

(2017) 06 RAJ CK 0063
In the Rajasthan High Court
Case No : 631 of 2000

**Rajasthan State Road Transport Corporation through its?General
Manager, Vs Smt. Indu Joshi, & Ors.**

Date of Decision : 06-06-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173,
Section 173, Section 166, Section 166 - Appeals - Application for compensation

Citation : (2017) 06 RAJ CK 0063

Hon'ble Judges : P.K. Lohra

Bench : SINGLE BENCH

Advocate : Anjana Jawa, L.K. Purohit, N.K. Joshi

Judgement

1. Appellant - Rajasthan State Road Transport Corporation (for short, "Corporation") has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, "Act") to challenge judgment and award dated 18.11.1999 passed by Motor Accident Claims Tribunal, Nagaur in Claim Case No.51/94. By the judgment and award impugned, learned Tribunal has partly allowed claim of the respondents-claimants under Section 166 of the Act and awarded compensation to the tune of Rs.2,60,000/- under different heads. Learned Tribunal has apportioned equal contributory negligence of the Corporation vehicle and the other vehicle involved in accident, i.e. truck No. RNQ7945 and consequently, fastened liability on the Corporation to pay compensation in part while partly fastening liability on the owner, driver and insurer of aforesaid truck.

2. Succinctly stated, the facts of the case are that on 21.03.1994, deceased Arun Kumar an employee in Indian Railways as T.T.E., was travelling in Corporation Bus No. RJ14/P- 1745 from Jodhpur for Nagaur. When the bus reached beyond village Khinvsar, it collided with truck No. RNQ7945. As per version of the respondents-claimants, the drivers of both the vehicles were driving their respective vehicles rashly and negligently and that resulted in the accident. Due to accident, deceased-Arun Kumar suffered injuries on his head and other vital parts and therefore, was taken to M.G. Hospital, Jodhpur where eventually he

succumbed to injuries on 06.04.1994. In order to quantify the amount of compensation to the tune of Rs.17,00,000/-under different heads, it is pleaded by respondents-claimants that at the time of his death deceased was serving as T.T.E. in Indian Railways and was drawing salary of Rs.3,000/- per mensem with allowance of Rs.500/-. In the claim petition, besides appellant-Corporation, its driver was also arrayed as non-applicant. That apart, the driver, owner and insurer of truck No.RNQ 7945 were also arrayed as non-applicants.

3. The claim petition is contested by non-applicants including the appellant-Corporation. Respondent No.6-Insurance Company, in its return, admitted that truck was insured with it but categorically denied that accident occurred due to rash and negligent driving of the truck. The appellant-Corporation and its driver in their return pleaded that accident was the result of rash and negligent driving of the truck by its driver. It is also averred in the reply that due to accident, Corporation has suffered property damage of Rs.41,258/-and police after investigation has submitted charge-sheet against the truck driver.

4. Learned Tribunal, upon consideration of pleadings of rival parties, framed following issues for determination:- "VERNACULAR MATTER OMITTED"

5. The respondents-claimants, for substantiating their claim, examined two witnesses; viz., A.W.1 Smt. Indu Joshi - respondent No.1 and A.W.2 Subhash Chandra Joshi besides producing documentary evidence. On behalf of appellant, its driver Madan Singh appeared in the witness box and two more witnesses; viz., NAW 2, Ladu Ram Dadhich, NAW 3 Hariram were also appeared,

6. Learned Tribunal, after conclusion on evidence, heard final arguments and upon appreciation of evidence and other materials available on record, came to the conclusion that accident occurred due to rash and negligent driving of the Corporation Bus as well as Truck. Learned Tribunal finally adjudicated Issue No.1 with a specific finding that drivers of both the vehicles were negligent for the cause of accident and apportioned equal negligence on their part. While examining Issue No.2, in light of the evidence tendered by rival parties, learned Tribunal quantified amount of compensation under the head, Loss of Dependency to the tune of Rs.2,34,000/- by applying multiplier of 12. That apart, learned Tribunal also assessed compensation under different heads and total amount of compensation is worked out to the tune of Rs.2,60,000/-. Out of the said amount Rs.50,000/-, which was paid to the claimants on the principle of "No Fault Liability", learned Tribunal ordered that respondents-claimants be paid remaining compensation amount to the tune of Rs.2,10,000/-with equal denomination by the Corporation as well as truck owner, driver and insurer. In this view of the matter, learned Tribunal directed Corporation to pay Rs.1,05,000/-, whereas, the truck owner, driver and insurer were asked to pay remaining amount of Rs.1,05,000/-, jointly and severally. Besides that, learned Tribunal also awarded interest on the aforesaid amount at the rate of 12% per annum to the respondents-claimants from the date of claim petition.

7. I have heard learned counsel for the appellant at length, perused impugned judgment and award and thoroughly scanned the entire record of the case.

8. During the course of arguments, Mr. N.K. Joshi, appearing for respondent No.6, Insurance Company, has submitted that insurer has satisfied the award to the extent its liability fixed by learned Tribunal and Insurance Company has not preferred any appeal against the impugned judgment and award. Now I proposed to examine the contentions of the appellant- Corporation.

9. The first issue relates to the cause of accident. For ascertaining rash and negligent driving of the vehicles, I have made sincere endeavour to examine findings of the learned Tribunal on the touchstone of evidence available on record.

10. While it is true that respondents-claimants for attributing negligence on the part of driver of both the vehicles examined two witnesses; viz., AW 1, Smt. Indu Joshi & A.W. 2, Subhash Chandra Joshi, but A.W. 1 is not an eye witness. The other witness NAW 2 has though made an attempt to show that driver of Corporation bus was driving the vehicle at moderate speed but his testimony is adequately impeached by NAW 3 Hari Ram, who was driver of the truck. Thus, in that background, learned Tribunal has made sincere endeavour to appreciate the evidence meticulously for arriving at the conclusion that both the vehicle drivers have contributed for the accident. After examining the findings on Issue No.1, in the light of documentary and oral evidence available on record, I am afraid, the same cannot be categorized as infirm or perverse so as to warrant interference in exercise of appellate jurisdiction.

11. As regards other issue, i.e. Issue No.2, in relation to quantum of compensation, in my opinion, learned Tribunal has assessed the compensation moderately and same cannot be faulted in the backdrop of calamity which has occasioned due to accident. If the amount of compensation quantified and awarded by the learned Tribunal is objectively examined then in my opinion, the same is not satisfying the criterion prescribed for just and fair compensation.

12. Be that as it may, the fact remains that respondentsclaimants have neither assailed the impugned award nor have made any endeavour to file cross-objection in this appeal. Therefore, in totality, I feel dissuaded to interfere with the findings recorded by the learned Tribunal regarding Issue No.2.

13. The upshot of the above discussion is that I find no merit in this appeal and the same is therefore dismissed.