
(2008) 10 RAJ CK 0026
In the Rajasthan High Court

Municipal Council	Vs	APPELLANT
Dr. Shridhar Sharma and Another		RESPONDENT

Date of Decision : 25-10-2008

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 98

Citation : (2008) ACJ 305

Hon'ble Judges : Sangeet Raj Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—These appeals are directed against the judgment and decree dated 21.8.1989 passed by the learned Additional District Judge No. 2, Sriganganagar in Civil Suit No. 102 of 1985, whereby, the suit preferred by the plaintiff Dr. Shridhar Sharma (respondent in Appeal No. 119 of 1989 and appellant in Appeal No. 141 of 1989 herein) for compensation quantified at Rs. 15,000, has been decreed to the extent of Rs. 7,500 against the defendant Municipal Council, Sriganganagar (appellant in Appeal No. 119 of 1989 and respondent in Appeal No. 141 of 1989 herein). The plaintiff is aggrieved by the judgment and decree to the extent its claim for compensation has been disallowed and so also by award of the interest at the rate of 6 per cent from the date of filing of the suit till the recovery of the amount, instead of 10 per cent claimed by him. The defendant has preferred the appeal aggrieved by the judgment and decree passed by the learned trial court whereby the decree for payment of compensation to the tune of Rs. 7,500 has been passed in favour of the plaintiff.

2. The brief facts of the case are that the defendant Municipal Council has constructed a small bridge over a nala near the shop of Suganchand Halwai at Sriganganagar. On 28.7.1982 at about 8 p.m. the plaintiff, a Lecturer in Biology in Government College, Sriganganagar while passing through the said bridge on scooter met with an accident. It is alleged by the plaintiff that there was no

sufficient arrangement for the light and, therefore, while passing through the said bridge, he could not see the ditch near the chamber of the bridge and consequently, he could not keep the balance of the scooter and fell down on the road resulting in fracture in the bone of his right hand. It was alleged that on account of the fracture, his right hand was plastered for a period of two months. It was further alleged that the plaintiff suffered physical and mental agony as a result of the injuries sustained. He was deprived from performing his daily work. It was alleged that it was only on account of gross negligence on the part of the local authority and its failure to discharge its duties for maintaining the road in proper condition and insufficiency of the light, the accident occurred. The plaintiff claimed compensation quantified at Rs. 15,000 from the defendants. Before filing the suit, the plaintiff served the defendant Municipal Council, Sriganaganagar so also the Agriculture Produce Market Committee, Sriganaganagar raising demand for the compensation. The Market Committee was impleaded as party defendant in the suit for the reason that the road on which accident occurred falls within the Market Committee area. The amount of compensation quantified at Rs. 15,000 was claimed by plaintiff out of which Rs. 7,500 were claimed as the general damages and Rs. 7,500 for the loss of pleasure.

3. The suit was contested by both the defendants by filing their separate written statement. The defendant Municipal Council did not dispute the factum of injury sustained by the plaintiff. However, it was stated that there was adequate arrangement of the light and if the bridge was in broken condition to some extent then for that the Municipal Council cannot be held liable. It was stated that the accident appears to have occurred on account of negligence of plaintiff himself in driving the scooter. It was further stated that the Municipal Council had no information regarding any ditch on the bridge and there was sufficient light existing on the disputed road. It was further pleaded that it may be that immediately before the accident, the road might have got damaged by passing of some heavy vehicle, therefore, no liability can be fastened on the defendant Municipal Council. The maintainability of the suit as against the Municipal Council was questioned on the ground that the concerned area falls within the jurisdiction of the Market Committee. Defendant also contested quantum of compensation. The receipt of the notice was also denied and it was contended that the suit is liable to be dismissed for want of prior notice to the defendant Municipal Council.

4. The Market Committee, defendant No. 2, took the stand in its written statement that the road where the accident is alleged to have occurred belongs to Municipal Council and, therefore, the Market Committee has no liability. However, the defendant No. 2 contested the claim on merits as well and while denying the incident for want of knowledge, alleged that plaintiff has suffered the injuries on account of his own negligence and, therefore, he is not entitled for any compensation.

5. On the basis of pleadings of parties the learned trial court framed following

issues for determination:

(Omitted as in vernacular)

6. In support of the case, the plaintiff Dr. Shridhar Sharma himself appeared as witness PW 1 and got examined Ravindra Kataria, PW 2; Om Prakash Gupta, PW 3, as witnesses. On behalf of the defendant, Narsingh Vishnoi, DW 1, working as Light Inspector with the respondent Municipal Council appeared as witness. The plaintiff also produced documentary evidence, viz., medical prescriptions, Exhs. 1, 3 and 4; receipt of X-ray, Exh. 2; postal receipts, Exhs. 6 and 7; A.D., Exh. 8; a copy of the notice, Exh. 5 and the postal certificate, Exh. 9.

7. After hearing counsel for the parties to the suit and due consideration of the evidence on record, the learned trial court arrived at the finding that the plaintiff had met with an accident as pleaded due to negligence on the part of the Municipal Council, Sriganaganagar in maintaining the road and insufficiency of the light at the place of occurrence. However, the learned trial court found the plaintiff entitled for compensation quantified to Rs. 7,500. Accordingly, the suit preferred by the plaintiff has been decreed as indicated above.

8. It is contended by the counsel appearing on behalf of the appellant Municipal Council, Sriganaganagar that the learned trial court has failed to examine the evidence on record in the correct perspective. There was a glaring variance between the pleadings and the proof and on the basis of the evidence on record it was manifestly clear that the plaintiff has cooked up a false case against the defendant-appellant. It was contended that the plaintiff purports to depose about having sustained fractures and having been X-rayed and plastered but, neither any radiologist was produced nor X-ray plate or even X-ray report was produced on the record. According to the appellant until and unless X-ray plates and reports are produced and proved by the radiologist, by establishing the identity of the victim, the injuries sustained cannot be said to have been proved. The appellant contended that there was nothing on record to establish the appellant's knowledge of existing damage to the road and thereafter omission to repair, therefore, no liability can be fastened on the appellant. The learned Counsel contended that the road was sufficiently lighted, therefore, it cannot be said that the appellant was in any manner negligent in discharge of its duties. Learned Counsel contended that the plaintiff has given three different numbers (registration mark) of the scooter on different stages which by itself creates doubt about the occurrence of the incident. The learned Counsel contended that it cannot be ruled out that the road might have got damaged immediately before the accident by passing of some truck, etc. Therefore, no negligence can be attributed to the defendant Municipal Council.

9. Per contra, learned Counsel appearing for the plaintiff-respondent submitted that the factum of accident and existence of the ditch over the bridge has not even been disputed by the Municipal Council in its written statement. Even the injury sustained by the plaintiff on account of the accident occurred has not been

disputed. Therefore, the plaintiff was not even required to lead the evidence on such issues. However, the plaintiff has been able to prove his case beyond doubt by producing cogent evidence on record which remains unrebutted. The learned Counsel submitted the contentions sought to be raised by the appellant beyond the pleadings cannot be entertained. The learned Counsel submitted that after examining the entire evidence on record the learned trial court has rightly arrived at the finding that the respondent Council was negligent in maintaining the road and keeping sufficient arrangement of the light. The learned Counsel contended that on the basis of the material on record it stands aptly proved that the plaintiff met with the accident on account of negligence on the part of the Municipal Council and sustained injuries alleged in consequence thereof. Arguing the appeal preferred by the plaintiff to the extent the claim was disallowed by the learned trial court, the learned Counsel contended that on the facts and circumstances of the case, the compensation awarded by the learned trial court is inadequate and the plaintiff was entitled for the compensation as prayed for in the suit. The learned Counsel contended that the learned trial court has also erred in awarding the interest at the rate of 6 per cent only, in the normal course the rate of 12 per cent should have been awarded.

10. I have considered the rival submissions and also perused the record.

11. At the outset, it is to be noticed that the specific averments made by the plaintiff in the plaint regarding the damaged condition of the road have not been specifically denied by the defendant in its written statement. The averments made in this regard in the plaint in para 4 of the plaint have been replied in the terms that pulia ke thoda bahut toot jaane mein nagar parishad ki koi lapervahi nahi thi. It has been further stated in para 8 of the written statement that the defendant Municipal Council had received no report regarding damage to the bridge, it may be that immediately before the accident, on account of passing of the heavy vehicle, it might have got damaged. Thus, the damaged condition of the road having not been disputed by the defendant, no further proof was required to prove the fact that a ditch was existing on the bridge near the chamber at the relevant time. Moreover, the damaged condition of the road stands proved by the oral deposition of the witnesses produced on behalf of the plaintiff. The factum of insufficiency of the light on the disputed road as on the date of the accident also stands proved from the testimony of the witnesses produced on behalf of the plaintiff. There is no evidence in rebuttal worth the name to establish that as on the date of the accident, arrangement of sufficient light was there on the site of the accident. Regarding the contention of the learned Counsel for the appellant that the plaintiff has given three different numbers (registration mark) of the scooter on the different stages, by itself creates doubt about the occurrence of accident, suffice it to say that on account of small variance in the scooter number given by the plaintiff, it cannot be inferred that no incident had occurred. Of course, the plaintiff has not produced on record the X-ray plate and report showing that he has suffered the fracture in right hand but, he produced the prescription of the doctor, Exh. 4, working in

Government Hospital, Sriganaganagar whereby, the plaster was instructed to be removed and he has also produced on record the receipt of the X-ray, Exh. 2 and the other medical prescription, Exh. 3. As a matter of fact, the injuries sustained by the plaintiff have also not been disputed by the defendant Municipal Council in its written statement. Moreover, as discussed above, the injuries sustained by the plaintiff also stand proved on the basis of the evidence on record.

Thus, the learned trial court has committed no error in holding that the injuries sustained by the plaintiff as alleged stand proved.

12. It is contended on behalf of the Municipal Council that since it had no knowledge about the damaged condition of the road and it is quite possible that immediately before the accident the damage might have been caused on account of passing of some heavy vehicle through the bridge, no negligence can be attributed to it and it cannot be fastened with liability for payment of compensation. It is to be noticed that as per provisions of Section 98 of Rajasthan Municipalities Act, 1959 (in short "the Act of 1959" hereinafter), the appellant is under an obligation to make reasonable provisions for lighting public streets, places and building, removing, constructing, altering and maintaining public streets, etc. The appellant cannot escape its liability by pleading lack of knowledge or its inability to maintain the roads, etc. Maintaining the roads in proper condition within the municipal area is one of the principal duties assigned to the local authorities under the relevant statute. In my considered opinion, such stands taken by appellant Municipal Council only shows its lack of concern regarding the right of the denizens of the local area to enjoy a peaceful and safe life, which deserves to be deprecated. Suffice it to say that duty of the defendant Municipal Council originates from the statutory provisions and the breach of duty having established, the damage suffered by the plaintiff is direct consequence of the breach. A person, who negligently carries out a statutory duty, thereby inflicting damage cannot claim immunity from an action in tort.

Thus, on overall consideration of the material on record I am of the considered opinion that the accident has occurred only on account of perfidious negligence on the part of the appellant Municipal Council in maintaining the roads and keeping the adequate arrangements of the light and, therefore, it cannot escape from its liability for compensation to the victim of the accident by pleading its ignorance about the existence of dilapidated condition of the road.

Thus, in view of the discussion above, the learned trial court has committed no error in deciding the issue Nos. 1, 2, 3, 6 in favour of the plaintiff and against the defendant. No arguments were advanced before this Court by the learned Counsel for the appellant assailing the findings of the learned trial court on issue Nos. 5, 6-A and 6-B.

13. Now coming to the question of entitlement of the plaintiff to compensation as claimed it is to be noticed that the plaintiff has suffered a single injury and entire medical bill, etc. stands reimbursed by the government. It stands proved from

the evidence on record that plaintiff has suffered a fracture but, in absence of the injury report and X-ray report, the gravity of the injury sustained cannot be ascertained. Therefore, the compensation awarded by the learned trial court for physical and mental agony suffered by the plaintiff on account of single injury sustained appears to be adequate. The interest awarded by the learned trial court exercising its discretion on the amount of compensation at the rate of 6 per cent also appears to be justified on the facts and in the circumstances of the case. Thus, the finding of the learned trial court on issue Nos. 4 and 7 also does not warrant any interference by this Court in exercise of its appellate jurisdiction.

Thus, I do not find any merit in the appeal preferred by the defendant Municipal Council so also in the appeal preferred by the plaintiff.

In the result, both the appeals fail and same are hereby dismissed. No order as to costs.