(1992) 01 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No''s. 318 and 341 of 1988 and 368 of 1990

Rama Nand — APPELLANT

Vs

Lalita Sharma and Others — RESPONDENT

Date of Decision : 17-01-1992

Acts Referred:
Motor Vehicles Act, 1988 — Section 173, 95, 96

Citation : (1993) ACJ 863

Hon'ble Judges : I.S. Israni, J

Bench : Single Bench

Advocate : M.M. Ranjan, for the Appellant; G.C. Mathur, Atul Luhadia, Pawan Sharma, H.M. Bhargava and Manish Bhandari, for the Respondent

Final Decision : Allowed

Judgement

Inder Sen Israni, J.—All the three appeals filed u/s 110D of the Motor Vehicles Act, 1939 (now Section 173 of the Motor Vehicles Act, 1988) arise out of the same award, therefore, they are decided by one order.

2. As stated in Appeal No. 368 of 1990, respondent Nos. 1 to 6 filed a claim petition before the Motor Accidents Claims Tribunal, Jaipur, against the appellant and respondent Nos. 7 to 11, on account of accidental death of deceased Gopal Lal, on September 9,1982. It is stated that deceased, who was working in Sheep and Wool Department, was going on a cycle in normal speed. It is further stated that the deceased was on his correct side of the road. When he reached near Lai Kothi, Tonk Road, a bus bearing No. RRL 1924 owned by the appellant, which is said to have been rashly and negligently driven by respondent No. 2, hit the deceased cyclist from behind, as a result of which he fell on the road. At the same time, a tractor, bearing No. PUW 3663, was also coming from the same direction, which is said to have been driven rashly and negligently by respondent No. 8, ran over the body of the deceased and crushed him, as a result of which he died instantaneously. The tractor is owned by respondent No. 7. The New India Assurance Co. Ltd., respondent No. 11, with which the tractor was insured,

raised a defence that respondent No. 8, the driver of the tractor, had no valid licence, therefore, the insurance company is not liable to pay any amount to the claimants. The National Insurance Co. Ltd., respondent No. 10, with which the bus mentioned above was insured, claimed that the bus was not at fault, but, in any case, as per provisions of Sections 95 and 96 of the Motor Vehicles Act, 1939 (for short, ''the MV Act''), it is not liable to pay more than Rs. 50,000/-. The learned Tribunal, in its award dated November 7, 1988, while deciding issue No. 1, apportioned the negligence to the extent of 70 per cent and 30 per cent of the bus and the tractor drivers respectively. It further held while deciding issue No. 5 that since the tractor driver had no valid licence, therefore, the insurance company, respondent No. 11, was not liable to pay any compensation. While deciding issue Nos. 3 and 6, a sum of Rs. 80,000/-along with interest has been awarded to the claimants. The National Insurance Co. Ltd., respondent No. 10, was made responsible to pay to the extent of limited liability amounting to Rs. 50,000/- only. For rest of the amount, both the drivers and owners of the bus and tractor have been made jointly and severally responsible for making payment to the claimants-respondents.

3. Mr. G.C. Mathur, learned counsel for the appellant in Appeal No. 368 of 1990, has raised twofold legal contentions. Firstly, it is contended that the learned Tribunal has erred in apportioning the negligence as, in the matter under consideration, the death was caused due to the negligence of both the vehicles. Therefore, this is a case of composite negligence and the same cannot be apportioned, as done by the learned Tribunal. Secondly, it is contended that the learned Tribunal has manifestly erred in holding that the driver of the tractor had no valid driving licence, therefore, respondent No. 11, New India Assurance Co. Ltd., has been wrongly exonerated from its liability. The plea of driver of the tractor, having no valid licence, was raised by respondent No. 11, but no evidence was produced by it. Hence, it has completely failed to discharge the burden of proving the allegation put forward by it. It is, therefore, contended that respondent No. 11 is also equally liable to pay the claim amount, in accordance with the provisions of law.

4. Appeal No. 318 of 1988 has been filed by registered owner of the tractor. It is submitted by Mr. M.M. Ranjan, learned counsel, that the tractor was being driven carefully and at a slow speed. It is further submitted that when the deceased was hit by the bus, he suddenly fell down on the road and the tractor overran him. The driver of the tractor was not at fault, in any case. It is, therefore, contended that no liability, regarding payment of 30 per cent compensation, should have been fixed on him and the insurance company with which the tractor was insured.

5. The third appeal, bearing No. 341 of 1988, has been filed on the ground of claim by the appellants. It is submitted by Mr. Atul Luhadia, learned counsel, that the deceased was IVth Class Government servant. He was getting salary of Rs. 516.87 per month and a certificate to this effect was produced before the learned Tribunal. It is further submitted that the negligence of the bus driver was held to

be 70 per cent but the insurance company, with which the tractor was insured, was exonerated on the ground that the driver of the tractor had no driving licence and the licence was forged. It is also submitted that this is only an allegation of prosecution in the criminal case, but no proof has been produced by the insurance company to prove that the licence was forged. Thus, the insurance company has failed to discharge the burden of issue No. 5. It is contended that wife of the deceased, Lalita Devi, PW 1, and others have clearly stated that the deceased was giving total amount to her and he had no habit of even chewing betel or smoking, etc. Therefore, the learned Tribunal has seriously erred in keeping the contribution of Rs. 300/- only for the family. It is further contended that the petitioner was only 40 years old and Tribunal, by taking 60 years to be average age, has erred in applying multiplier of 20 years, whereas the average life span has been accepted to be 75 years by several courts. Hence, the multiplier of 35 years should have been applied.

6. I have heard the parties and gone through the documents and evidence on record. From the facts and circumstances mentioned above, it is clear that the deceased was going on his cycle on proper side, in normal speed, when he was knocked down by the bus. Thereafter, the tractor ran over him. This shows that the driver of the bus was driving his vehicle rashly and negligently and struck the deceased from behind. The learned Tribunal has also given finding that the driver of the tractor was also driving it rashly and negligently. In fact, if he were to drive cautiously and carefully, perhaps he could have stopped his tractor and saved the life of the deceased. Thus, it is clear that the death of the deceased occurred on account of rash and negligent driving on the part of both the drivers of the vehicles. In these circumstances, there is no question of fixing up contributory liability separately on each of the drivers of the vehicles. This, in fact, is a case of composite negligence, as the death of the deceased has occurred on account of rash and negligent driving by the drivers of both the vehicles. The learned Tribunal has, therefore, erred in fixing up 70 per cent liability on the driver/ owner of the bus and 30 per cent liability on the driver/ owner/insurance company of the tractor.

7. I find force in the contention of Mr. G.C. Mathur, learned counsel, that the learned Tribunal has erred in holding that since the tractor driver had no valid driving licence, the insurance company, respondent No. 11, is not responsible to pay any amount to the claimants. It may be stated that the learned Tribunal framed issue No. 5 which, when translated in English, reads as under:

Whether the driver of the vehicle was running with forged driving licence, therefore, the insurance company is not liable to pay any compensation.

The learned Tribunal has held that the driver of the tractor was holding forged driving licence. It is contended by Mr. Bhargava, learned counsel for respondent No. 11, New India Assurance Co. Ltd., that even though the burden of proving issue No. 5 is on respondent No. 11, but, from the documents of challan, produced on behalf of the claimants, it is clear that Sita Ram, driver of the tractor, had no valid driving licence. A forged driving licence has been produced by the owner of the tractor, which has also been confirmed by Sarwan Singh, ASI, who has been produced as witness No. 2 on behalf of the respondents. It may be pointed out that Sita Ram, driver of the tractor, in his statement, has stated that he has not produced any forged driving licence during the course of investigation. He has further stated that he did have a valid driving licence, but it has been lost by him. The licence was obtained from Chandigarh. The criminal proceedings are still pending. Admittedly, the burden of proof, regarding issue No. 5, was squarely on respondent No. 11, the insurance company and merely because a driving licence alleged to be forged has been produced by the owner of the tractor during the course of investigation in a criminal case, it cannot be said that the insurance company has discharged the onus, regarding this issue. No evidence whatsoever has been produced on behalf of the insurance company, respondent No. 11, to prove that Sita Ram, driver of the tractor, had no valid driving licence. The allegation of forged licence, which is denied by Sita Ram, the driver, cannot be said to have been finally proved, since the criminal proceedings regarding the same are yet to be decided. Thus, there is no finding of any court, what to talk of the Tribunal itself, on the basis of any documentary evidence, to come to the conclusion that Sita Ram was driving the tractor on the basis of a forged document. Such jumping conclusions, on the basis of mere allegations in a criminal case, will not justify in holding that the driver of the tractor had a forged driving licence. Since no evidence whatsoever has been produced by respondent No. 11 to discharge its burden of proof regarding the driving licence being forged, there is no reason to disbelieve the statement of Sita Ram, driver of the tractor, that he did possess a valid driving licence. I am fortified in my opinion by a decision of the Apex Court in Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, in which it was held by the Apex Court that when the insurance company contended that the driver did not have a valid driving licence at the time of accident as the driver failed to produce the licence when asked to do so in cross-examination, and no other evidence has been led by the insurance company to substantiate its contention, the insurance company has failed to discharge the onus to prove that the driver had no driving licence. The insurance company cannot escape the liability merely on the ground of non-production of licence by the driver and it is liable to indemnify the award. The learned counsel for respondent No. 11 has placed reliance on Kashiram Yadav and Another Vs. Oriental Fire and General Insurance Co. and Others, This was a case in which a constable was knocked down by the tractor driven by unlicensed driver. It was held by the Apex Court that ''the onus of the insurer has been discharged from the evidence of the insured himself. The insured took a positive defence stating that he was not the owner of the vehicle since he had already sold the same to a third party. Secondly, he took a defence stating that the vehicle at the relevant time was driven by a licensed driver, Gaya Prasad, PW 2. This was proved to be false. There is no other material even to indicate that the vehicle was entrusted to the licensed driver on the date of fatal accident.'' Therefore, it was held that the insurance company was not liable and the decision given in Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, could not be of any help to the appellants. So far as the matter under consideration is concerned no reliance has been placed on the decision of Skandia Insurance Co. Ltd. Apart from that, the above-mentioned authority is of no help to respondent No. 11, since in the case of Kashiram Yadav (supra), the plea that the driver had valid licence was proved to be false and there was enough evidence on this point before the Tribunal Court (Tribunal). However, in the case under consideration, not even an iota of evidence has been produced by respondent No. 11 to prove that the driver of the tractor had no valid licence and respondent No. 11 has completely failed to discharge its onus. Therefore, the finding of the learned Tribunal that the driver of the tractor had a forged licence is not based on any evidence and is, therefore, set aside. The New India Assurance Co. Ltd., respondent No. 11, will, therefore, also be jointly and severally responsible for discharging the liability of the award.

8. So far as petition No. 341 of 1988 is concerned, there seems to be force in the contention raised by Mr. Luhadia, learned counsel, that the learned Tribunal has erred in holding that out of the meagre amount of the salary of Rs. 516/- per month, the deceased was to spend Rs. 200/- on his own expenses and contributed only Rs. 300/- to the family. AW 1, the widow of deceased, Lalita Devi, has stated in her evidence that the deceased had no habit of chewing betel, or smoking cigarette, etc. Apart from the widow, the deceased had six children, the eldest being 17 years and the youngest four years. She has further stated in her statement that the deceased was giving her Rs. 500/-every month for expenses on the family and running the house. No evidence has been produced by any of the respondents to disprove the statement of AW 1 and her statement has not been shaken in the cross-examination. Therefore, there was no reason for the learned Tribunal to come to the conclusion that the deceased spent Rs. 200/-on his own and contributed only Rs. 300/-per month to upkeep his family consisting of seven members. In these days of high living cost, perhaps, it is impossible for a family of seven persons to survive in less than Rs. 500/- per month. I am, therefore, of the considered opinion that the deceased contributed Rs. 500/- to the family every month. The learned Tribunal has mentioned in its award that the claimants are getting Rs. 200/- per month as pension. Merely because the claimants, who are seven in number, are getting Rs. 200/- per month as pension, the learned Tribunal has erred in holding, on this ground, that the contribution of the deceased to his family is fixed at Rs. 300/- per month. It may be mentioned that the compensation amount should be so assessed that the legal representatives should receive such pecuniary benefit as they would have got from the deceased, if he had lived his normal life. Therefore, the compensation awarded should be just, reasonable and proportionate to the loss resulting from the death of the deceased. From the evidence, as mentioned above, it is clear that the deceased contributed Rs. 500/- per month to his family. The learned Tribunal has applied 20 years'' multiplier for reaching the amount to be awarded to the claimants. The deceased was 40 years old at the

time of incident. Even when a Government servant retires, he has to keep the pot boiling and carry on work, till he is healthy, to look after his family. Apart from this, in the cases of low income persons, as of deceased, with more number of dependants, no deductions for personal expenses should be made in computing the family dependency and justice should be done to the dependants, who had lost their sole bread-earner of the family. The average age of an Indian is considered to be at least 70 years. In the facts and circumstances I am of the opinion that ends of justice shall be met if the multiplier of 25 is applied while fixing the amount of the award.

9. In the result the appeals are allowed and it is held that respondent No. 11, New India Assurance Co. Ltd., in Appeal No. 368 of 1990, shall be liable jointly and severally along with other respondents, regarding payment of the amount of the award, in accordance with law. The contribution of the deceased to the family is raised to Rs. 500/-per month. Thus, the amount of the award is raised from Rs. 80,000/- to Rs. 1,50,000/-. In addition to this, the claimants shall also be entitled to receive interest on the increased amount as awarded by the learned Tribunal. If payment is not made within three months, interest will be at the rate of 15 per cent per annum.

10. The appeals are allowed, as above, with no order as to costs.

