
(2006) 04 RAJ CK 0010
In the Rajasthan High Court

R.S.R.T.C.

APPELLANT

Vs

Ramesh Chand and Others

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 171

Citation : (2006) 2 ACC 842

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—The Rajasthan State Road Transport Corporation (henceforth to be referred to as the RSRTC, for short) has challenged the award dated 20.9.2003 passed by the Motor Accident Claims Tribunal, Deeg, District Bharatpur whereby the respondent No. 1 was awarded a compensation of Rs. 88,969.

2. The brief facts of the case are that on 1.2.1997 at about 10.30 a.m. while the respondent No. 1, Ramesh Chand, was busy repairing the telephone line on a pole, a Roadways Bus, bearing Registration No. RJ 05-P 0293, dashed against the said pole. Consequently, the appellant fell from the pole and sustained injuries. In order to seek compensation, the appellant filed a claim petition before the learned Tribunal. In order to substantiate his case, the respondent No. 1 examined three witnesses, including himself, and submitted eleven documents. The appellant Corporation examined a single witness, but did not submit any documentary evidence. After going through the oral and documentary evidence, the learned Tribunal was pleased to grant a compensation as aforementioned. Hence, this appeal by the appellant Corporation.

3. Mr. Virendra Agrawal, the learned Counsel for the appellant Corporation, has argued that the sole negligence was not of the bus driver. But, as a wire was hanging from the pole due to the negligence of the respondent No. 1, the accident was caused. Therefore, it is a case of contributory negligence. According to the learned Counsel, for a permanent disability of 2.5%, an award of Rs.

88,960 is on the higher side. Lastly, the Tribunal has imposed penal interest which it could not have done so, as there is no provision for imposition of penal interest in the Motor Vehicles Act, 1988 (henceforth) to be referred to as "the Act", for short).

4. On the other hand, Mr. Vinay Mathur, the learned Counsel for the respondent-claimants, has argued that there is no evidence to show the negligence on the part of respondent No. 1. Therefore, although this contention was raised by the appellant Corporation, it has failed to prove its plea. Furthermore, the learned Tribunal has calculated the loss of income from the agricultural work as Rs. 75 per month. The said loss of income is certainly not on the higher side. However, in all fairness the learned Counsel has agreed that there is no provision for imposition of penal interest contained in the Act.

5. We have heard the learned Counsel for both the parties and have perused the impugned award.

6. Both according to A.W. 2, Jai Singh, and according to A.W. 3, Hardayal Singh, on 1.2.1997 while respondent No. 1 was repairing the telephone wire a Roadways bus came and struck the said pole. Consequently, the respondent No. 1 fell from the pole and sustained injuries. Both these witnesses are independent witnesses. Their testimony has not been shaken in the cross-examination by the appellant Corporation. Hence, there is no reason for disbelieving their testimony. It is only Than Singh, the driver of the bus, who has denied the occurrence of the accident. However, as Than Singh needs to save his own skin, it is natural for him to deny the accident. Since Than Singh has a personal interest in denying the accident, we are not inclined to believe his testimony. As it is the bus which collided with the pole, the doctrine of *Res ipsa loquitor* can certainly be applied in this case. The accident itself speaks about the rash and negligent driving of Than Singh. Hence, it is not a case of contributory negligence. But, it is a case where the negligence of the driver is writ large. Therefore, the first contention of the appellant Corporation is meritless.

7. The respondent No. 1 has clearly stated that besides the income received from the Telephone Department, he was also earning Rs. 3,000 from selling milk and from his agricultural work. The learned Tribunal has calculated the loss of monthly income at Rs. 75, by calculating 2.5% of his agricultural income of Rs. 3,000. Therefore, while giving the benefit of formula incorporated in item 5 of Second Schedule attached to the Act, the learned Tribunal has calculated an annual loss of Rs. 13,500. The future loss, thus, has been calculated only from the income of the agricultural work. The loss of Rs. 75 per month is certainly not on the higher side. Therefore, the second contention of the Counsel for the appellant is unsustainable.

8. As far as the imposition of penal interest is concerned, it is, indeed, a settled principle that penal interest cannot be charged in case of default of payment of the compensation amount. In the case of National Insurance Co. Ltd. Vs. Keshav

Bahadur and Others, the Hon''ble Supreme Court has clearly held as under:

Though Section 110-CC of the Act (corresponding to Section 171 of the new Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110-CC of the Act or Section 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of compensation together with interest payable thereon virtually amounts to the imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore, directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal.

9. Therefore, the imposition of penal interest of 12% per annum is certainly unwarranted. Hence, we modify the impugned award to the limited extent that no penal interest shall be paid in case of non-payment of the compensation amount within the stipulated period. However, it is clarified that the compensation awarded by the learned Tribunal shall be paid @ 9% per annum as directed by the learned Tribunal itself.

10. In the result, this appeal is partly allowed as stated above.