
(2002) 10 RAJ CK 0032

In the Rajasthan High Court

Case No : Special Appeals (Civil) No. 64, 65 and 72 of 1997

Rajasthan State Road Transport Corporation and Another

APPELLANT

Vs

Smt. Mana Devi and Others

RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

Citation : (2003) 1 WLC 580 : (2003) 2 WLN 495

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Division Bench

Judgement

H.R. Panwar, J.—These three appeals arise out of common judgment passed in S.B. Civil Misc. Appeals No. 271/91, 272/91, 232/91 and 244/91 filed by respective claimants whereby the learned Single Judge by his judgment dated 12.8.1996 modified the awards dated 8.4.1991 passed by Motor Accident Claims Tribunal (District Judge), Churu (hereinafter referred to as "the Tribunal"). Aggrieved by the judgment of the learned Single Judge, Rajasthan State Road Transport Corporation (hereinafter referred to as "the R.S.R.T.C.") filed three D.B. Special Appeals (Civil) No. 62/97, 64/97 and 65/97. The claimant Ram Gopal has filed D.B. Special Appeal (Civil) No. 72/97 seeking enhancement of compensation.

2. We have heard learned Counsel for the parties and carefully gone through the record of the case as well as the judgments passed by the Tribunal and the learned Single Judge.

3. On careful consideration of the material on record, we do not find any error in the conclusion reached by the learned Single Judge holding the bus driver negligent for the accident in question. We have perused the statements of A.W. 1 Sanwar Mal and A.W. 2 Naresh Kumar. These witnesses are the eye-witnesses of the occurrence, who were occupants of the jeep which was hit by the bus owned by R.S.R.T.C. On 10.7.1986 A.W. 1 Sanwar Mal, A.W. 2 Naresh Kumar, A.W. 3 Ram Gopal, Ramesh Kumar, Phool Chand, Virendra Kumar and Hari Prakash @ Munna were travelling in jeep No. RRT 6961 from Madhopur to Bikaner. When the

said jeep was plying on Fatehpur Ratangarh road, at about 5.30 AM, bus No. RNE 9886 owned by the R.S.R.T.C. came from opposite direction being driven at a great speed, rashly and negligently by its driver second respondent Sanwal Singh, hit the jeep. Due to this accident, the jeep was completely damaged and the occupants of the jeep, namely, Ramesh Kumar, Phool Chand, Virendra Kumar and Hari Prakash @ Munna sustained fatal injuries. They succumbed to the injuries and AW 3 Ram Gopal (appellant in D.B. Special Appeal (Civil) No. 72/97) sustained as many as five injuries on the right hand, skull and nose etc. The injury on the right hand resulted in amputation of the right hand from above elbow. The testimony of the eye-witnesses is consistent to the effect that the jeep was driven at a moderate speed on its correct side of road whereas the bus suddenly swerved to wrong side of the road coming from the opposite direction at a great speed and dashed against the jeep. The jeep was thrown about 70 to 80 feet away after it was hit by the bus. The eye-witnesses are consistent on the point that the said accident took place before the bus had crossed the railway level crossing. The learned Single Judge on reappreciation of the evidence on record, came to the conclusion that the finding recorded on the point of negligence by the Tribunal was based on extraneous or inadmissible evidence. From the pleadings, oral as well as documentary evidence, it is clear that the accident in question took place before the bus had crossed the railway level crossing and not after having crossed the railway crossing as contended by the learned counsel for the R.S.R.T.C. The Tribunal based its finding mainly on the site inspection map which, according to it, was incomplete but even then the Tribunal chose to rely upon such an incomplete document. More so, the said map has not been proved by the author of the document or its Motbirs. The learned Single Judge rightly held this document to be inadmissible in evidence while reversing the finding of the Tribunal on the point of negligence. The Tribunal has altogether ignored the testimony of three eye-witnesses, who sustained injuries due to the very accident, A.W. 3 Ram Gopal has proved the injuries which he sustained in the said accident, A.W. 1 Sanwar Mal had lodged the FIR of the said accident promptly with the police. His evidence was not believed by the Tribunal because he failed to produce the injury report for the injuries sustained in the said accident. The testimony of the eye-witnesses produced by the claimants remained un rebutted. The presence of these witnesses in the jeep at the time of the occurrence cannot be doubted. In these circumstances, the Tribunal fell in error in preferring the site inspection map, an incomplete and unproved document, as against the testimony of independent witnesses. In our opinion, the learned Single Judge justifiably placed reliance upon the evidence of independent eye-witnesses produced by the claimants while reversing the finding on negligence. More so, this controversy has already been concluded by a Division Bench of this Court in D.B. Special Appeal (Civil) No. 62/97 decided on 11.1.2001 arising out of same accident to which one of us (H.R. Panwar, J.) was a party. In Premier Tyres Limited Vs. Kerala State Road Transport Corporation, the effect of nonfiling of an appeal in the connected suit tried together with common issues came to be considered by the Hon"ble Supreme Court and the

Apex Court held that where an appeal arising out of connected suits is dismissed on merit the other cannot be heard, and has to be dismissed.

4. So far as quantum of compensation is concerned, the learned Single Judge has awarded compensation of Rs. 85,000/- in the case of deceased Phool Chand, Rs. 90,000 in the case of deceased Ramesh Kumar and Rs. 1,00,000/- in the case of injured Ram Gopal. It is settled law that in appeal quantum is interfered when compensation awarded is either too low or too excessive, as the case may be. Obviously, for the death of Phool Chand, a young person aged 35 years and Ramesh Kumar aged 20 years, award of Rs. 85,000/- and Rs. 90,000/- to the respective claimants who are legal representatives of the deceased persons cannot be said to be too excessive.

5. D.B. Special Appeal (Civil) No. 72/97 filed by the appellant claimant Ram Gopal (for short "the claimant"), who at the relevant time of the accident was an occupant of the jeep and due to rash and negligent driving of the R.S.R.T.C. bus by its driver respondent No. 1 Sanwal Singh sustained various injuries on his person. The claimant has placed on record the injury report Ex. 2, certificate issued by Rehabilitation Research Centre, S.M.S. Medical College Hospital, Jaipur. Ex. 3 dated 17.3.1988, which shows that the claimant Ram Gopal has suffered an amputation from above right elbow. The Medical Officer, Government Hospital, Srimadhapur has certified that the right hand of the claimant has been amputated due to an accident. Ex. 6 the certificate issued by S.M.S. Medical College Hospital, Jaipur shows that the claimant was admitted as an indoor patient from 11.7.1986 to 12.8.1986 in Neurosurgical Ward. He was admitted because of head injury vide admission No. 22722. Ex. 7 is the certificate issued by Board of Secondary Education, Rajasthan, in the year 1971 showing the date of birth of the claimant to be 1.2.1954. Ex. 8 is a certificate issued by the Branch Manager, Life Insurance Corporation of India (for short "L.I.C."), Sikar showing claimant's commission earning. Ex. 9 is copy of income tax return filed by the claimant. The claimant has also produced the bills for treatment expenses and the transportation charges incurred by him Exhibits 11 to 166. From the record, it is established that the claimant Ram Gopal sustained injuries on right hand, which resulted in amputation of right hand above elbow. He has also sustained head injury resulting in numerous fractures of skull. Injuries have been on nose and other parts of the body. In all he sustained five injuries vide Ex. 2. This fact has amply been established from the statements of A.W. 3 Ram Gopal, A.W. 4 Chauthmal and A.W. 5 Dr. Rakesh Nathani, Assistant Professor, Department of Neurosurgery, S.M.S. Hospital, Jaipur.

6. We have carefully perused the record of the case, gone through the statements of A.W. 3 Ram Gopal, A.W. 4 Chauthmal and A.W. 5 Dr. Rakesh Nathani. It is established from the deposition of Dr. Rakesh Nathani, Assistant Professor, Department of Neurosurgery, S.M.S. Hospital, Jaipur that the claimant Ram Gopal was admitted in S.M.S. Hospital in Neurosurgical Ward on 11.7.1986 due to head injury. At the time of admission to the hospital, he was deep

unconscious having right hand amputated and the head injury. On 12.7.1986 he was operated as due to the injury, injured developed breathing disorder. C.T. scan was done. According to the doctor, there was injury on right tempo parietal region as well as left posterior parietal region. Blood was oozing from left lateral parietal region. On 22.7.1986 plastic surgery of his fractured nose was done. On clinical examination, it was found that the injured had no memory and rather he lost the memory. He could not remember anything. Even he could not recognise other persons by face nor could he distinguish the difference in colours. He could not read or write. He has proved prescription slip dated 1.8.1982. It was further deposed that due to injury on skull, there was intracerebral hemorrhage and the injured had to be transfused blood from 12.7.1986 to 14.7.1986. He has proved the discharge certificate issued by the Hospital and the certificate regarding period of hospitalisation Ex. 3 and Ex. 6 respectively. This fact has also been proved by the statement of the injured's brother A.W. 4 Chauthmal. Thus, from the unrebutted deposition of the claimant's, witnesses it has been established that due to the said accident, claimant not only became permanently disabled but rendered totally incapable of doing anything, rather it can be said that he has been crippled. From the pleading and evidence and supporting documents, it is established that on the relevant date of the accident, the claimant was engaged as LIC agent, which is evident from Ex. 8 certificate issued by the Branch Manager, LIC Sikar, The age of the claimant has also been established to be 32 years. From the statements of A.W. 3 Ram Gopal and AW 4 Chauthmal, it is also established that the claimant is having a wife and 5 minor children dependent on him. The claimant has also incurred expenses on treatment, conveyance, attendants and nourished diet etc. He has suffered mental agony and physical pain during the period of treatment and would suffer permanently for rest of his life. Keeping in view the nature of the injuries and the permanent disablement caused to the claimant, the amount of Rs. 1,00,000/- awarded by the learned Single Judge is grossly inadequate and, therefore, in the facts and circumstances of the present case, the compensation is required to be enhanced on a proper computation.

7. In R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , the Hon"ble Supreme Court observed as under:

Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of a money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant; (1) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for loss of amenities of life which may

include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental, stress in life.

8. It was further observed by their Lordships as under:

It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame.

9. Their Lordships further observed that in its very nature whenever a Tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused.

10. In Amar Singh Vs. Ishwar and Others, the Hon"ble Supreme Court enhanced the compensation from Rs. 50,000/- to Rs. 1,00,000/- for pain, shock and suffering. In that case, the claimant therein had suffered 30% permanent disablement.

11. In Shashendra Lahri Vs. UNICEF and Others, the Apex Court enhanced the compensation from Rs. 58,000/- to Rs. 4,58,000/- by granting an additional compensation of Rs. 4,00,000/-. In that case, the claimant suffered permanent disablement of shortening of his right leg by 3 inches. He was a B.Com. student of 17 years. Their Lordships were of the view that the injured person had future prospects and because of the adverse effect of his permanent disability as a result of motor accident on his future prospects, an, amount of Rs. 4,00,000/- should be further awarded in addition to that awarded by the High Court.

12. In Swatantra Kumar Vs. Qamar Ali and Others, , the Apex Court awarded Rs. 1,00,000/- for pain, shock and sufferings to the injured, who sustained injuries in the accident, which resulted in shortening of his leg by 1.75 inches.

13. In Imtiaz v. National Insurance Co. Ltd. and Ors., 2001 ACJ 1033 the injured claimant was awarded compensation of Rs. 2,00,000/- for amputation of leg by the Tribunal, which was reduced to Rs. 1,45,000/- by the High Court. The Hon"ble Supreme Court enhanced the compensation to Rs. 2,00,000/- and observed that even the quantum of compensation of Rs. 2,00,000/- appears to be on the lower side.

A Division Bench of the Karnataka High Court in Suresh Umani Gugaratti and

Ors. v. General Manager, K.S.R.T.C. and Ors., 2001 (3) TAC 353 awarded a sum of Rs. 7,30,000/- as compensation to a B.Com. student of 31 years, who suffered amputation of left arm. Apart from the loss of earning and the treatment expenses, the injured was awarded Rs. 50,000/- as loss of amenities and enjoyment of future life and Rs. 75,000/- for pain and suffering.

14. A Division Bench of the Madhya Pradesh High Court in Bhuri Bai v. Kararnjeet Singh and Ors., 2001 (1) TAC 735 (MP) awarded compensation of Rs. 1,96,000/- to the injured, who suffered amputation of right hand by applying the multiplier of 16.

15. In Muthaiah Sekhar Vs. Nesamony Tpt. Corporation Ltd. and Another, , the Apex Court enhanced the compensation by awarding additional Rs. 3,00,000/- to the original compensation awarded by the Tribunal and affirmed by the High Court of Rs. 1,76,000/-. In all the claimant was awarded Rs. 4,76,000/-. In that case, the claimant aged about 25 years suffered injuries including dislocation of right hip, head injury and injury to the left ear. The Tribunal awarded Rs. 1,76,000/-. On appeal to the Kerala High Court, the award of the Tribunal was maintained. On further appeal, the Apex Court enhanced the compensation by awarding additional Rs. 3,00,000/-. Thus, the total compensation awarded to the claimant therein was Rs. 4,76,000/- with interest @ 12% p.a. from the date of the claim petition.

16. A Division Bench of the Punjab and Haryana High Court in Smt. Sudesh Raizada Vs. Deepak Gupta and Others, enhanced the compensation from Rs. 2,80,000/- to Rs. 5,00,000/-. In that case, the injured claimant suffered head injury resulting in loss of mental faculties besides other physical injuries. The injured was aged 43 years. Considering the nature and extent of injuries suffered by the claimant, loss of amenities of life, medical expenses incurred and the need of attendant, the compensation was enhanced to Rs. 5,00,000/-.

17. A Division Bench of Himachal Pradesh High Court in Surjit Singh Vs. Waryam Singh and Another, held that the total compensation payable to the claimant therein under various heads comes to Rs. 5,60,000/- through in that case, the claimant laid the claim only for Rs. 3,00,000/-. In that case, the injured claimant aged about 4 years suffered head injury and was not obeying commands and was not communicable. The Court held that the injured would not be able to lead an independent life taking care of himself and would require an attendant throughout his life. Besides the compensation for various other heads, a sum of Rs. 90,000/- for pain, suffering and loss of amenities of life, a sum of Rs. 1,35,000/- was awarded as loss of future earnings.

18. A Division Bench of Bombay High Court in Shekhar Shantaram Dighe Vs. Roshan Lal Uday Bhan and Others, awarded compensation of Rs. 3,69,140/- to the injured claimant. In that case, the claimant suffered amputation of left arm at the age of 30 years having income of Rs. 1,400/- p.m.

19. In Zumar Lal v. Nand Kishore and Ors., 2001(3) TAC 1 (SC) the Apex Court

awarded compensation of Rs. 2,00,000/- to the injured aged about 62 years for amputation of leg.

20. In Ashwani Kumar Mishra Vs. P. Muniam Babu and Others, , the Apex Court applied the multiplier of 16 for computing loss of income in the case of injured aged 23 years, who suffered injury to spinal cord resulting in permanent disablement.

21. this Court in Prahlad Rai v. Pradeep Kumar and Ors., RLW 2002(1) Raj. 669 awarded compensation of Rs. 5,00,000/- to the injured claimant at about 22 years, who suffered amputation of leg.

22. Keeping in view the above principles and considering the facts of the instant case, nature of injuries suffered by the claimant, his age and monthly income, usual deprivation, pain and sufferings which the claimant has suffered on account of the injuries suffered in the said accident and would suffer in future having been rendered totally functional incapacitated, loss of amenities of life, need of an attendant, loss of earning capacity in present and for entire future, dependency of his wife and five minor children, we are of the view that the learned Single Judge failed to take into account these material aspects while assessing the compensation and, therefore, in the light of the above noticed principles, in the instant case, the compensation awardable to the claimant needs to be worked out. It is evident from the record that the claimant has wife and five minor children dependent on him. He was a L.I.C. agent and was having monthly income of Rs. 1800/- being income tax payer. The present and future loss if not more, at least can safely be assessed @ Rs. 1500/- p.m. Thus, the annual loss works out to Rs. 18,000/-. This amount further needs to be multiplied by appropriate multiplier applicable to the age of the claimant, which is 17 years purchase factor. Thus, the loss of income works out to Rs. 3,06,000/-. To this a sum of Rs. 10,000/- for treatment expenses, Rs. 5,000/- for expenses on transportation, Rs. 3,000/-for nourished diet and Rs. 75,000/- for loss of amenities, pain and suffering etc. should be added, which is just and proper compensation in the facts and circumstances of this case. Thus, the total compensation works out to Rs. 3,99,000/- rounded to Rs. 4,00,000/- to which the claimant is entitled.

23. In view of the aforesaid discussion, D.B. Special Appeals (Civil) No. 64/97 and 65/97 filed by the R.S.R.T.C. are devoid of any merit and accordingly, they are dismissed. D.B. Special Appeal (Civil) No. 72/97 filed by appellant claimant Ram Gopal is allowed and the compensation is enhanced from Rs. 1,00,000/- to Rs. 4,00,000/-. This amount shall carry interest @ 9% p.a. as has been held by the Apex Court in Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, from the date of application till realisation. However, there shall be no order as to costs.