

(1998) 12 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 174 of 1997

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

APPELLANT

Vs

Smt. Sayar Bai and Others

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 171

Citation : (2000) ACJ 1302 : AIR 1999 Raj 96

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Advocate : B.S. Bhati, for the Appellant; H.R. Panwar, for the Respondent

Final Decision : Dismissed

Judgement

Mohd. Yamin, J.—This is an appeal against the award given by learned Judge, Motor Accidents Claims Tribunal, Udaipur dated 12-9-96 in favour of respondents as against the appellant for Rs. 2,12,000/-.

2. Facts of the case are that deceased -Banshilal who was the husband of Smt. Sayar Bai and lather of other claimants was travelling by bus of appellant bearing No. RJ-14-1102 from Udaipur to Jodhpur on 23-11-91. The said bus at about 2.45 a.m. fell down in Ranakpur valley with the result that Shri Banshilal sustained injuries and succumbed to them. The bus was being driven by Kishore Singh rashly and negligently. He was the driver under employment of the appellant. Respondents-claimants had claimed compensation of Rs. 5,40,000/-.

3. The reply of the appellant was that all of a sudden steering of the vehicle failed and, therefore, bus went out of control of the driver and fell down in the valley. It was pleaded that Kishore Singh was driving the bus with slow speed and was very careful but there was a mechanical failure and the bus could not be stopped. The learned Tribunal framed as many as four issues, recorded evidence of the parties and passed the impugned award.

4. I have heard the learned counsel for both the parties at length.

5. Learned counsel for the appellant first submitted that the accident took place due to mechanical fault over which the appellant had no control. He submitted that the principle of *res ipsa loquitur* was not applied in this case by the learned Tribunal. He also submitted that so far as quantum is concerned, a wrong multiplier has been applied by the learned Tribunal. He has further submitted that the income of the deceased has not been proved and an amount of Rs. 20,000/- for loss of love and affection is excessive. He has submitted that the appeal should be accepted and the award be set aside.

6. On the other hand, learned counsel for the respondents-claimants has vehemently opposed the arguments of the learned counsel for the appellant.

7. So far as the factum of accident is concerned, it is admitted by the appellant but according to the appellant's counsel the accident occurred due to mechanical failure of the bus and that the doctrine of *res ipsa loquitur* was not applied by the learned Tribunal.

8. I have gone through the finding of the learned Tribunal on issue No. 1. So far as this aspect is concerned, the case of the defendant-appellant before the Tribunal as pleaded in the written statement was that there was defect in the steering of the bus and the bus could not be controlled by the driver. But when the claimants' witness Vinay Pratap Singh appeared he was suggested in the cross-examination that the accident occurred due to failure of brakes. This means that the appellants have put a case different in cross-examination than what was pleaded. However, the driver of the bus could be the best witness. He has been withheld. The bus might have been mechanically examined after the accident but no mechanical report has been produced or proved. These are sufficient grounds to withdraw a presumption against appellant.

9. The question of application of principle of *res ipsa loquitur* would arise only when the appellant would put certain circumstances in evidence, There is no evidence on behalf of the appellant. Even the driver has not been produced nor any mechanical report about the bus has been submitted, therefore, this principle would not be applicable in the present case.

10. So far as quantum is concerned, learned counsel for the appellant submitted that the multiplier of 8 in the case of death of a person of 58 years is a wrong multiplier in view of *U. P. State Road Transport Corporation v. Trilok Chandra JT* 1996 (5) SC 356. In this case multiplier of 16 was used when the deceased was only aged about 26 years and his earning capacity was 300/- per month. Learned counsel for the appellant submitted that there is no evidence of income of deceased as no documentary evidence is produced on behalf of the claimants. He also submitted that the deceased could not have earned Rs. 3,000/- per month as stated by Smt. Sayar Bai the widow of deceased.

11. So far as earning part is concerned, Smt. Sayar Bai has stated that the deceased was a Civil Engineer and used to work privately. He first worked with Shri Sundarlal Dave and later on with Tak Construction Company wherefrom he

used to get Rs. 3,000/- per month. She further stated that the age of her husband at the time of death was 58 years. When she was cross-examined by the appellant no suggestion was made to her that deceased did not earn Rs. 3,000/- per month at the time when he expired. She rather reiterated in her cross-examination that deceased used to get Rs. 3000/- per month. The family consisted of the deceased, his widow Smt. Sayar Bai and four sons out of whom two were working and one of these was studying. The fourth son was not working. For such a family the requirement of monthly expenses would definitely be not less than Rs. 3,000/- per month, therefore, the income of Rs. 3,000/- per month as stated by Smt. Sayar Bai does not appear to be excessive. The appellant did not lead any evidence about the income of deceased specially when Smt. Sayar Bai had herself stated that deceased used to work with Sunderlal Dave and M/s. Tak Construction Company, the appellant could have very well produced any one of them. As such the learned Tribunal was right in holding that the income of the deceased was Rs. 3,000/- per month.

12. So far as multiplier is concerned. I find from the table in the second schedule to the Motor Vehicles Act, 1988 that for persons dying at the age of 8 years multiplier of 8 is provided. It has been submitted before me by the learned counsel for the appellant that in Trilok Chandra's case (supra) the Apex Court did not rely on the table in the second schedule and has observed that the calculation of compensation and amount worked out in the schedule suffered from several defects. Even then the Hon'ble Apex Court in this case has observed that neither the Tribunal nor the Courts can go by the ready reckoner and it can only be used as a guide. In the facts and circumstances of this case when the age of the deceased was approximately 58 years and the table in the second schedule which can be used as a guide provides that a multiplier of 8 may be proper, I am of the view that the learned Tribunal has not committed mistake in using the said multiplier.

13. Learned counsel for the appellant submitted that an amount of Rs. 20,000/- as loss of love and affection is excessive. On the other hand, learned counsel for the respondents-claimants cited R.S.R.T.C. v. Smt. Manorma 1989 WLN 467. He submitted that in view of this Division Bench Judgment the amount is not excessive. I agree with him and find no need to interfere in the amount granted for love and affection.

14. In the end, it was submitted that the learned Tribunal passed the award in the terms that if the amount is not paid within a period of 30 days the interest will be paid at the rate of 15%. It has been submitted that this Court granted stay on 14-3-97, therefore, the appellant is not liable to pay interest at the rate of 15%. This argument is not acceptable as the appeal was preferred on such grounds which are also not acceptable.

15. In view of above discussion, the appeal is hereby dismissed. No orders as to costs.