

(2004) 10 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 260 of 1992

Rajasthan State Road Transport Corporation

APPELLANT

Vs

Abdul Raseed and Others

RESPONDENT

Date of Decision : 13-10-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 92A

Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2005) 2 ACC 15 : (2005) ACJ 1766 : (2005) 2 RLW 927 : (2005) 1 WLC 279

Hon'ble Judges : R.P. Vyas, J

Bench : Single Bench

Advocate : Ankur Mathur, for Virendra Agrawal, for the Appellant; R.B. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Vyas, J.—The instant appeal has been filed against the Award dated January 20, 1992, passed by the Motor Accident Claims Tribunal, Jaipur, decreeing the total claim for a sum of Rs. 1,10,400/- with interest at the rate of 12 per cent per annum from 9.6.1989. The claim amount was ordered to be paid within three months, failing which 15% interest was ordered to be paid.

2. Brief facts leading to the filing of the present appeal are that one Abdul Saeed was working at Conductor of Tempo. On April 30, 1989, at 2.45 p.m. when the Tempo after, taking passengers from Sanganeri Gate, started for Jal Mahal and reached the turn of Shanker Gate, Bus No. RSG 2532 of the Rajasthan State Road Transport Corporation, being driven rashly and negligently by Shri Munnalal-Driver of RSRTC, came from behind in fast speed and dashed with the Tempo, as a result of which Abdul Saeed received grievous injuries and he succumbed to his injuries on May 5, 1989.

3. A case, bearing No. 87/89, was registered under Sections 279, 337, 338 and 304A, IPC, at Police Station, Brahampuri, statements of the witnesses were

recorded and investigation was carried out by the Police.

4. The claimants filed a claim before the Motor Accidents Claims Tribunal. Jaipur.

5. On the pleadings of the parties, the Tribunal framed as many as five issues, which read as under :-

"1. Whether, on 30.4.89, vehicle No. RSG 2532 was driven rashly and negligently by respondent No. 2-Munnalal, which caused accident and resulted into the death of Abdul Saeed ?

2. Whether, respondent No. 2 was in employment of respondent No. 1 -owner and the accident accrued during the course of employment.

3. Whether, applicants are entitled to get Rs. 11,65,000/- as compensation. If so, from who of them and how much of amount from each of them ?

4. Whether, deceased Abdul Saeed is responsible for contributory negligence ?

5. Relief?"

6. The claimant-respondents examined AW 1 Smt. Raisa Bedum, AW 2-Farooq, AW 3-Abdul Raseed and AW 4-Mubarak in support of the claim before the Tribunal. Apart from the, claimant-respondent filed copies of admission slip, FIR, Post Mortem Report of deceased-Abdul Seed, Parcha-Bayan, Site Plan, Final Report, Seizure Memo of Roadways Bus, Log Book, Home Guard Training Certificate of deceased Abdul Seed and Cash Memos of medicines.

7. Issues No. 1 and 4 were decided by the Tribunal in favour of the claimants and against the Corporation & Driver-Munnalal. Issue No. 2 was also decided by the Tribunal in favour of the claimants, as driver of the RSRTC Bus-Munnalal was in the employment of the Corporation at the lime of the accident.

8. With regard to issue No. 3, it may be staled that the claimants claimed, in all, Rs. 11,65,000/- before the Tribunal. But the learned Tribunal, after scanning every aspect of the matter, awarded Rs. 1,10,400/- as final Award. The interim amount of Rs. 15,000/-, which was awarded u/s 92-A of the Act on the application of the claimants, was adjusted against the total award of Rs. 1,10,400/- and ultimately, the Tribunal held that the claimants were entitled to gel actual amount of Rs. 95,400/-.

9. In rebuttal, no reply was given by respondent No. 2-Munna Lal before the Tribunal. Respondent No. 1-RSRTC stated before the Tribunal that the bus was not being driven by the driver rashly and negligently. The bus was very much within the control of the driver and was not running with excess speed. It was further staled that the driver of the Tempo in order to pick up the passengers, applied brakes suddenly and the Tempo stopped in the middle of the road, which resulted into accident. The conductor of the Tempo received minor injuries. He was immediately taken to the hospital and it was on 5.5.89 that he succumbed to his injuries. It was also stated by the Corporation before the Tribunal that the

driver of the Bus was not at fault, nor he is responsible for accident.

10. After discussion of oral and documentary evidence on record, the Tribunal has awarded a total award of Rs. 1,10,400/- as compensation with 12% interest from 9.6.1989. It maybe mentioned that earlier Rs. 15,000/- which were awarded as interim relief u/s 92-A of the Act, were adjusted against the amount of the final Award.

11. Against the aforesaid Award, the instant appeal has been filed by the RSRTC for setting aside the award dated January 20, 1992.

12. It was contended by the learned counsel for the the appellant-Corporation that Munnalal-the driver of the bus was driving bus in a normal speed at proper place, but the deceased was vulging from outside the Tempo. The said Tempo was being driven rashly and negligently. When the Tempo reached near Police Station, Brahampuri, in order to pick up more passengers, the driver of the Tempo suddenly applied brakes and the Tempo stopped in the middle of the road then the deceased received minor injuries due to his own fault. Therefore, the claimants are not entitled to get any compensation.

13. It was further contended by the learned counsel for the appellant-Corporation that the age of the deceased has been shown as 18 years by the claimants. But no certificate in support of the age has been produced by the claimants. Apart from that, the claimants have not produced any salary certificate, showing any income of the deceased from his Home Guard service. Only training certificate of Home Guard has been produced by the claimants.

14. It was also contended by the learned counsel for the Corporation that in the absence of any certificate with regard to the age of the deceased, the Tribunal has wrongly taken the age of the deceased as 18 years by taking into consideration the age of his parents. In the absence of salary certificate, the Tribunal has also wrongly assessed Rs. 400/- as dependency monthly income of the deceased. Therefore the award dated 17th January, 1992 maybe set aside.

15. It was Contended by the learned counsel for the respondent-claimants that the Tribunal has determined the dependency of Rs. 400/- per months which is most inadequate and meager amount. The deceased was a healthy young man of 18 years and was earning Rs. 1500/- per month by performing the job of Conductor. Apart form that, he was engaged in the job of Home Guard too and he had also earning from the job of Home Guard, which he was giving to respondents No. 1 to 5. Therefore, the Tribunal, should decide the issue accordingly.

16. Learned counsel for the appellant-Corporation has drawn my attention to the Second Schedule u/s 163A of the Motor Vehicles Act, 1988. This Schedule is pertaining to Compensation for Third Party Fatal Accident/Injury Cases Claims. This Schedule is taken into consideration for the purpose of guidelines only. He urged that the table of 18 applied by the Tribunal is improper. It was submitted

that the evidence was not properly appreciated by the Tribunal. It was also submitted that the quantum of compensation has wrongly been determined by the Tribunal, as the deceased was neither in Government service nor any salary certificate of his private employment has been produced by the claimants.

17. Section 163A provides special provisions as to payment of compensation on structured formula basis. Sub-section (1) of Section 163A lays down that the owner of the motor vehicle of the authorised insurer shall be liable to pay in case of death or permanent disablement due to accident. Further, Sub-section (2) provides that in any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful actor neglect or default of the owner of the vehicle concerned.

18. Section 163A is prospective in nature. This came into force w.e.f. 14.11.1994 by Amending Act No. 54 of 1994. It creates a new right in favour of the claimants. Simultaneously, it creates a new liability on the owners of the vehicles. But it shall be made applicable prospectively and not retrospectively. In the instant case, the accident had taken place on April 30, 1989 and the Tribunal has passed the Award on January 20, 1992. Apart from that ground No. 6 of the table provides for notional income for compensation to those who had no income prior to accident, whereas, in the instant case, the deceased was employed and was working as Conductor of the Tempo and was said to be earning Rs. 1500/- per months. Therefore, the Tribunal, after appreciating the facts and evidence on record and taking into consideration the age of his parents, appreciated the facts of salary to the tune of Rs. 400/- per month as Tempo Conductor and has rightly applied the multiplier of 18 by determining the salary of Tempo Conductor as Rs. 400/- per month.

19. Learned counsel for the respondent-claimants submitted that the learned Tribunal has appreciated the evidence on record and after examining all the material available on record, has passed the most inappropriate award, which, in the facts and circumstance of the present case, cannot be said to be proper.

20. In view of the oral and documentary evidence on record, it is established beyond all shadows of doubt that the accident took place due to rash and negligent driving of the bus driver- Munnalal and he was in employment of RSRTC and the accident occurred during the course of employment. The Tribunal, after appreciating the entire evidence on record, has rightly passed the suitable Award. There is no apparent error in the suitable Award of the learned Tribunal.

21. In the result, I do not find any force in the the instant appeal. The appeal is hereby dismissed.