

(2017) 06 RAJ CK 0062
In the Rajasthan High Court
Case No : 106 of 1999

M/s. Sojat Lime Company

APPELLANT

Vs

Chhela Ram S/o Shri Jeeta Ram, & Ors.

RESPONDENT

Date of Decision : 05-06-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 279](#),
[Section 304-A](#) - Rash driving or riding on a public way
[Motor Vehicles Act, 1988](#), [Section 14](#), [Section 157](#)

Citation : (2017) 06 RAJ CK 0062

Hon'ble Judges : P.K. Lohra

Bench : SINGLE BENCH

Advocate : Mr. Rajesh Panwar

Judgement

1. Appellant-M/s. Sojat Lime Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "Act") to challenge judgment and award dated 9th of November, 1998, passed by Motor Accident Claims Tribunal, Sojat, Camp Jaitaran, District Pali (for short, "learned Tribunal"). By the judgment and award impugned, learned Tribunal while adjudicating the claim of respondent-claimants under Section 166 read with Section 140 of the Act, quantified and awarded them compensation to the tune of Rs.1,85,000/- and fastened liability to pay the said compensation on the appellant, being owner of the offending vehicle, truck bearing No.RJT-973.

2. Succinctly stated, facts of the case that on fateful day of 17th of November 1994 at about 9:00 PM when deceased Munnaram was returning to his house at village Sisarwada, Tehsil Sojat, District Pali as pedestrian, offending vehicle, which was driven by its driver Mangilal rashly and negligently, hit Munnaram and eventually Munnaram was crushed to death on the spot. The accident was reported to police and after investigation chargesheet against Mangilal driver of the offending vehicle was filed before the court of competent jurisdiction under Section 279 and 304-A IPC as well as Section 134/177 of the Act. The

respondent-claimants, being dependents and legal heirs of deceased Munnaram, filed claim petition before the learned Tribunal, inter alia, on the ground that at the time of calamity/mishap, deceased was 25 years old and he was an Artisan engaged in chiseling of stones and masonry work besides undertaking agricultural activities. As per respondent-claimants, deceased was earning Rs.2,400/- per month from masonry work and was also earning Rs.20,000/- per annum from agriculture. In substance, under various heads, amount of compensation was quantified to the tune of Rs.10,64,000/-. Attributing negligence on the part of driver of offending vehicle, the claimants also arrayed appellant as non-claimant for tortuous act of its employee (driver of vehicle) on the doctrine of vicarious liability.

3. The claim petition is contested and the averments contained in the claim petition were refuted by the appellant as well as driver of the offending vehicle. Initially, insurer was impleaded as party-respondent but subsequently it was deleted. The learned Tribunal, on the basis of pleadings of the rival parties, settled following issues for determination :- "VERNACULAR MATTER OMITTED"

4. In support of claim petition, respondent-claimants examined four witnesses and tendered documentary evidence. On behalf of appellant, NAW-1 Anchi appeared in the witness box. The learned tribunal, after conclusion of evidence, decided Issue No.1 relating to rash and negligent driving of the offending vehicle in favour of respondent-claimants and against the appellant as well as respondent No.4. While adverting to Issue No.2 regarding quantum of compensation, the learned Tribunal moderately assessed monthly income of deceased @ Rs.1,250/- per month and accordingly quantified annual income to the tune of Rs.15,000/-. After deducting one-third for personal expenses, the learned Tribunal applied multiplier of sixteen and assessed compensation for loss of dependency to the tune of Rs.1,60,000/-. That apart, under the heads; Loss of Love & Affection and Loss of Consortium awarded a sum of Rs.25,000/-. In total, Rs.1,85,000/- was awarded to the respondent-claimants.

5. I have heard learned counsel for the appellant, perused impugned judgment & award, and thoroughly scanned the entire record of case. Upon examining impugned award in conjunction with materials available on record, in my opinion, learned Tribunal has not committed any error in appreciation of evidence. The evidence, which was tendered by respondent-claimants to prove rash and negligent driving of the offending vehicle, remained unimpeached inasmuch as no cogent evidence was tendered by the appellant to counter evidence of the claimants. It is really a matter of grave concern that driver of the offending vehicle was party to the litigation yet he did not appear in the witness box before the learned Tribunal. Contrary to it, one Anchi was examined as defence witness by the appellant, who had no causal connection with accident/incident and, therefore, her testimony can at the best be called ceremonious and of no avail and consequence to the appellant. Such an evidence of appellant has thus rightly persuaded the learned Tribunal to decide Issue No.1 in favour of respondents.

6. It is trite that in accident claims, crucial witness is driver of offending vehicle, and, if driver has deliberately not appeared in witness box, an adverse inference can be drawn so as to infer his prima facie negligence. Thus, in totality, I am unable to find any error regarding findings recorded by the learned Tribunal on Issue No.1.

7. Now advertent to Issue No.2, suffice it to observe that learned Tribunal has moderately assessed monthly income of deceased and accordingly worked out total amount of compensation. As a matter of fact, in present era of inflation and even when the claim was adjudicated, the amount awarded by the learned Tribunal was not commensurate with the loss of dependency suffered by the bereaved family. Be that as it may, as no appeal/cross-objections are preferred by the claimants for enhancement of amount of compensation, I feel dissuaded to interfere with the findings of learned Tribunal on Issue No.2.

8. The upshot of above discussion is that there is no merit in this appeal and same is, accordingly, dismissed.

9. Costs are made easy.