

(1985) 09 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 57 to 60 and 64/82

Rajasthan State Road Transport

APPELLANT

Vs

Smt. Chandra Kanta and Others

RESPONDENT

Date of Decision : 18-09-1985

Acts Referred:

Citation : (1986) WLN 215

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

Bench : Single Bench

Judgement

Kishore Singh Lodha, J.—These five appeals have been filed by the Rajasthan State Road Transport Corporation against the joint award dated 20th April, 1981 made by the Motor Accident Claims Tribunal, Jodhpur, in favour of the five different claimants by a single order. As the five appeals are directed against this single order; they are being disposed of together by a common order.

2. The facts giving rise to these appeals briefly stated are that on 22-5-1975 Mahendra Kumar, Chandra Kanta, Kumari Amita Mangi Bai and deceased Lalit Kumar were coming from Mt. Abu towards Abu Road in a car-taxi No. GTF 9169 at about 11.30 a.m. When they came near "Talhati" a bus No. RR N 6531 belonging to the Rajasthan State Road Transport Corporation came from the side of Abu Road. It is alleged that the taxi-car was being driven by Hans Raj and bus was being driven by Shiv Nath Singh, and, both the vehicles were being driven rashly at a high speed. The two vehicles collided resulting into the deaths of Lalit Kumar and Hans Raj and injuries to the other occupants of the taxi-car. The injured were taken to the Abu Road Hospital and then they were taken to the Vadi Lal Sara Bhai Hospital, Ahmedabad.

3. Five claim petitions were filed. Four by the four injured persons viz. Mahendra Kumar, Kumari Amita, Chandra Kanta and Mangi Bai, and, one by the dependents of the deceased Lalit Kumar. It was alleged in the claim petitions that on account of the rashness or negligence of both the drivers this accident took place. The Rajasthan State Road Transport Corporation and the driver Shivnath Singh, were

impleaded as non-petitioners on the one hand and Pyare Lal, the owner of the taxi-car and the United India Fire and General Insurance Co. Ltd., the insurer of the taxi were impleaded on the other hand. In their written statements the non-petitioners denied the fact of their by driver being rash and negligent and imputed the cause of accident to each other's driver. The fact of the accident, the death of Lalit Kumar and injuries to the various claimants, does not appear to have been disputed. Payare Lal the owner of the taxi-car however, did not file any reply and was proceeded against ex-parte. After framing the necessary issues and taking evidence of the parties, the learned Judge of the Claims Tribunal found that the accident was due to the contributory rashness of both the drivers and he awarded compensation to the claimants in different sums which I will presently consider. The four non-petitioners were held jointly and severally liable for the awards and 6% interest was awarded on the amount of the award from the date of the application to the date of payment. However, the liability of the non-petitioner United India Fire and General Insurance Co. Ltd. was restricted to Rs. 10,000/- over and above the costs and interest in each case.

4. Aggrieved of this, now, the Rajasthan State Road Transport filed the present appeals. Cross-objections have also been filed on behalf of the claimants as well as by respondent No. 3. So far as respondent No. 3 is concerned, his case is that the driver of the taxi was not at all rash and accident did not take place on account of his rashness, and, therefore, respondent No. 3 could not be held liable for any damages. So far as the claimants are concerned, they have asked for enhancement of the amounts of the award and have also prayed that interest should have been awarded at rate of 12% on the amount of award from the date of accident upto the date of payment. The claimants have also prayed for increase of the liability of the Insurance Company.

5. I have heard the learned Counsel for the parties and gone through the record. The first and foremost question which arises for consideration in these appeals is about the negligence of the driver of the bus. The learned Tribunal after proper appreciation of evidence on record have come to the conclusion that the driver of the bus was also negligent. In my opinion, this finding does not call for any interference, I have perused the relevant evidence in this respect and I am perfectly in agreement with the learned Tribunal. All the injured persons, who have come in the witness-box clearly stated that the bus was being driven at a very high speed. Not only this, from the very nature of the accident, it clearly appears that the driver of the Bus was rash. The evidence of Bhikam Chand, the Investigating Officer, who has been examined in each of the cases, has prepared a site-plan and proved the same. He states that the marks of the tyres of the bus as well as the car at the spot showed that after the impact, the car was pushed back to about 12 feet. This fact also stands corroborated by the evidence of Loomba Ram, the Mechanical Inspector, who had also visited the spot and examined the vehicles. It is not in dispute that the bus was going towards Mt. Abu ascending whereas the car was coming from Mt. Abu towards Abu Road on the descending. If, in these circumstances the bus pushed back the car to about

12 feet, it clearly goes to show that the bus was at a really high speed and driver of the bus could not stop it on seeing the car from the opposite direction. The driver of the bus has entered the witness box and he states that on seeing the car coming from the opposite direction he had taken the bus to the extreme left and brought it to stand-still and the car collided it while it was standing. This statement of the driver of the bus is wholly un-believable in view of the position that was found on the spot, In these circumstances the learned Tribunal was perfectly justified in holding that the driver of the bus was rash. When the rashness of the driver of the bus is established, the only other question which remains for consideration in these appeals is quantum of damages awarded to the claimants because as already stated above the fact that the injured persons viz. Mahendra Kumar, Kumari Amita, Chandra Kanta, Mangi Bai and deceased Lalit Kumar were travelling in the taxi-car at the time of accident, has not been disputed before me nor it has been disputed that they have received injuries in the accident.

6. Mahendra Kumar has been awarded a sum of Rs. 75,000/- in total under different heads as under:

(i) Expenses for treatment Rs. 3,000/- (ii) Loss of expected income Rs. 50,000/- (iii) On account of mental and physical sufferings Rs. 10,000/- (iv) Deprivation of happiness and enjoyment in life Rs. 5,000/- (v) Loss of expectancy of life Rs. 7,000/-

7. It is contended by the learned Counsel for the appellant that so far as the award of Rs. 3,000/- on account of expenses for treatment goes no bills, vouchers and receipts etc. have been produced to support his case and so far as other claims under heads No. 2 to 5 are concerned, they are over lapping and in any case no award could have been made for loss of expectancy of life when Mahendra Kumar is still alive. He, therefore, prays that award may be set aside or suitably reduced. On the other hand, learned Counsel for the non-petitioner, Mahendra Kumar, supported the award.

8. I have considered these contentions. Mehendra Kumar was about 18 years of age at the time of this accident. On account of this accident, his left femer had been fractured and steel-rod has been inserted after operation. He remained in hospital from 25-5-75 to 4-6-75. The accident had taken place in between Mt. Abu and Abu Road and the members of his family as well as family doctor were called from Dhar to Abu Road. From there he was shifted to the Vadi Lal Sara Bhai, Hospital, Ahmedabad. Looking to the nature of the injuries and the manner in which he had to be thus, looked after, the award of Rs. 3,000/- by way of medical expenses cannot be said to be excessive by any amount of imagination. It is not necessary for claiming the expenses on account of medical treatment, the claimant or his attendants should have produced the vouchers and bills etc.

9. The award of Rs. 10,000/- on account of bodily and mental sufferings, a sum of Rs. 5,000/- for deprivation of happiness and enjoyment of life and loss of

expectancy of life in the sum of Rs. 7,000/-, also cannot be said to be improper or excessive. I do not agree with the learned Counsel for the appellant that the awards on the different heads is over lapping or improper. Mental and bodily suffering of a person who got fracture of femur which necessitated the insertion of steel-rod in his leg can easily be imagined. There has been permanent disability in the leg. Mahendra Kumar has stated that he cannot sleep on his left side on account of the presence of the steel-rod. He feels, pain in his hands and feet when ever there are clouds. He also states further that on account of this accident his sight in the right eye is reduced, therefore, the award on account of mental and physical suffering is perfectly justified and so also the award for the loss of happiness and enjoyment of life because of these defects in body would continue. So far as the damages for loss of expectancy of life are concerned, they are also allowable to a person who have suffered injuries and merely because he is alive, the award under this head, cannot be said to be improper. In this connection, reference may be made to Ayesha Begum Vs. G. Veerappan and Others, where in the learned Judge of the Madras High Court while considering the question on award of damages to an injured person, has observed:

He is also entitled to general damages in respect of pain and suffering which he has undergone upto the date of trial and which he is likely to undergo thereafter. Damages are also awarded in respect of loss of happiness which a person might expect to have enjoyed and of which he has been deprived, under the head loss of expectation of life.

This, leaves the award of Rs. 50,000/- on account of loss of income. It may at once be stated that looking to the material on record, this award appears to be excessive. In the claims petition, no specific mention has been made about this claim. A sum of Rs. 50,000/- has been claimed as damages for fracture and shortening of leg, limping and for permanent disablement caused to the applicant. However, in evidence Mahendra Kumar states that he wanted to be a Chartered Accountant but now he has got low marks in his examination so he would not be able to do so. At the time when he came in witness box on 21-4-1978 he was doing his B.Com (final), he has further stated that on account of accident his memory has gone weak. He lost one year and failed in IIInd year commerce. That is all the evidence. It has not been stated by him that what his position in the lower classes had been. He has also stated that if he had become Chartered Accountant then what income he would have expected. He has also not stated as to what he would do now, when he apprehends that he would not be able to be a Chartered Accountant. In these circumstances, there does not appear to be a reasonable basis for the award of Rs. 50,000/- on account of loss of income. The learned Counsel for respondent Mahendra Kumar urged that though on the record of this case the status of the family of Mahendra Kumar has unfortunately not come but in the connected claims which were being tried by the Tribunal, simultaneously, there is evidence to show that Mahendra Kumar belongs to a well to do family. His father is an Additional District Judge, his uncle is Superintending Engineer and other brother is doctor and, in these

circumstances it can easily be expected that Mahendra Kumar would have either become Chartered Accountant or could have qualified himself for being well placed in life. Unfortunately the evidence which is not on the record of this case cannot be taken into account. However, it does appear that the family to which Mahendra Kumar belongs is quite well placed. This inference can rightly be drawn from the facts that when this accident took place, they were travelling by a taxi-car and after the accident, a doctor had been called from their native place Dhar which ordinarily family not being of means, could not have afforded. Keeping the back ground of the family it can be expected that Mahendra Kumar would have qualified for a good status in life. Looking to all the facts and circumstances of the case, I am of the view that a sum of Rs. 30,000/- could have been awarded to him on this count and to this extent the award requires to be modified.

10. Now coming to the awards made in favour of Kumari Amita, Chandra Kanta and Mangi Bai, it may at once be stated that the learned Tribunal has awarded different sums to these claimants on the same heads as in the case of Mahendra Kumar except the award on account of future income. Kumari Amita has been awarded a sum of Rs. 30,000/-. The evidence of Amita supported by the evidence of Dr. Jain goes to establish that she was also taken to the "Vadilal Sarabhai Hospital. She remained in hospital from 25-5-1975 to 26-7-1975. Her jaw was fractured. Thus, her face was disfigured. She also received injuries in eyes, and left hand. Kumari Amita further states that after this accident she cannot lift any weight by her left hand. She cannot do reading for long and also feels difficulty in walking. She has also stated that she wanted to be a doctor but on account of above difficulties she could not take up that course and has now joined the course of Home-science. Looking to these circumstances an award of Rs. 30,000/- cannot be said to be excessive, so also the awards of Rs. 20,000/- and Rs. 1500/- to Chandra Kanta and Mangi Bai, who have also received injuries and had to be taken, to the Vadi Lal Sara Bhai Hospital, Ahmedabad, and taken there for some time.

11. This, brings me to the award of Rs. 25,000/- on account of death of Lalit Kumar. Lalit Kumar was 18 years of age at the time of the accident and had passed Higher Secondary in First Class. His parents as the evidence shows are well to do and he could have attained a position in life. His father was 40 years of age at the time of accident and his mother was 30 years of age. Looking to all these circumstances, the award of Rs. 25,000/- on account of his death also does not appear to be in any way excessive.

12. Now coming to the cross-objections filed on behalf of Pyare Lal respondent No. 3, it may at once be stated that in these appeals filed by the Rajasthan State Road Transport Corporation, Pyare Lal is not entitled to file any cross-objection affecting the award against him because the lis was between the claimants and him. He had filed appeals against the award but the same were rejected as not pressed as would be clear from the order dated January 3, 1984, passed in the miscellaneous appeals, therefore, those awards have become final between

Pyarelal and the claimants. These cross-objections are, therefore, liable to be dismissed. So far as the cross-objections filed on behalf of the claimants are concerned, I do not find that the awards made in favour of these claimants as stated above are inadequate or improper. The claimants themselves have not properly proved the different heads of compensation they wanted to claim and the learned Tribunal had to report to approximation and estimate the amounts which in the circumstances of the case, cannot be said to be improper.

13. These claimants have also claimed interest @ 12% on the amounts of the award and the learned Counsel has placed reliance on 1985 ACJ 379 and 1985 ACJ 397 to support this claim but I am of the opinion that the award of interest is in the discretion of the Tribunal, the Appellate court has nothing to interfere with his discretion. In any case while passing the stay order in the various stay applications filed along with the appeals, this Court has directed the appellant to pay interest @ 12% p.a. on the amount remaining up-paid from 26th April, 1982, until the amount is deposited or paid, and, therefore, also I am not inclined to interfere with the rate of interest.

14. The claimants have also asked for the increase of the liability of the Insurance Company. But in the appeals filed by the Rajasthan State Road Transport Corporation, the claimants cannot claim by further relief against the Insurance Company by filing cross-objections because the appeal is not by the Insurance Company.

15. The result, therefore, is that the cross-objections filed by the respondents are hereby dismissed. The appeals No. 57/82, 59/82, 60/82 and 64/82 also fail and are hereby dismissed.

16. Appeal No. 58/82 is partly accepted and the award made in favour of Mehendra Kumar against the R. S. R. T. C. is reduced by a sum of Rs. 20, 000/-. This award would be limited to a sum of Rs. 55,000/-. Looking all the facts and circumstances of the cases, the parties are left to bear their own costs in these appeals.