sustained by the appellant was because the right hand was projecting outside the bus and that was the cause of the said injury. He admitted that while crossing, both the vehicles coming from opposite directions, the appellant sustained injury.

12. D.W.2 Sangram Singh also admitted that the appellant was passenger in the bus owned by the Corporation and while crossing the bus from the truck coming from the opposite direction, the appellant sustained injury in his hand. He stated that the appellant Mangal Singh was sitting on the rear seat of the bus.

13. From the evidence produced by the parties, it is established that the appellant was a passenger travelling in the bus owned by the Corporation. It has also been established that the injury sustained in his right hand, was due to driving of both the vehicles negligently by their drivers while crossing each other without leaving sufficient space between them. Nothing has come on record that the said injury was because of the negligence of the appellant. It is a matter of common knowledge that passengers sitting in a bus near to windows generally keep their hands on the window sill and the driver/drivers of the vehicle/vehicles are required to take due care and proper precaution while crossing the vehicle coming from opposite direction, keeping in mind that persons sitting in the bus near the windows normally keep their hands on window sills and, therefore, it was obligatory for the bus driver to have kept sufficient space between the two vehicles crossing each other. In the instant case, drivers of both the vehicles failed to take due care and, therefore, the said accident was result of rash and negligent driving of the bus as well as truck and as such, the injury sustained by the appellant was due to composite negligence of the driver of the bus as well as truck driver.

14. Madhya Pradesh High Court in Sushma Mitra v. M.P. State road Transport Corporation and Ors. (1), while dealing with the facts, which are very similar to

the facts of the instant case, held as under:--

"It cannot be disputed that the driver of a bus which carries passengers owes a duty of care for the safety of passengers. While driving he must have the passengers in contemplation and he must avoid acts or omissions which can reasonably be foreseen to injure them and in deciding what acts or omissions he should avoid, he must bear in mind the normal habits of passengers. It is a matter of common experience that passengers who sit adjoining a window very often rest their arm on the window-sill by which act the elbow projects outside the window. The driver of the bus must have these passengers also in contemplation and, therefore, while overtaking or crossing another vehicle on the road he must not come too close to the vehicle that is overtaken or crossed and he must leave sufficient gap between the vehicles to avoid injury to these passengers. The driver of a vehicle coming from the opposite direction owes a similar duty while crossing a passenger bus he too must have in contemplation passengers sitting near the windows of the oncoming bus who may have their hands resting on the windows, and in crossing the bus he must not only avoid contact with the body of the bus but he must also avoid coming in contact with the elbow of any passenger that may be resting on the window and projecting outside the body of the bus. He must, therefore, take precautions to move to his near side and leave sufficient gap for preventing any mishap."

15. In the instant case from the material on record and under the circumstances, it cannot be held that there was any negligence on the part of the appellant himself. It is common knowledge that passengers travelling in the bus have their elbows resting on the window sill. It is not proved on record that there is any provision prohibiting against it. Keeping in view the same whether the appellant can be held negligent or the appellant can be said to have failed to take reasonable care for his own safety. Obviously the conclusion which emerges from the pleadings and the statements of P.W. 1 Mangal Singh and P.W.2 Om Prakash is that there was no negligency on the part of the appellant, but the said accident was as a result of composite negligence of drivers of both the vehicles.

16. In *State of Punjab v. Guranwanti* (2), it was held that it is well-known that often passengers travel with their elbows resting on the window of the car, it cannot be held in these circumstances that those passengers were guilty of negligence.

17. Similarly, the Gujarat High Court in case of *Chaturji Amarji v. Ahmad Rahimbux* (3), while considering the similar proposition on similar facts held that the passenger was resting his elbow on the window-sill. A truck was coming from the opposite direction. The bus and the truck grazed each other. Forearm of the passenger was severed. It was held that the driver of the bus even was liable and could not escape liability to pay damages.

18. The Kerala High Court in a recent decision rendered in the case of *Beeravu v. K.K. Damodaran* (4) also took the same view where left hand of the passenger

was injured when the bus hit against an electric post. The defence in that case was that the injured had placed his hand outside the bus. It was held that it was the duty of the driver to ensure sufficient space between the bus and the other object. The driver of the bus must ensure sufficient space between the bus and other object. A passenger cannot be held guilty of contributory negligence when in the normal practice any portion of his body is outside the bus, even in case it is taken for arguments sake that the claimant put his hand on the side window of the bus.

19. Punjab and Haryana High Court also took a similar view in the case of Prem Devi v. Harbhajan Singh (5). In that case when the passenger was resting her hand on the window-sill the bus grazed against the stationary bus, it was held that the driver of the bus was negligent because he did not leave sufficient space between the bus and the other vehicle of the object.

20. A Division Bench of the Bombay High Court in the case of Maharashtra State Road Transport Cooperation and Ors. v. Ramchandra Ganpatrao Chincholkar and Ors. (6), while considering similar facts to that of the case in hand held that it is common experience that bus passengers sitting adjoining windows often rest their arms on the window-sills, as a result their elbows project outside the windows. The driver of the bus is always expected to have such possibilities in mind while overtaking or crossing another vehicle on the road.

21. Keeping in view the settled principle that has been referred to in the various precedents above, it is clear that the driver of the Corporation's bus as well as the truck driver did not leave enough space between their respective vehicles. Because of grazing of the two vehicles, the appellant who was sitting near to the window while resting his right hand on the window sill, sustained injury due to negligently driving of both the vehicles by the respective drivers. Under these circumstances, the appellant cannot be blamed for the said accident. In this view of the matter, in my considered opinion, the Tribunal fell in error in deciding issues No. 1 and 3 by holding only the truck driver negligent in the said accident. From the aforesaid discussion, it emerges that the said accident was result of composite negligence of the bus driver as well as the driver of the truck.

22. From the evidence, it has been established that the accident in question was due to composite negligence of the driver of the Corporation's bus as well as the truck driver and, therefore, for the negligence of joint tortfeasor, the appellant is entitled for compensation from both or either of them. It is compensation from both or either of them. It is settled law that the claimant can claim compensation against both or either of the joint tortfeasor. What is composite negligence is defined in Andhra Marine Exports etc. v. P. Radhakrishnan etc. (7). Pollock in his book on Torts 15th Edn. held:

"Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled, of course, within the limits set out by

the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between these persons though in any case he cannot recover in the whole more than his whole damage."

23. In *National Insurance Company v. Kastoori Devi and Ors.* (8) Rajasthan, Division Bench of this Court held that in a case of composite negligence there is no method or indicia to bifurcate or apportion the liability and the only course open in such cases can be to make them both liable as jointly or severally. So far as the claimants are concerned, they can realise the amount from any one of the insurance companies and then the insurance company, which pays the entire amount can take steps for recovering half of the amount from the other insurance company.

24. In *Dhapa Kanwar and Ors. v. Kishanlal and Anr.* (9), this Court held that in the case of composite negligence there is joint and separable liability and it is open to the claimants to claim damages from any or all of the joint tortfeasors. In such cases, the Tribunal has no authority to apportion the compensation between the tortfeasors. In *Law of Torts by Ratanlal and Dhirajlal*, 21st Edn. at page 171, it is said:

"Joint tortfeasors are jointly and severally liable for the damages caused from the tort. They may be sued jointly or separately. If sued jointly damages may be levied from all or either. Each is responsible for the injury sustained by his common act.

In a suit for composite negligence analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damages, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage, he has a right to recover full amount of damages from any of the defendants."

25. Since this is a case of composite negligence, the appellant had a right under the law to sue the Corporation for the compensation, which had been suffered by him. The liability of the bus and the truck was joint and several. This being the position, the appellant could choose either of the two or prefer claim against both.

26. In the instant case, the appellant did not choose to file a claim against the driver, owner and the insurer of the truck but has filed the claim petition against the Corporation in whose bus he was travelling as a passenger at the relevant time of the accident and, therefore, he is entitled for compensation from the Corporation as the driver of the Corporation's bus is joint tort feisor and the Corporation is liable to pay compensation jointly and severally.

27. The respondent examined D.W. 1 Gauri Shanker and D.W.2 Sangram Singh. Both are employees of the respondent Corporation and are interested witnesses.

The respondent did not produce any independent witness, who witnesses the occurrence whereas D.W.I and D.W.2 are not independent witnesses. In *Haji Nainullah Khan v. Nagar Mahapalika, Allahabad* (10), the Hon''ble Supreme Court held that the Nagar Mahapalika produced before the Tribunal the driver of the vehicle and an Assistant Engineer who were its employees. Both were interested witnesses. The Nagar Mahapalika did not produce even a single independent witness to support its version. The Tribunal and the High Court fell into patent error in preferring the evidence of two wholly interested witnesses to that of Abdul Khalique who was an independent witness and whose presence on the spot could not be doubted.

28. In the instant case, D.W.I Gauri Shanker driver of the bus and D.W.2 Sangram Singh, conductor of the bus, both are the employees of the Corporation and are interested witnesses. The Tribunal fell in error in placing reliance on the testimony of these two wholly interested witnesses. In my considered opinion, the finding arrived at on the basis of such interested witnesses cannot be sustained, and it is held that the said accident was due to rash and negligent driving of the Corporation's bus by its driver as well as the truck driver.

29. It was contended by the learned counsel for the appellant that the Tribunal fell in error in not computing the compensation. Admittedly, the said accident resulted in amputation of right hand of the appellant. At the relevant time, the appellant was a young man of 35 years of age and was earning Rs. 1500A p.m. Keeping in view the age and his monthly income as also the permanent disablement to the extent of 80% as established by Ex.5 and by the statement of P.W.3 Dr.G.L. Dad, the compensation under various heads would work out much more than what has been claimed by the appellant in his claim petition,

30. It is settled law that while fixing the amount of compensation payable to a victim of the road accident, the damages have to be assessed separately as pecuniary damages and non-pecuniary damages. Pecuniary damages include the actual expenses incurred and are capable of being calculated in terms of money, whereas non-pecuniary damages are those which are incapable of arithmetical calculations. So far as non-pecuniary damages are concerned, they are generally called general damages which may include the damages for physical pain, shock as also mental agony, which the victim had suffered and would suffer in future on account of injuries or the disablement. It also includes the damages to composite for the loss of amenities of life which varies from person to person and injury to injury as on account of injury or the disablement, victim of an accident may not be able to walk, run, sit properly and may not be in a position to drive the vehicles or even may find difficulty in moving from one place to another without help of attendants. Such damages also include loss of expectation of life as on account of injury, normal longevity of the person concerned is shortened. Discomfort, disappointment, frustration, inconvenience and mental stress in life are the grounds of general damages.

31. In the instant case, the appellant who is a young man of 35 years of age

became disabled on account of amputation of his right hand due to the said accident. In this background, although it is quite difficult to assess the exact compensation for physical pain and suffering as also mental agony which he had suffered and would continue to suffer for rest of the span of life.

32. In *Amar Singh v. Ishwar and Ors.* (11), the Apex court enhanced the compensation from Rs. 50,000/- to Rs.1,00,000/- for pain, shock and suffering in the case of claimant therein having 30% permanent disablement.

33. In *Kadir S/o Shri Said v. Moin s/o Ahmad Khan and Ors.* (12), this Court awarded non-pecuniary damages of Rs. 1,50,000/-. In that case, the claimant injured was a labourer or a Cleaner in the truck and the Tribunal awarded Rs. 54,000/- for non-pecuniary damages. In that case, the injured suffered permanent disablement to the extent of 25% and the injury resulted in shortening of leg by 2-1/2". Looking to the young age of the claimant, this court awarded Rs. 1,50,000/- as non-pecuniary damages.

34. In *Shashendra Lahiri v. UNICEF and Ors.* (13), Hon"ble Supreme Court enhanced the compensation from Rs. 58,000/- to Rs. 4,58,000/- by granting an additional compensation of Rs. 4,00,000/-. Appellant of that case suffered permanent disablement of shortening of his right leg by 3 inches. He was 17 years of age and brilliant student of B.Com. In view of the age of the appellant at the time of the accident and the prospects and the adverse effect of his permanent disability as a result of the motor accident, the compensation awarded was further enhanced by Rs. 4,00,000/- with interest @ 12% p.a. from the date of the claim.

35. In *Swatantra Kumar v. Qamar Ali and Ors.* (14), the Hon"ble Supreme Court awarded Rs. 1,00,000/- to the pillion rider as compensation under the head pain, shock and sufferings. In that case, the injury sustained by the claimant resulted in shortening of his leg by 1.75 inches.

36. In *Prahlad Rai v. Pradeep Kumar and Ors.* (15), this Court enhanced the compensation from Rs.1,19,000/- to Rs. 5,00,000/-. In that case, the appellant was a young person of 25 years of age and sustained amputation of leg due to accident. He was earning Rs. 2300/- p.m. at the relevant time. Taking into account the loss of income for rest of span of life, physical pain, suffering and mental agony suffered by him under the pecuniary and non- pecuniary heads, total compensation of Rs. 5,00,000/- has been awarded by this Court.

37. This Court in *Pramod Kumar Mishra v. Ram Nath and Ors.* (16), enhanced the compensation from Rs. 1,61,000/- to Rs. 5,00,000/-. In that case, the injured sustained amputation of right leg and the disability resulted to the extent of 70%. Considering the non- pecuniary damages as also the permanent disablement, this Court enhanced the compensation from Rs.1,61,000/- to Rs.5,00,000/-.

38. In *Executive Officer, Municipal Board, Jhunjhunu and Ors. v. Bhinwa Ram and*

Ors. (17), this Court enhanced the compensation from Rs.87,977/- to Rs.3,20,000/-alongwith interest @ 12% p.a. from the date of application. In that case, the injured sustained the injury on leg which resulted in amputation of the leg from knee.

39. Thus, keeping in view the aforesaid overall facts and circumstances of this case, in my considered opinion, the amount of compensation of Rs. 1,69,500/- as claimed by the appellant, cannot be said to be excessive but it is not lower side and, therefore, I consider it proper to award the whole of the amount claimed by the appellant.

40. Accordingly, this appeal succeeds and is allowed. The claim petition filed by the appellant claimant Mangal Singh is allowed and the compensation of Rs. 1,69,500/- is awarded in favour of the appellant and against the respondents jointly and severally alongwith interest 2 1/2% p.a. from the date of application till realisation. No order as to costs.