
(1989) 04 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 143, 144, 196 and 197 of 1985

Ranjeetmal Haran and Others

APPELLANT

Vs

Santosh and Others

RESPONDENT

Date of Decision : 10-04-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 29, 31, 94, 96

Citation : (1991) ACJ 1129 : (1990) 1 RLW 74

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : P.K. Bhansali, for the Appellant; H.R. Panwar and B.L. Maheshwari, for the Respondent

Judgement

Jasraj Chopra, J.—These four appeals and two cross-objections are directed against the award of the learned Motor Accidents Claims Tribunal, Jodhpur dated 6.4.1985 in M.A.C.T. Case Nos. 55 and 56 of 1979. The M.A.C.T. Case No. 55 of 1979 has been filed by the legal representatives of deceased Gopichand whereas M.A.C.T. Case No. 56 of 1979 has been filed by the legal representatives of deceased Shankerlal. Gopichand happens to be the son of deceased Shankerlal.

2. As both M.A.C.T. Case Nos. 55 and 56 of 1979 were tried together and were disposed of by a common order and raise common question, I propose to decide all these four appeals and two cross-objections simultaneously by common order.

3. The facts necessary to be noticed for the disposal of these four appeals and two cross-objections briefly, stated are: that on 21.5.1979 at about 4.45 p.m. Gopichand and his father Shankerlal were going on a cycle from Riktiya-Bherujika-Chauraya towards Residency Road. Gopichand was driving the cycle whereas Shankerlal was sitting on the pillion seat of the cycle. The truck bearing No. RJT 4061 which was driven by Iqbal Mohd., was going at a fast speed and was driven rashly and negligently. On seeing this, Gopichand left the road and came on the kutchra road but still the truck driver brought his vehicle to the wrong side and crushed and injured them. Shankerlal was thrown away with the impact of the

truck whereas Gopichand was crushed under the truck and died at the spot. Shankerlal was seriously injured and was shifted to the hospital, where he died at about 6.30 p.m. It is alleged that the registered owner of this truck is Jaymalsingh, who got it insured with the New India Assurance Co. Ltd., Ghopasani Road, Jodhpur. It is not disputed that this truck was insured with the New India Assurance Co. Ltd., Ghopasani Road, Jodhpur and at the relevant time, Iqbal Mohd. was driving this truck. The accident has also not been disputed by Iqbal Mohd. as also by Ranjeetmal Haran, the present owner of this vehicle. Ranjeetmal Haran has stated that he is the power of attorney holder of this vehicle on behalf of Jaymalsingh and the claim about the loss caused to this truck on account of this accident has been paid to him, i.e., Jaymalsingh by the insurance company and so, the insurance is still in existence and is very much effective. As regards the accident, it has been claimed that the truck was driven at a very slow and moderate speed. The accident has occurred on account of the negligent driving of the cycle by Gopichand, who lost his balance and collided against the truck. Ranjeetmal Haran has, therefore, claimed that no compensation can be claimed from him as this accident is not the result of the rash and negligent driving of the truck by Iqbal Mohd.

4. The registered owner of the truck Jaymalsingh has stated that he does not know about the accident and the driver Iqbal Mohd. was not his servant at the time of the accident and so, Iqbal Mohd. was not driving the truck on his authority and, therefore, he has nothing to do with the accident. Similar plea has been taken by the insurance company.

5. The claimants have, however, claimed that at the time of the accident, deceased Shankerlal was working as a peon in the office of the Director, Agricultural Department, Jodhpur and was drawing a salary of Rs. 350/- per month. Hewas a barber by caste and was earning Rs. 150/- per month by doing part-time job of a barber, i.e., hair cutting profession. The claimants have, therefore, claimed that they are entitled to a compensation of Rs. 50,000/- on account of his death in this accident-Rs. 45,000/- have been claimed on account of the loss of income and Rs. 5,000/- have been claimed on account of the mental shock and agony caused to Shankerlal as he received certain serious bodily injuries and was in great mental and physical agony before his death.

6. As regards deceased Gopichand, it has been stated that he was an electrician and was doing electric decoration work at the time of the marriages and other functions. He was also selling ice cream (kulfi), tea and sugarcane juice and earning about Rs. 400/- per month. His age at the time of his death was 21 years. He was married on 17.4.1979. Rs. 70,000/-have been claimed on account of the mental shock and agony and economic loss to the family due to the death of Gopichand and Rs. 5,000/- have been claimed on account of loss of consortium by Santosh.

7. Certain issues were framed after consolidation of both these claim cases and, thereafter, the evidence was recorded on behalf of the claimants. Nobody was

examined on behalf of the non-applicants and hence, after hearing the parties, the learned Tribunal came to the conclusion that the accident has occurred on account of the rash and negligent driving of the truck by its driver Iqbal Mohd. and, therefore, issue No. 1 was decided in favour of the claimants and against the non-applicants. As regards issue No. 2, it has been held that at the time of the accident, Iqbal Mohd. was in the service of Ranjeetmal Haran. Santosh, Bhanwari, Hulasi Devi and deceased Gopichand's son Ramkishore were dependent on the deceased persons. Nemichand and Durga were living separately from the deceased persons. The learned Tribunal has, therefore, held that only Santosh, Bhanwari, Hulasi Devi and Ramkishore are entitled to compensation. Nemichand and Durga were held to be not entitled to any compensation on account of these two accidental deaths.

The learned Tribunal has held that claimants are entitled to compensation of Rs. 28,800/- on account of the death of deceased Shankerlal and Rs. 48,000/- on account of the death of deceased Gopichand. As regard issue No. 4, it has been held that out of the compensation awarded on the death of deceased Shankerlal, Bhanwari will get Rs. 14,000/- and Hulasi, Santosh and Ramkishore will get Rs. 6,000/-, Rs. 4,000/- and Rs. 4,800/- respectively whereas on account of the death of Gopichand, Santosh will get Rs. 20,000/- and Bhanwari, Hulasi and Ramkishore will get Rs. 4,000/-, Rs. 4,000/- and Rs. 20,000/- respectively. The claims were accordingly decreed against non-applicant Nos. 1 and 2, viz., Iqbal Mohd. and Ranjeetmal Haran. However, the claims were dismissed against non-applicant Nos. 3 and 4, viz., Jaymalsingh and New India Assurance Co. Ltd., Jodhpur. Aggrieved against this award passed in both these claims petitions, these four appeals and two cross-objections have been filed.

8. I have heard learned counsel appearing for the parties and have critically gone through the record of the case.

9. The learned counsel appearing for the parties do not dispute that the accident took place on 21.5.1979 on account of rash and negligent driving of truck No. RJT 4061 by its driver Iqbal Mohd. Thus, finding on issue No. 1 has not been challenged before me.

10. In this case, the following points arise for the decision of the court:

(1) Whether the learned Tribunal has wrongly held that the claimants are not entitled to recover any compensation from the registered owner of the truck, viz., Jaymalsingh and the New India Assurance Co. Ltd., Jodhpur?

(2) Whether the amount of compensation awarded by the learned Tribunal is insufficient and is against the principles of law?

(3) Whether the claimants are entitled to any interest and if so at what rate and from what date?

I have given my most earnest consideration to the rival submissions made at the bar. Now I proceed to deal with the above points, raised by the learned counsel

appearing for the parties.

Question No. 1

11. It is an admitted case of the parties that the registered owner of the truck is Jaymalsingh. It is further not disputed that this truck was insured with New India Assurance Co. Ltd., Jodhpur.

12. Mr. P.K. Bhansali, the learned counsel appearing for Ranjeetmal Haran has, however, submitted that Ranjeetmal Haran is not the owner of this truck. Actually, Jaymalsingh is the owner of this truck. Ranjeetmal Haran is only a power of attorney holder on behalf of Jaymalsingh. He was driving this truck on his authority and, therefore, he is not at all responsible for the payment of this claim. According to Mr. Bhansali, Jaymalsingh and the insurance company are responsible for the payment of this claim. Mr. Bhansali has submitted that he has produced some documents before the learned lower court to show that the insurance company itself has admitted that Jaymalsingh is the owner of this truck and the claim as regards the damages caused to the truck was settled by the insurance company in favour of Jaymalsingh and, therefore, that document should have been considered by the learned lower court. Once the document is taken on record and when it has been admitted then it has to be marked as an exhibit and nothing more is to be done. According to Mr. Bhansali, this submission should not detain me any longer because in the reply that has been filed on behalf of non-applicant Nos. 1 and 2, the contents of paras 8, 9 (ka), 9 (kha) and (ga) have been admitted. In para 8 of the claim petition, the claimants have mentioned the number of that truck, i.e., RJT 4061. That number of the truck has been admitted by Ranjeetmal Haran. In reply to para 9 (ka), it has been admitted that Iqbal Mohd. was driving this truck at the time of the accident. In para 9 (kha), the claimants have mentioned that Ranjeetmal Haran is the present owner of the truck. This para has also been admitted by Ranjeetmal Haran meaning thereby that he admits the present ownership of the truck and so, now he cannot turn round and say that he is only the power of attorney holder on behalf of Jaymalsingh and does not have any interest in this vehicle. As per Ranjeetmal Haran, Jaymalsingh is the registered owner of the truck. A perusal of the registration certificate also shows that Jaymalsingh is the registered owner of the truck. The insurance company has also admitted that this truck was insured by it in the name of Jaymalsingh. It is not disputed by the insurance company that the term of the insurance policy has not expired at the time when this accident took place. Thus, it will be deemed that this truck was insured with the insurance company and the insurance company has covered the risk of the truck bearing No. RJT 4061 on behalf of Jaymalsingh, who has been the registered owner of this truck between 10.6.1978 to 9.6.1979. So far as Ranjeetmal Haran is concerned, the contention of Mr. Bhansali that Ranjeetmal Haran was not the owner of the truck at the time of the accident also has no legs to stand.

13. Now, this has to be determined as to whether Jaymalsingh and the insurance

company are also liable to make payment of the amount awarded in this claim. M/s. H.R. Panwar and P.K. Bhansali have submitted that it is a settled law that if a person is found to be driving the vehicle, he shall be presumed to be so doing with the lawful authority of its owner and if the owner alleges that he had not authorised that person for driving of his vehicle then the onus is on him to rebut that presumption. In this respect, reliance was placed on a decision of the Punjab and Haryana High Court in Pritam Kaur and Others Vs. Pal Singh and Others, In this case, it has been claimed by Jaymalsingh that Iqbal Mohd. was not driving the vehicle on his behalf. He was not his servant and was not working as per his instructions. It is admitted case of the parties that Jaymalsingh is the registered owner of this vehicle. The registration certificate has been got produced from him by the learned Tribunal and that registration certificate clearly shows that he is the registered owner of this vehicle and, therefore, it will be presumed that Iqbal Mohd. was driving that vehicle under his authority. If Jaymalsingh claims that Iqbal Mohd. was not driving this vehicle under his authority then it was for him to prove this fact. The onus to prove this fact lies on him. In this case, it is admitted that Iqbal Mohd. was driving the vehicle at the relevant time. This fact has also been proved by PW 3 Amarchand and when that is proved then onus of proof shifts on Jaymalsingh to show that Iqbal Mohd. was not driving this vehicle on his authority but he has failed to enter the witness-box. It has also been argued on behalf of Ranjeetmal Haran that he is not the owner of this vehicle and the registration certificate of this vehicle has not been transferred in his name and as such, Iqbal Mohd. was working under the authority of Jaymalsingh at the time of the accident. Thus, the presumption which is raised against him has not been rebutted by Jaymalsingh. M/s. H.R. Panwar and P.K. Bhansali have placed reliance on a decision of this court in Shankerlal v. Shankerlal 1988 ACJ 866 (Raj) wherein it has been observed as follows:

The upshot of the aforesaid discussion is that in claims arising out of the motor accident where a policy regarding the vehicle involved in the accident is in force, i.e., it could not have lapsed but for the death or bankruptcy of the insured or on account of the transfer of the vehicle by the insured to the third person, the only defences available to the insurance company in such claims are those which are provided by Section 96(2) of the Motor Vehicles Act. It is a different matter that the insurance company on account of certain terms or exclusion clauses included in the insurance policy can claim reimbursement from the insured or transferor but it cannot take all those defences in a claim petition filed by the injured or in case of his death by his legal representatives. Likewise, in spite of the transfer of the vehicle by the insured or death or bankruptcy of the insured, the insurable interest survives in the insured unless he discharges the statutory obligation under Sections 29 and 31 read with Section 94 of the Motor Vehicles Act so far as the third party risk is involved. So far as this particular case is concerned, I held above that the appellant as well as respondent Nos. 2 and 3 have failed to prove that this vehicle has been transferred by respondent No. 2 Magharam to the appellant Shankerlal and therefore, even on account of that, the learned

lower court should have ordered the payment of the amount of the award in favour of the claimant against respondent Nos. 2 and 3.

Reliance was also placed on a decision of this court in *Mishrilal v. Shiv Kumar*, S.B. Civil Misc. First Appeal No. 217 of 1982; decided on 16.11.1987, wherein it has been observed:

That in the present case, the policy was current, i.e., 28.4.1978 to 27.4.1979 in favour of Mustaq Ahmed. If Mustaq Ahmed has sold out the vehicle and if he ceased to be the owner of the vehicle in accordance with law then perhaps the policy would have terminated. But there is no evidence to show that any completed sale has taken place so as to absolve the insurance company of its liability. The accident took place on 9.9.1978 and at that time, the policy was current under the ownership of Mustaq Ahmed. The vehicle was taken out with the permission of Mustaq Ahmed may be through agency of Faiyaz Khan or Mularam. But so far as the insurance company is concerned the policy did not stand terminated nor any condition of the policy was violated. The insurance company has only pleaded that since the vehicle stood transferred, therefore, the policy has been terminated. But the insurance company has failed to show how completed sale has taken place. In this connection reference may be made to Section 96 of the Motor Vehicles Act which clearly lays down that insurance company could only absolve on certain legal defences as mentioned in Section 96. But in the present case, the insurance company has not been able to show that how they can disown the responsibility. Since the vehicle was taken out with the permission of the insured Mustaq Ahmed and the policy was current, therefore, the insurance company is liable to indemnify the claimant.

14. In *National Insurance Co. Ltd. v. Ajit Doshi* 1979 ACJ 433 (Raj) the insured sold the vehicle prior to the date of accident but the registration and policy continued to remain in his name and the insurer failed to prove that insured was the real insured. In these circumstances, it was held that the insurance company was liable to pay compensation. In the present case also, Jaymalsingh has not entered the witness-box to prove that the sale has been completed prior to the date of accident. No document has been brought on record to show that the insurance policy was terminated on account of the sale of this vehicle. Unless that is done neither Jaymalsingh nor insurance company can absolve themselves from the liability to pay the compensation to the third party, whose kith and kins have been killed in the accident.

15. In this case, Jaymalsingh has taken the plea that Iqbal Mohd. was not driving the vehicle under his authority. It was for him to prove that Iqbal Mohd. was not driving the vehicle on his behalf and under his authority but Jaymalsingh has failed to enter the witness-box to prove this fact and, therefore, now he cannot claim any immunity. Mr. H.R. Panwar, the learned counsel appearing for the claimants, has placed reliance on a decision of their Lordships of the Supreme Court in *Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt* 1966 ACJ 89 (SC) wherein it has been held that there is a presumption that a vehicle is driven

on the master's business and by his authorised agents or servants, but the presumption can be met.

16. The upshot of the entire discussion is that if the insurance policy is in force and even if an agreement to sell the vehicle has been executed by Jaymalsingh in favour of Ranjeetmal Haran, the insurable interest survives in him so far as the third party risk is involved and he or his insurance company cannot be absolved of their responsibility unless Jaymalsingh discharges his statutory obligations under Sections 29, 31 read with Section 94 of the Motor Vehicles Act. I, therefore, feel that the learned Tribunal was (Sic. not) correct in holding that Jaymalsingh and the New India Assurance Co. Ltd., Jodhpur are not responsible for the payment of compensation on account of this accident. I, therefore, hold that Jaymalsingh and the New India Assurance Co. Ltd., Jodhpur along with Ranjeetmal Haran are liable to pay the compensation to the claimants.

Question No. 2

17. It has not been challenged before me that Nemichand and Durga are not entitled to any compensation. On account of the death of deceased Shankerlal, the claimants have claimed the compensation as under:

(1) Mental and physical agony caused to Shankerlal before his death Rs. 5,000/- (2) For mental agony and economic loss caused to the claimants on account of the death of Shankerlal Rs. 45,000/-

As regards the death of deceased Gopichand, the claimants have claimed the compensation as under:

(1) On account of loss of consortium to Santosh Rs. 5,000/- (2) On account of mental shock and agony and economic loss to the family due to the death of Gopichand Rs. 70,000/-

The accident took place on 21.5.1979 at about 4.45 p.m. and Shankerlal died at about 6.30 p.m. on that very day. His injuries have been recorded in his post-mortem report Exh. 1. A man who is knocked down by the truck and is thrown away and receives serious injuries by crushing of the body, must get mental shock and bodily agony and compensation can be allowed in respect thereof as held by a Full Bench decision of this court in R.S.R.T.C. v. Kistoori Devi 1986 ACJ 960 (Raj). In this case, deceased Shankerlal actually survived for less than two hours after the accident. Looking to the nature of his injuries and his status in life, I am of the opinion that the claimants should have been allowed Rs. 3,000/- as compensation for mental and physical agony caused to Shankerlal before his death.

18. So far as the loss of income to the claimants on account of the death of deceased Shankerlal is concerned, PW 1 Hulasi has stated that Shankerlal was earning Rs. 350/- as pay from the Agricultural Department. He was a barber by caste and was earning Rs. 100/- to Rs. 200/- by doing the part-time job of a barber. She was cross-examined on this point and she has stated that Shankerlal

was going to different persons for doing his part-time job of a barber and was not maintaining any shop. Simply because, Shankerlal was not maintaining any shop, it cannot be said that he was not doing part-time job of a barber. It is not difficult for a person to earn Rs. 100/- or Rs. 200/- by doing part-time job of a barber. I, therefore, feel that deceased Shankerlal was earning Rs. 450/- per month. At the time of his death, he was aged about 42 years. His mother is aged about 70 years and his father also died at the age of 70 years. We also take the span of life as 70 years and, therefore, even if Shankerlal might have retired, he would have earned either on account of interest payable on the amount of gratuity and other pensionary benefits or on account of doing full time work of a barber upto that age. Aman who is earning Rs. 450/- per month can at best spend Rs. 150/- on himself and he would have utilised the rest of the amount to maintain his family. Thus, I hold that if Shankerlal would have remained alive, he would have supported his family for about 28 years and would have spent Rs. 300/- per month on his family. If we compute this sum for 28 years, the total amount comes to Rs. 1,00,800/-. In this case, the claimants have only claimed Rs. 45,000/- on account of the loss of income by the death of deceased Shankerlal. In the facts and circumstances of this case, Rs. 45,000/- as claimed by the claimants on this account appears to be most reasonable.

19. On account of the death of Gopichand, Rs. 5,000/- have been claimed as compensation for loss of consortium by Santosh, who was married to Gopichand less than two months prior to the date of the accident. The amount of compensation for loss of consortium as claimed by the claimants appears to be too meagre. Santosh has been examined in the court and she has stated that she will not remarry. She has further stated that Ramkishore was born to her after the death of her husband. I, therefore, feel that the learned lower court has wrongly disallowed this claim to her. I hold that Santosh is entitled to get Rs. 5,000/- on account of the loss of consortium.

20. So far as the income of deceased Gopichand is concerned, PW 1 Hulasi has stated that Gopichand was earning Rs. 500/- per month by doing electrician job and the job of selling ice cream (kulfi), tea and sugarcane juice. According to Hulasi, Gopichand was not carrying a regular shop but was doing this job on a hand-driven cart. Simply because, a person is not maintaining any shop and he earns by doing his job on a hand-driven cart it cannot be said that he was not earning Rs. 500/- per month by this job. PW 2 Santosh has also stated that her husband was earning Rs. 400/- to Rs. 500/- per month. She has been disbelieved by the learned lower court on the ground that he has no personal knowledge, as she was married to Gopichand only for less than two months. She has stated that when Gopichand's parents came to her parents for engagement, they told that Gopichand was earning Rs. 400/- to Rs. 500/- per month. This is quite possible in the facts and circumstances of this case. Thus, on this account Santosh could not have been disbelieved. Even PW 3 Amarchand has stated that Gopichand was earning Rs. 8/- to Rs. 10/- per day by doing his job. In these times, it is not very difficult to earn Rs. 300/- to Rs. 400/- per month, even if

one indulges in sporadic work. A man who is earning Rs. 300/- to Rs. 400/- per month can at best spend Rs. 100/- to Rs. 150/- on himself and must spend Rs. 200/- to Rs. 250/- per month on his family. At the time of his death, deceased Gopichand was aged about 21 years. Formally, the span of life is taken to be 70 years. Thus, if Gopichand would have remained alive, he would have supported his family for about 49 years. Even if we hold that he would have supported his family by Rs. 200/- per month then the total amount comes to Rs. 1,17,600/-. In this case, the claimants have only claimed Rs. 70,000/- as compensation on account of the loss of income due to the death of deceased Gopichand. Of course, the claimants are not entitled to any compensation for mental agony on account of the death of deceased Gopichand as held by this court in *R.S.R.T.C. v. Kistoori Devi* 1986 ACJ 960 (Raj) but they can safely get compensation for loss of income on account of the death of Gopichand. Rs. 70,000/- as claimed by the claimants for loss of income on account of the death of deceased Gopichand appears to be most reasonable in the facts and circumstances of this case. I, therefore, hold that the claimants are entitled to get compensation of Rs. 70,000/- on account of the loss of income due to the death of deceased Gopichand.

Question No. 3

21. It has been decided by the Lordships of the Supreme Court in *Chameli Wati v. Delhi Municipal Corporation* 1985 ACJ 645 (SC) that claimants are entitled to 12 per cent interest on the amount of compensation from the date of the application. I therefore, hold that the claimants are entitled to 12 per cent interest on the amount decreed by this court from the date of their application, i.e., 24.8.1979.

22. The upshot of the above discussion is that the claim of the claimants is decreed for Rs. 48,000/- on account of the death of deceased Shankerlal and for Rs. 75,000/- on account of the death of deceased Gopichand and out of this amount decreed by this court Hulasi Devi, Bhanwari Devi, Santosh and Ramkishore shall be entitled to Rs. 8,000/-, Rs. 23,000/-, Rs. 7,000/- and Rs. 10,000/- respectively on account of the death of deceased Shankerlal and on account of the death of deceased Gopichand, Hulasi Devi, Bhanwari Devi, Santosh and Ramkishore shall be entitled to Rs. 8,000/-, Rs. 12,000/-, Rs. 35,000/- and Rs. 20,000/- respectively. They shall also be entitled to interest at 12 per cent per annum from the date of their application, i.e., 24.8.1979 on these sums. This decreed amount shall be payable jointly and severally by Ishaq Mohd., Jaymalsingh, Ranjeetmal Haran and New India Assurance Co. Ltd., Jodhpur.

23. All these four appeals and two cross-objections stand disposed of.