

(2006) 02 RAJ CK 0005
In the Rajasthan High Court

R.S.R.T.C and Another

APPELLANT

Vs

Jamal Deen and Another

RESPONDENT

Date of Decision : 17-02-2006

Acts Referred:

Citation : (2006) 3 ACC 681 : (2006) 3 WLC 68

Hon'ble Judges : Manak Lall Mohta, J

Bench : Single Bench

Judgement

Manak Mohta, J.—This appeal is directed against the judgment and award dated 12.12.1994 passed by the Judge, Motor Accident Claims Tribunal, Nohar Camp at Bhadra in MACT Case No. 84 of 1992 whereby the learned Tribunal has allowed the claim petition and has awarded a sum of Rs. 78,000 plus interest at the rate of 12% per annum from the date of filing of the claim petition in favour of the claimant-respondents and against the non-claimant-appellants.

2. Brief facts giving rise to the present appeal are that on 28.6.1992 a bus bearing No. RJ 14-P/1062, which belonged to Sri Ganganagar RSRTC Depot was plying on Bhadra-B ikaner route. As per the facts stated in the claim petition, Khanu sat on the top of the bus with prior permission of the driver. One Raisingh s/o Lalchand Jat r/o Village Kunji, Tehsil Bhadra and other persons were also sitting on the top of the bus. At Kunji bus-stand, they came into contact with live electric wires, as a result of which, Khanu died and other persons received injuries due to touch of live electric wires. The said bus was being driven by Bhagwat Singh rashly and negligently without taking care of the electric wires. At the time of accident, the deceased Khanu was 18 years old and he was earning Rs. 100 per day by selling vegetables. Due to untimely death of Khanu, no male member was left in the family to look after his old parents. It was stated that his parents were dependent on the income of deceased Khanu. The parents of the deceased filed a claim petition for awarding compensation to the tune of Rs. 16 lacs under different heads before the learned Tribunal at Nohar.

3. A reply to the claim petition was filed on behalf of the non-claimant-appellant

Nos. 1 and 2. The Corporation denied the averments made in the claim petition and also stated that the deceased sat on the top of the bus on his own will. No permission was sought in this respect. The deceased was also not having ticket with him. The accident took place due to negligence of the deceased. In the alternative, it was submitted that the accident took place due to contributory negligence of the deceased. It was further stated that at the time of accident, the deceased was 14-15 years of age and he was not an earning member. It was prayed that RSRTC was not liable to pay compensation. The reply filed on behalf of non-claimant-respondent No 3 Bhagwat Singh, driver of the concerned Bus supported the contentions made by non-claimant-appellant Nos. 1 and 2. Further it was denied that the deceased sat on the top of the bus with permission of the bus driver. Rest of the averments made in the claim petition were denied for want of knowledge. It was prayed that the claim petition may be rejected.

4. On the basis of pleadings of the parties, the following issues were framed:

("Hindi Matter Omitted.")

5. From the side of claimants, statements of Jamal Deen (AW 1) and Nabi Rasool (AW 2), Rai Singh (AW 3) and Brahmanand (AW 4) were got recorded and certain documents were produced as Ex. 1 Investigation Report, Ex. 2 Postmortem Report, Ex. 3 Site Inspection Note. No documentary or oral evidence was produced on behalf of the non-claimants.

6. At the conclusion of trial, the learned Judge, Motor Accident Claims Tribunal, Nohar held that the accident occurred due to rash and negligent driving of the bus of RSRTC and as a result of accident Khanu died. The learned Tribunal awarded compensation of Rs. 78,000 to the parents of the deceased vide its judgment and award dated 12.12.1994 in the manner stated above.

7. Being aggrieved by the impugned judgment and award, the non-claimant-appellants have preferred this appeal for setting aside the judgment and award passed against RSRTC. After getting the copy of appeal, the claimants (parents of the deceased) also filed cross-objection for the enhancement of compensation amount.

8. I have heard learned Counsel for the parties and have carefully gone through the record of the case.

9. During the course of argument, it was submitted by the learned Counsel for the appellants that the learned Tribunal has not properly appreciated the material available on record and gave erroneous findings on the issues, that is not sustainable. It was contended that the driver of the concerned bus was not driving the vehicle rashly and negligently. The deceased sat on the top of the bus at his own will without taking prior permission of the conductor of the bus. The learned Tribunal has wrongly relied upon the statement of AW 3 Rai Singh and gave the finding that the passengers sat on the top of the bus with prior permission of the conductor but this has not been proved that the deceased sat

on the top of the bus with prior permission. It was also contended that he was not having ticket with him at that time. The learned Tribunal without considering these material points came to the conclusion that the accident occurred due to rash and negligent driving of the bus. It was also contended that at the most, it was a case of contributory negligence for that the appellants cannot be made responsible alone for causing the accident.

10. The learned Counsel for the appellants also submitted that the age and income of the deceased are not proved by the claimants' side but the learned Tribunal on the assumption and presumption, has estimated that at the time of accident, he was 19 years of age and his earning was Rs. 50 per day. It was submitted that it is also not established that how much amount out of his income, he used to pay to the claimant-parents. The learned Tribunal has awarded exorbitant compensation to the claimants, that is not sustainable. On these submissions, it was prayed that the judgment and award may be set aside and the appeal may be allowed.

11. On the contrary, it was submitted by the learned Counsel for the respondents that it has been well established by the evidence of AW 3 Rai Singh that the concerned bus was over-crowded. There was no place for sitting inside the bus. In that position, on asking the conductor of the bus, he instructed to sit on the top of the bus. AW 3 Rai Singh has also stated that along with him, other persons were also sitting on the top of the bus and the deceased Khanu was one of them. He has further stated that live electric wires were running over the bus. If the driver of the bus would have taken due care to save the bus from live electric wire knowing the fact that passengers are sitting on the top of the bus, the accident would not have happened. It was stated that the driver of the bus was well aware of this fact that the passengers were sitting on the top of the bus but he did not take care. It was further submitted by the learned Counsel for the respondents that due to touch of electric wires, the passengers sitting on the top of the bus got injured and due to that, Khanu expired on the spot, that is also corroborated by Post-mortem Report Ex. 2. It was also submitted that the police authorities, after thorough investigation have filed charge-sheet against the driver of the bus in the Criminal Court. In this way, the finding of the learned Tribunal on this issue is correct. It was also submitted that the passengers sat on the top of the bus with prior permission of the conductor and the passengers could not be permitted to sit in the bus without taking tickets and no evidence has been led by the RSRTC in this respect. In this way, there is no question of contributory negligence. The contentions raised by the learned Counsel for the appellants are not tenable. It was also contended that the deceased used to earn Rs. 100 per day by selling vegetables and this fact has been proved by AW 1 Jamal Deen and AW 2 Nabi Rasool and there is no rebuttal from the other side. It was also submitted that the claimants who were father and mother of the deceased, were fully dependent on the earnings of the deceased. The learned Tribunal has awarded a meagre amount of compensation. It was contended that the learned Tribunal has assessed the daily income of the deceased Rs. 50 and

out of that, after deducting Rs. 15 towards personal expenses has determined the loss to the members of the family as Rs. 35. On that basis, the learned Tribunal has assessed the yearly loss of Rs. 12,600 (35 x 30 x 12). Further it was contended that the learned Tribunal without any basis, rhyme and reason has applied the multiplier of 5 against the settled norms and principles, ignoring the age of the deceased and the claimants. In this way, the amount awarded by the learned Tribunal is on lower side. For that, the respondent-claimants have separately filed the cross objection for enhancement of the compensation amount but the contentions raised by the appellants' side in this respect are not having any force and they should be rejected.

12. The learned Counsel for the respondents also submitted the contentions in support of their cross-objection for enhancement of the compensation amount. It was contended that the learned Tribunal has accepted the age of the deceased as 19 years at the time of accident but while assessing the loss of income to the claimants, the learned Tribunal has applied the multiplier of 5 that is not reasonable at all. Likewise, the learned Tribunal has also assessed the daily income of the deceased Rs. 50 against the evidence. AW 1 Jamal been (father of the deceased) and other witnesses have stated that the deceased was earning Rs. 100 per day by selling vegetables and there was no rebuttal from the other side. There is no reason to discard the evidence but the learned Tribunal, on its own motion, has assessed the income at Rs. 50 per day and on that basis, unjust and unreasonable amount of compensation has been determined. Likewise, for other general losses, a very nominal amount of Rs. 15,000 has been awarded. The deceased was the sole bread-earner of the family. The claimants are mother and father. They have been shocked by untimely death of their son Khanu. Thus, amount of compensation may be enhanced reasonably. In this way, it was prayed that cross-objection may be allowed and the appeal may be dismissed. The learned Counsel for the appellant opposed the contentions placed in support of the cross-objection.

13. I have considered the rival contentions of the learned Counsel for the parties and perused the findings of the learned Tribunal on each issue. Before the learned Tribunal, with regard to factum of accident, AW 3 Rai Singh has stated that he was also sitting on the top of the bus. He has stated that at that time, the bus were over-crowded. After asking the conductor and on his instruction, he sat on the top of the bus. He has also stated that other persons including the deceased Khanu was also sitting on the top of the bus. For ready reference, the relevant portion of the statement of AW 3 Rai Singh is quoted below:

("Hindi Matter Omitted.")

14. From his evidence quoted above, it can be inferred that after giving permission by the conductor of the bus, the passengers sat on the top of the bus and they have obtained tickets also and it can be inferred that the driver of the bus was aware of this fact that the passengers were sitting on the top of the bus but he has not taken due care and caution to save the bus from any mis-

happening by touching live electric wires which were running over the bus. In this way, the driver of the bus was negligent in driving the bus. These facts again get corroboration from the statement of AW 4 Brahmanand and the police investigation report. The claimants have produced the police papers in this respect. The police has inspected the site and prepared the site-plan Ex 3 which shows that there was a sand-dune on the road and the live electric wires were running over the bus, in that position, the driver should have taken extra care and caution. The driver and conductor of the bus have not dared to appear in the witness-box before the learned Tribunal to refute the allegations levelled against him. In this way, the finding of the learned Tribunal, which is based on the material available on record that the accident occurred due to rash and negligent driving of the bus is not suffering from any infirmity. The finding on issue No. 1 is to be maintained.

15. I have also considered the rival submissions with regard to the quantum of compensation and the contentions placed by the respondents for enhancement of the compensation amount. In this respect, AW 1 Jamal Deen has stated in his statement that his son was earning Rs. 100 per day by selling vegetables. AW 2 Nabi Rasool has also supported the version of AW 1 Jamal Deen. From the other side, there was no rebuttal of this fact. Taking into consideration the oral statement of the witnesses and the nature of job, the learned Tribunal has assessed the income of the deceased at Rs. 50 per day, which the deceased used to earn and out of that, after deducting Rs. 15 per day towards his personal expenses, Rs. 35 per day the deceased would have paid to the claimants. Though that is on lower side but looking to the job of the deceased, this amount can be maintained but to assess the total loss of income, the learned Tribunal has applied the multiplier of 5 that is too low and requires modification. Due to untimely death in the accident, the claimants have been deprived of this income. Further looking to the age of the deceased as well as the age of the claimants which came on record near about 45-50 years, a suitable multiplier of 15 is just and reasonable. In this way, the finding of the learned Tribunal with regard to loss of income is modified and in place of multiplier of 5, the suitable and reasonable multiplier of 15 is applied. On that basis, the loss of income comes out to Rs. 1,89,000 = $(35 \times 30 \times 12 \times 15)$. The learned Tribunal has further awarded Rs. 15,000 as general damages. Looking to the facts that he was the only son of the claimants, that the deceased was of young age, they have been deprived of the services, love and affection and have suffered mental pain and agony Rs. 15,000 is not excessive that is maintained. Thus, the total amount comes to Rs. 2,04,000 = $(1,89,000 + 15,000)$ i.e. enhanced by Rs. 1,26,000. Further the claimants shall be entitled to receive interest @ 7.5% on the enhanced amount of compensation from the date of filing the claim petition.

16. Thus, the appeal filed by the R.S.R.T.C. is disallowed and cross objection filed by the claimants is partly accepted. The compensation amount is modified and enhanced from Rs. 78,000 to Rs. 2,04,000 (inclusive the amount awarded under No Fault Liability) i.e. enhanced by Rs. 1,26,000. Further on this enhanced

amount, the claimant will be entitled to recover interest @ 7.5% from the date of filing the claim petition. The appellant RSRTC is directed to pay or deposit in the Tribunal due amount along with interest as determined aforesaid failing which the respondents shall be entitled to recover the same.

17. With the above modification, the rest of judgment and award is confirmed. The appeal and cross-objection are disposed of accordingly.