

(2023) 07 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 271 Of 2002

Rajasthan State Road Transport Corporation And Others

APPELLANT

Vs

Vimla Devi And Others

RESPONDENT

Date of Decision : 18-07-2023

Acts Referred:

Citation : (2023) 07 RAJ CK 0052

Hon'ble Judges : Rajendra Prakash Soni, J

Bench : Single Bench

Advocate : M.R. Pareek, Ayush Gehlot

Final Decision : Dismissed

Judgement

Rajendra Prakash Soni, J

1. This appeal under the Motor Vehicles Act is at the instance of the owner of the vehicle and is directed against the award dated 07.12.2001 passed by the Motor Accident Claims Tribunal, Bikaner in Motor Accident Claim Petition No. 256/1997 whereby, disposing of the application by awarding a sum of Rs.12,84,840/- as compensation for the death of Madho Singh arising out of the accident where the bus owned by the appellant was involved.

2. Being dissatisfied, the owner of the vehicle namely Rajasthan State Road Transport Corporation (for short, "RSRTC") has come up with the present appeal.

3. There is no dispute that on 02.10.1997 at about 1:35 pm, while the driver of the bus No. RJ-07-P-1038 left from Deshnok bus stand for Jodhpur and as soon as the bus started moving a little, it ran over Madho Singh and consequently he died. The claim petition was filed by his wife Mrs. Vimla Devi and four siblings. They are claiming that the deceased Madho Singh was working as a Constable in the police department of Government of Rajasthan and he used to earn Rs.50,400/- per annum. The amount claimed was Rs. 49,82,000/-.

3. The claim petition was contested by the Rajasthan State Road Transport

Corporation as well as the driver and the conductor of the bus involved.

4. In reply, the fact that the victim Madho Singh died of the accident was not denied. It was however, contended that due to negligence on the part of the deceased Madho Singh himself, the accident occurred, therefore, the appellant RSRTC would not be held responsible for the death. According to the appellants, as soon as the bus started moving a little from Deshnok bus stand, some of the passengers from rear side of the bus shouted that someone has fallen and was ran over by the bus.

5. The Tribunal below, on consideration of the material available on record came to the conclusion that it was due to the negligence of the driver of the bus involved that the accident occurred and in such circumstances, it was a fit case for grant of compensation. The compensation was assessed in the following way:-

(i) for loss of dependency	= Rs.12,47,840/-
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(ii) for love and affection to each child	
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Rs.5,000/- (Rs.5000 x 4)	= Rs. 20,000/-
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(iii) for loss of consortium	= Rs. 10,000/-
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(iv) for death ceremony and	
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transportation expenses	= Rs. 7,000/-
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Total	Rs.12,84,840/-
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6. Mr. M.R. Pareek, learned counsel appearing on behalf of the appellant strenuously contended before me that while arriving at the conclusion that the driver of the bus alone was responsible for the death, the Tribunal below has totally misread the evidence on record.

7. He submitted that the learned Tribunal has erroneously concluded that the accident took place on account of the rash and negligent driving of the bus No. RJ-07-P-1038 by its driver Sri Ram; that the deceased Madho Singh, in fact, was negligent and responsible for the accident inasmuch as he made attempt to board the moving bus but was unable to catch hold of the rod and fell down, on account of which, he sustained fatal injuries. He has further submitted that there was no rash or negligent act on the part of the bus driver Sri Ram. He has thus, prayed that the findings of the Tribunal below holding the driver of the offending bus to be rash and negligent resulting into death of Madho Singh be set aside.

8. According to Mr. Pareek, the finding arrived at by the Tribunal below is based on assumptions and presumptions since relevant evidence has not been considered in its correct perspective. The finding recorded qua issue No. 1 is ex-

facie contrary to the fact and law. The learned Tribunal has discarded all other evidence including the deposition of driver and conductor of the involved bus; that the learned Tribunal has failed to appreciate the evidence available on record in its correct perspective and has ignored the cogent evidence available on record.

9. It is further contended that the learned Tribunal has erred in recording the finding that the driver of the bus acted in rash and negligent manner in starting the bus, while the deceased Madho Singh was boarding it. The driver of the bus was not responsible for the accident occurred. The driver started the bus after all the passengers boarded it and the gate of the bus was closed.

10. It is further argued that without prejudice to the preceding arguments and in addition to that, it is alternatively argued that the Tribunal has miserably failed to apply the principles of contributory negligence and "res ipsa loquitur" which vitiates the impugned judgment. On the basis of the material available on record, it cannot be said that the negligence can be attributed to the bus driver alone. The deceased Madho Singh himself acted in negligent manner in boarding the bus while it was in a motion. He was not having the requisite ticket to show that he was at all a passenger of the bus involved. It is further argued that the deceased was a habitual drinker and was in the state of intoxication when the accident occurred but this fact has not been taken into consideration by the Tribunal below.

11. At the most, it was a case of contributory negligence on the part of the deceased also, therefore, the liability of compensation cannot be fastened solely on the appellants. Being the case of contributory negligence, the compensation computed by the Tribunal below deserves to be reduced substantially after computing it afresh on the basis of the arguments advanced by him. He, therefore, submits that the appellants should not be held liable for payment of compensation.

12. Contrary to it, Mr. Ayush Gehlot, learned counsel appearing on behalf of the claimants has supported the award impugned and has contended that it was the sole duty of the driver of the involved bus to see that the bus is moved only after all the passengers have boarded it and the gate of the bus is closed. He further contends that sufficient materials were there on record in support of the averment that the victim had actual income of Rs.50,400/- per annum from the salary and it was sufficient to come to the conclusion that the amount of compensation awarded was rather on the lower side. Therefore, he prays for dismissal of the appeal filed by the RSRTC.

13. After hearing the learned counsel for the parties and after going through the material available on record, it is found that there is no dispute to the fact that the victim had died where the bus No. RJ-07-P-1038 was involved. In the instant case, AW-2 Gordhan Singh S/o Pabudan Singh is an eye-witness to the accident and he has claimed in his deposition that the involved bus started while picking

up the passengers and Madho Singh died due to the sudden departure of the bus while passengers were boarding it. The driver suddenly started the bus carelessly at the signal of the conductor. Madho Singh fell down as soon as the bus left almost for 5-7 feet. The victim had not yet fully boarded the bus and on account of which, Madho Singh fell down and sustained injuries resulting into his death.

14. It is further deposed by him that as soon as the bus was being moved ahead, the passengers sitting in the bus raised an alarm that someone has fallen down. This proves that someone from inside the bus has fallen out of the bus. Although, the conductor of the bus involved NAW-2 Magha Ram S/o Moola Ram has deposed that he had closed the gate of the bus when the bus was moving. Thereafter, the passengers raised hue and cry on which, the bus was stopped. After getting down from the bus, he saw that someone who had come to visit the fair after drinking alcohol had come under the rear tyre of the bus.

15. From the close scrutiny of the statements, as a whole, it is abundantly clear that before Madho Singh could enter into the bus completely and safely as well as without ensuring closure of the gate of the bus, the driver carelessly and suddenly moved the bus due to which Madho Singh, who was in the process of boarding the bus, fell down resulting into his death. Had a person standing outside of the bus comes under the rear tyre of the bus then the passengers inside the bus may not need to make noise because they could not know about it. Therefore, the statements of the driver and the conductor of the bus cannot be considered reliable.

16. The version of the eye-witness aw-2 Gordhan Singh finds corroboration from the site plan (Ex.P-5) and the charge-sheet (Ex.-4) filed against the bus driver. In view of the above, as already referred, the statements of the driver and the conductor of the bus involved stand falsified from the testimonies of the eye-witness examined by the claimants.

17. I find substance in the contention of Mr. Ayush Gehlot that while driving any vehicle in a public place, especially in such a situation where the bus is supposed to carry passengers of a fair from the fair ground, an additional duty is cast upon the driver of the vehicle to see that the bus is moved only after all the passengers have boarded it safely and the gate of the bus is closed. By doing so, there could be no question of any person falling down from the bus. Since, it was a bus of RSRTC hence, it was the duty of the conductor of the bus to caution the passengers from entering into the bus while the bus was on the move.

18. After carefully going through the record, I am of the considered view that the conclusion qua negligence arrived at by the learned Tribunal is based on the facts proved by the claimants and the finding of the Tribunal below qua issue No.1 has to be confirmed as the Tribunal below has given cogent reasons for coming to the conclusion that the accident took place on account of rash and negligent driving of the involved bus of RSRTC and not on account of any negligence of deceased Madho Singh nor was there any contributory negligence on the part of the

deceased in causing the accident. The findings of the trial Judge on issue No. 1 are confirmed.

19. So far issue No.2 is concerned, learned counsel for the appellant has argued that the learned Tribunal has seriously erred in deciding issue No.2 in favour of the claimants; that determining the future increase in the income at 50% was a serious error; that there was no material placed on record to prove the possibility of increase in the income of the deceased. It is further contended that the deduction of Rs.25, 996/-, i.e. one-fourth of the total income towards the personal expenditure was also a mistake committed by the learned Tribunal since, as per him, at least one-third of the total income was required to be deducted against the expenditure of the deceased. In respect of the multiplier applied, it is argued that the learned Tribunal has committed palpable error in applying the multiplier of 16 for computing the compensation. Looking to the age of the deceased, the multiplier of 11 could have been applied. In view of the above, it is argued that the compensation awarded is exorbitant and simply cannot be sustained. The amount awarded in other conventional heads has also been challenged stating to be contrary to the law. The learned Tribunal has also ignored the schedule for compensation appended to the Motor Vehicles Act, 1988, therefore, he concluded that the impugned award passed by the learned Tribunal deserves to be quashed and set aside.

20. Contrary to it, learned counsel for the claimants has supported the amount awarded.

21. A perusal of the record shows that at the time of accident, deceased Madho Singh was permanently employed in Government service as a Head Constable and there is no dispute in respect of his income at Rs.50,400/- per annum and his date of birth as 02.08.1958 as proved by the salary certificate (Ex.1) produced by PW-2 Ganga Prasad Khatri, who has deposed on behalf of the Office of Superintendent of Police, Bikaner. It is also not disputed that at the time of accident, the deceased was married having four children, therefore, in case, the deceased was in Government service and below the age of 40, hence 50% addition was to be made to his income as future prospects. Moreover, the deduction towards personal and living expenses for a person such as the deceased has to be determined as one-fourth. The accident occurred on 02.10.1997 and the learned Tribunal has taken multiplier of 16 on the basis of second schedule which also appears to be just and proper. In that view of the matter, I am of the view that the amount of compensation awarded by the Tribunal is just and reasonable.

22. In the light of aforesaid discussion, I see no reason to differ with the findings arrived at by the learned Tribunal, therefore, the conclusion arrived at by the learned Tribunal is upheld.

23. Resultantly, there is no merit in the present appeal as such the same is dismissed. In the facts and circumstances of the case, there would be no order

as to costs.

24. Appeal dismissed.