

(2000) 09 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 905, 906, 907, 908, 909, 1037 and 3865 of 1997, 121 and 573 of 1998 and 132 of 1999

Rajasthan State Road Transport Corporation

APPELLANT

Vs

Ashok Mishra and Others

RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:

Citation : (2001) 1 ACC 45 : (2001) ACJ 158 : (2001) WLC 64

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : K.S. Rathore, for the Appellant; R.S. Bhati, J.K. Singhi, K.N. Tiwari, Virendra Agrawal and Deepak Goyal, for the Respondent

Judgement

J.C. Verma, J.—All the above civil misc. appeals have been filed by the Rajasthan State Road Transport Corporation challenging the order dated 19.8.97 passed by the Motor Accidents Claims Tribunal, Jaipur, whereas Appeal Nos. 905, 906, 907, 908 and 909 of 1997 have been filed by the claimants for enhancement of the compensation arising out of the same accident and, therefore, all the appeals are being decided together.

2. Appeal No. 132 of 1999 is filed by the Corporation, a counter Appeal No. 907 of 1997 for enhancement is filed by the claimant. Similarly Appeal No. 905 of 1997 has been filed by the claimant and counter Appeal No. 1037 of 1997 has been filed by Poonam. Appeal No. 3865 of 1997 has been filed by the Corporation whereas Appeal No. 906 of 1997 has been filed by the claimant. Appeal No. 909 of 1997 has been filed by Madan Mohan whereas Appeal No. 121 of 1998 has been filed by the claimant.

3. The facts as stated are that on 28.3.90 Gopal Das was going in car No. MP-07-M-3522 from Jaipur to Tonk when near a school building of Shivdaspora, a Roadways bus belonging to the R.S.R.T.C. No. RNP 3289 collided with the said Maruti van, killing Gopal Das and another person on the spot and injuring many others. F.I.R. No. 91 of 1990 was got registered. Gopal Das aged about 26 years

was travelling in the said Maruti van.

4. As many as five claim applications were filed being Claim Application No, 564 of 1990, Poonam v. Ram Swaroop (C.M.A. No. 905 of 1997); 565 of 1990, Kamla Devi v. Ram Swaroop (C.M.A. No. 906 of 1997); 566 of 1990, Abhay v. Ram Swaroop (C.M.A. No. 908 of 1997); 587 of 1990, Ashok Mishra v. Ram Swaroop (C.M.A. No. 907 of 1997); and 76 of 1992, Madan Mohan v. Ram Swaroop (C.M.A. No. 909 of 1997).

5. The Tribunal had framed issues in regard to negligence of the vehicle concerned causing the accident on 28.3.1990 between the aforesaid two vehicles whereby Gopal and Vijay had died and other claimants were injured and also in regard to quantum of compensation in respect of claim applications filed by such claimants.

6. The injured Ashok Mishra had deposed as AW 1 that the Corporation bus, driven with a very rash speed, had collided with Maruti van with such a force that Maruti van had turned turtle 3-4 times. Gopal and Vijay had died at the spot. Ashok Mishra had suffered injuries of fracture on his right arm and compound fracture on the left arm. He had suffered an injury on the head as well.

7. Abhay Kumar, AW 2, injured had also deposed. He had stated that the accident had been caused because of the negligence of the drivers of both the vehicles.

8. Kamla, AW 3, who was a claimant because of death of Vijay Singh, her husband, had also deposed. Similarly, Poonam had claimed compensation because of the death of her husband Gopal Das. Madan Mohan, AW 5, had also blamed both the vehicles.

9. On behalf of the Corporation Ram Swaroop driver of the bus involved in the accident, was produced. He had admitted that he was driving the bus No. RNP 3289 and stated that Maruti van had struck the bus even though he had tried to save the accident. He had put the blame on the driver of Maruti van.

10. On the basis of the deposition of the witnesses and site plan, Exh. 3, a finding was given to the effect that the accident had been caused by the negligence of both the drivers of the vehicles.

11. The five Civil Misc. Appeal Nos. 132 of 1999, 1037 of 1997, 121 of 1997, 573 of 1998 and 3865 of 1997 (under defect) have been filed by the R.S.R.T.C. against all the claimants involved in the accident only on the ground that the Tribunal had not given any finding on the point of contributory negligence. There is merit in the submission made by the appellant. The Tribunal itself had found that both the vehicles were being driven at very high speed causing head-on collision and both the vehicles were being driven rashly and negligently, but still had not given the percentage of contributory negligence and had given an award against all the respondents including the owner, driver and the insurance company of Maruti van holding all the respondents including the present

appellant liable jointly and severally.

12. After hearing learned counsel for the parties, I am of the opinion that it is a fit case where the Tribunal should have given a finding to the effect that both the vehicles were liable and responsible for causing accident and, therefore, compensation should have been proportioned by fixing the percentage of contributory negligence on the parties of Maruti van No. MP-07-M-3522 and also the appellant in 50:50 per cent. The appeals are accepted with the direction that for the award of compensation, the appellants shall be liable to pay 50 per cent and the remaining 50 per cent shall be paid by the driver, owner and the National Insurance Co. Ltd. jointly and severally.

13. The appeals of the Corporation are allowed to this extent.

Appeals by the claimants for enhancement-- C.M.A. Nos. 905, 906, 907, 908 and 909 of 1997:

14. In M.A.C.T. Claim Application No. 564 of 1990 (C.M.A. No. 905 of 1997), claim was made by the widow of Gopal Das, the infant daughter Kumari Shalu and parents of Gopal Das. Gopal Das was aged 26 years. The claimants were the dependants of Gopal Das. The claim application was filed for Rs. 14,19,000. The deceased was running a namkeen shop in the name and style of Madan Namkin Bhandar at Gwalior and it was stated by the claimant that Rs. 2,000 was being paid by the deceased for meeting the house expenses and Vijay Singh deceased was also working in the same shop and was being paid Rs. 1,500 p.m. The Tribunal after taking the income to be Rs. 2,000 and deducting an amount of Rs. 700 for the personal expenses of the deceased, had assessed the dependency at Rs. 1,300 p.m. and the yearly dependency at Rs. 15,600. Multiplier of 15 was applied and total compensation of Rs. 2,34,000 was awarded along with Rs. 10,000 to all the claimants for loss of love and affection and total amount of Rs. 2,44,000 was awarded. The respondent Nos. 1 to 5 were made rightly to pay jointly and severally. Certain direction was given to deposit the amount in the FDRs.

15. The deceased in the present case was of the age of 26 years. His earning has been accepted as Rs. 2,000 p.m., but multiplier of 15 had been applied. Counsel for the appellant states that minimum multiplier which should have been applied would not be less than 18 and also wants to rely on the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Trilochan Singh's case [sic. U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, In my opinion, in the present circumstances of the case the minimum multiplier which should have been allowed in the case could not be less than 18 and thus the compensation is enhanced to Rs. 1,300 x 12 x 18 plus Rs. 10,000 for loss of love and affection and Rs. 25,000 towards loss of consortium and thus total Rs. 3,15,800 with interest as already awarded by the Tribunal. 50 per cent of the total award shall be paid by the Corporation and driver and the remaining 50 per cent shall be

paid by the driver, owner and insurance company of the Maruti van jointly and severally.

S.B. Civil Misc. Appeal No. 906 of 1997:

16. In M.A.C.T. Claim Application No. 565 of 1990 (C.M.A. No. 906 of 1997) was filed by the dependants of Vijay Singh deceased, Kamla Devi, the widow, three minor daughters and the parents of the deceased, the monthly salary was assessed as Rs. 1,500 and after dividing expenditure to units Rs. 430 was taken as expenses of the deceased and remaining Rs. 1,070 were the monthly dependency which was multiplied by 12 for calculating annual income and the yearly dependency was assessed by the Tribunal as Rs. 12,840. The deceased was of 30 years of age. The multiplier of 14 had been applied. Total amount of compensation was assessed as Rs. 1,89,760 including Rs. 10,000 awarded to all the claimants jointly for loss of love and affection. In this case also certain directions had been given to deposit the amount in FDRs, etc.

17. The age of the deceased was 30 years. In the present case also the multiplier of 18 should have been awarded, the compensation is enhanced to Rs. 2,31,120 (Rs. 1,070 x 12 x 18) plus Rs. 25,000 for loss of consortium and Rs. 10,000 for loss of love and affection as has been granted by the Tribunal, the total compensation coming to Rs. 2,66,120, which shall be paid in the same manner as mentioned above, i.e., 50 per cent by the Corporation and 50 per cent by respondent Nos. 3 to 5.

S.B. Civil Misc. Appeal No. 908 of 1997:

18. In Claim Application No. 566 of 1990, Abhay Kumar (C.M.A. No. 908 of 1997), the injured had suffered the injuries of fracture on the leg as well as on the hands. The lips had been cut. He remained admitted in the hospital and also remained in plaster because of fractured bone for about three months and remained under hospital treatment for about seven months. Medical evidence was produced. Evidence was produced for 5 per cent disability on the right leg and 10 per cent disability for other injuries. A total amount of Rs. 29,000 was ordered to be paid for the injuries suffered by dividing into the headings, i.e., Rs. 25,000 for disability compensation, Rs. 2,000 for other injuries, for medicines an amount of Rs. 1,223 and another sum of Rs. 777 for meeting the expenses in the hospital.

19. In my opinion, the compensation awarded for the injuries is too less. The appellant had suffered fracture injuries on the leg as well as on the hands. He remained under treatment for about 6-7 months. He was disabled on the right palm to the extent of 5 per cent and on the leg 10 per cent. He could not sit properly.

20. After hearing learned counsel for the parties, I am of the opinion that in the circumstances when there is disablement on the arm as well as on the leg, the minimum compensation should have been not less than Rs. 50,000 for

disablement and Rs. 10,000 for pain and suffering apart from other expenses of medicines, i.e., Rs. 50,000 + Rs. 10,000 + Rs. 2,000 = Rs. 62,000 which shall be equally paid by the Corporation and the owner, driver and insurance company of the van in question.

S.B. Civil Misc. Appeal No. 909 of 1997:

21. In Claim Application No. 76 of 1992, Madan Mohan (C.M.A. No. 909 of 1997), it was held that Madan Mohan claimant had three injuries and certain stitches were done on the face and his face has been defaced to some extent. 5 per cent disablement had been attributed. He had been awarded Rs. 25,000. He had not suffered any grievous injury, for pain and suffering Rs. 2,000 had been awarded and total Rs. 27,000 had been awarded by the Tribunal. In my opinion, in the circumstances of the case and for the reason that there was no grievous injury, the award of the Tribunal so far awarding of Rs. 25,000 is concerned, is not to be interfered with. However, for the pain and suffering it is enhanced to Rs. 5,000. The Tribunal has omitted to grant any award in regard to medical expenses. It is admitted that he was treated and stitches were done on his face and he had undergone treatment, it shall not be unjust to grant another sum of Rs. 2,000 for meeting the medical expenses and other expenses. Therefore, total compensation is raised to Rs. 32,000 which shall be paid 50 per cent by the Corporation and 50 per cent by the driver, owner and insurance company of Maruti van.

S.B. Civil Misc. Appeal No. 907 of 1997:

22. In Claim Application No. 587 of 1992, Ashok Mishra (C.M.A. No. 907 of 1997), the injured who was the driver of the van had suffered the injuries on the legs and hands. He was put in plaster. The skin on the hand had also peeled. He had suffered injuries on the head also. 40 stitches were stitched on the head. He remained in the S.M.S. Hospital for about 20 days. He was operated upon three times. It is stated that he is suffering from constant headache and his memory has gone weak. He was working as a salesman with Gomes and Company and getting an amount of Rs. 3,000 as salary. He used to go on touring as well. He could not work for about one year. He stated that he had to spend Rs. 20,000 to Rs. 25,000 on treatment and he was disabled to the extent of 24 per cent on the right leg because of fracture, 5 per cent on the skull. He was awarded Rs. 30,000 because of the injuries on the right leg and the left hand (Rs. 15,000 + Rs. 15,000) and for other injury Rs. 10,000, total Rs. 40,000. Apart from above, he was granted Rs. 24,000 for loss of salary and Rs. 50,000 was granted because of disablement of 29 per cent. To meet the medical expenses he was granted Rs. 10,000, total amount of Rs. 1,24,000 was granted.

23. It is submitted on his behalf that for the injuries, fractures on hand, leg and operation on the head where 40 stitches were done, grant of Rs. 30,000 and for pain and suffering is too less and admittedly he remained under treatment for about 8 months. I agree with the counsel for the appellant. The amount of

compensation for injuries because of fracture on the hand, leg and 40 stitches on the skull is raised to Rs. 1,00,000 from Rs. 15,000 + Rs. 15,000 + Rs. 10,000 as awarded by the Tribunal for pain and suffering and the amount for 29 per cent disablement is also enhanced from Rs. 50,000 to Rs. 1,00,000. Other amounts as awarded by the Tribunal are maintained. The claimant shall be entitled to a total amount of Rs. 2,24,000.

24. For reasons mentioned above, all the civil misc. appeals are partly allowed.