
(2002) 05 RAJ CK 0102

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 654 of 1999

R.S.R.T.C. and Another

APPELLANT

Vs

Hem Raj and Others

RESPONDENT

Date of Decision : 21-05-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 163

Citation : (2003) 1 RLW 589

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : L.M. Lodha, Lalit Kawadia, Mahesh Thanvi, for the Appellant;

Final Decision : Dismissed

Judgement

Panwar, J.—At the request of learned counsel for the parties, this appeal is finally heard and decided at the stage of orders.

2. By judgment and award dated 19th May, 1999 learned Motor Accident Claims Tribunal, Udaipur (hereinafter referred to as "the Tribunal") awarded compensation of rupees three lac in favour of the respondent claimants Hem Raj and Smt. Padma (for short "the claimants" hereinafter), who are parents of deceased Kumari Niti.

3. Brief facts to the extent they are relevant and necessary for decision of this appeal are that on 21st January, 1991 Kumari Niti and her friend Kumari Sheri Bhatnagar were proceeding on her Luna moped from Meera Giris College, Udaipur to their residence situated at Hiran Magri, Udaipur. At that relevant time a truck No. GJ-7/T-5881 came from opposite direction, which was driven rashly and negligently by its driver hit luna moped due to which the occupants of the moped were thrown aside. While Kumari Niti was lying at the road side, she was over run by a bus No. RNP 1998 owned by Rajasthan State Road Transport Corporation (for short "the Corporation") which was plied at a great speed, rashly and negligently by its driver. The head of Kumari Niti was crushed under

the wheel of the said bus owned by the Corporation. She succumbed to injuries instantaneously. The parents of the deceased respondents No. 1 and 2 filed a claim petition before the Tribunal claiming compensation for a sum of Rs,5,10,000/-against the driver-cum-owner of the truck, the Insurance Company and also against the Corporation.

4. The Tribunal on appreciation of the evidence reached to the conclusion that Kumari Niti succumbed to injuries due to rash and negligent driving of the truck and the bus owned by the Corporation by their respective drivers and further held that the driver of the truck was negligent to the extent of 70% and driver of the bus was negligent to the extent of 30%. While computing the compensation the Tribunal had taken into account the further prospects of the deceased, her background and educational career and on the basis of the material and evidence produced before the Tribunal, assessed and awarded a sum of rupees three lac as compensation.

5. Neither the owner of the truck nor the Insurance Company with whom the said truck was insured, has challenged the award passed against them, however, the Corporation being aggrieved by the award impugned has filed this appeal.

6. I have heard learned counsel for the parties and carefully gone through the judgment and award impugned as also the various documentary as well as oral evidence produced by the parties before the Tribunal. I have carefully gone through the statements of the witnesses, which were shown to me by learned counsel for the claimants.

7. The claimants has produced AW-1 Hem Raj and AW-2 Kumari Sheri Bhatnagar, eye witness of the occurrence and certain documents exhibits No. 1 to 4, which include lice investigation papers, charge sheet filed by the police against the driver of the bus and the truck involved in the accident and the relevant educational record of the deceased etc. AW-2 Sheri Bhatnagar, who was riding the luna moped is the eye witness of the occurrence. She in her statement elaborately given the version of the accident. She clearly stated that the luna which she was riding, on which Kumari Niti was pillion rider was hit by the said truck and due to this accident both the occupants were thrown aside of the road. At the same time a bus owned by the Corporation, which was driven at excessive speed, rashly and negligently by its driver over--run the deceased Kumari Niti. The head of Kumari Niti was crushed under the wheel of the bus owned by the Corporation.

8. On behalf of the appellant NAW-1 Mohd. Kalim the driver of the said bus was produced. He admitted in his statement that when he saw the truck he took his bus off road where the deceased was found crushed under the wheel of the bus. However, he denied the accident. The Tribunal did not rely on the statement of NAW-1 Mohd. Kalim and in my opinion considered rightly so. In the said accident the head of the deceased Kumari Niti was crushed under the wheel of the bus driven by NAW-1 Mohd. Kalim and she succumbed to injuries instantaneously,

despite this the driver of the said bus denied the happening of the accident. This itself shows that he had hardly any respect to the truth. After considering entire statement of eye witness, statement of the father of the deceased, site map, site inspection note of the accident, investigation report and charge sheet filed by the police against the drivers of the bus and the truck respectively the Tribunal held that the bus driver was negligent to the extent of 30% and the truck driver was negligent to the extent of 70%.

9. I have scanned the material available on record. In my considered opinion, no error can be found with the finding arrived at by the Tribunal holding the drivers of both the vehicles to the extent noticed above. Accordingly, the finding on issue No. 1 is hereby affirmed.

10. So far as assessment of quantum of compensation is concerned, it has been established by the claimants' evidence that the deceased was a young girl of 18 years of age and she had a brilliant academic career, which is evident from the exhibits available on record. The certificates and mark-sheets issued by various educational institutions and prizes the deceased won show her to be an outstanding student. Taking into account all these materials the Tribunal computed the compensation in all in the sum of rupees three lac.

11. It is settled law that in appeal the quantum is interfered, either if it is too low or too excessive, as the case may be. Obviously, in the instant case for death of a brilliant young girl a sum of rupees three lac awarded by the Tribunal cannot be said to be too excessive.

12. Learned counsel for the appellant could not point out anything as to how the compensation assessed by the Tribunal is excessive, more so, when 70% of the amount awarded by the Tribunal had already been paid by the respondent insurer of the truck involved in the accident, whereas Kumari Niti died due to crush injury to her head caused by rash and negligent driving of the bus owned by the Corporation.

13. In my considered opinion, it is not a fit case which calls for any interference in the quantum of compensation. Hence, finding on issue relating to quantum is affirmed.

14. An application has been filed by the respondent claimants before this Court seeking permission to withdraw the amount which has been fixed deposited for a period of 60 months with the Union Bank of India, Udaipur in pursuance of the direction of the Tribunal. The treatment record of the claimant Hem Raj Banthia has been placed on record. The claimant Hem Raj Banthia suffered from Acute Inferior MI. On 19.12.2001 he was admitted in Intensive Care Unit of Ravindra Nath Tagore Medical College, and Maharana Bhupal Government Hospital, Udaipur, and further underwent angiography at Santokba Durlabhji Memorial Hospital-cum-Medical Research Institute, Jaipur. The report dated 11.5.2002 is on record. He was advised by the medical authorities to immediately undergo heart surgery (coronary artery disease) in order to save his life for which the

claimants are immediately in need of amount which was deposited with the Bank noticed above for a long period of five years.

15. Taking into account the peculiar facts and circumstances of this case, I am of the considered view that no useful purpose will be served to retain the amount of compensation awarded by way of FDRs in the Bank for such a long period, when the persons in whose favour compensation has been awarded, need it most.

16. In view of the aforesaid discussion, I find no merit in this appeal. Accordingly, it fails and is dismissed- However, the Branch Manager, Union Bank of India, Udaipur is hereby directed to ensure the withdrawal of amount of FDRs Nos.NUD 004364/186/11/4886 dated 30.10.1999 and NUD 004365/11/187/4887 dated 30.10.1999 to the respondent claimants Hem Raj Banthia and Smt. Padma positively within a period of one week from today so that the claimant Hem Raj Banthia can undergo the heart surgery (coronary artery disease) as advised by the medical authorities. No order as to costs.