

(2013) 09 RAJ CK 0120

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1755 of 2007

RSRTC, Jaipur and Another

APPELLANT

Vs

Smt. Puspa and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 09 RAJ CK 0120

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : S.R. Paliwal on behalf of Mr. Anil Bachhawat, for the Appellant; M.S. Soni on behalf of Mr. Rajesh Panwar for Respondent Nos. 1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—Though the matter is listed for orders on application, but with the consent of the parties, the appeal itself has been finally heard. This appeal is directed against judgment and award dated 16.03.2007 passed by the Motor Accident Claims Tribunal, Sirohi ("the Tribunal"), whereby, for the death of one Bhagwana Ram, the Tribunal has awarded a sum of Rs. 10,11,540/- as compensation alongwith interest @ 7.5% from the date of filing application for compensation ("the application") i.e. 28.11.2005.

2. The application was filed by the claimants-six in numbers, who were wife/children of Bhagwana Ram with the averments that while getting down from the bus on 21.09.2005, which was being driven rashly and negligently by respondent Pukh Singh driver of the bus, resulted in said Bhagwana Ram falling down and suffering injuries in his head, hand and other parts of the body and during treatment he succumbed to the said injuries on 30.09.2005. The claimants claimed a sum of Rs. 28,40,500/- towards compensation.

3. A reply to the application was filed by the respondents and it was submitted that deceased Bhagwana Ram tried to get down from the bus even before it

stopped, which resulted in his suffering the said injuries and, therefore, the Corporation was not liable for payment of compensation. The claim made by the claimants regarding the income etc. were also denied by the Corporation.

4. On behalf of the claimants wife of the deceased and one Narayan Lal, who was co-passenger and relative of the deceased were examined and on behalf of the Corporation driver and conductor were examined.

5. The Tribunal after hearing the parties came to the conclusion that the accident occurred on account of rash and negligent driving by the driver of the bus, which resulted in the deceased suffering injuries and latter succumbing to the said injuries. The Tribunal on coming to the finding that deceased, who was working as a IV Class employee with the State Government, based on the monthly pay slip, awarded compensation for loss of income taking into consideration future prospects at Rs. 7,805/- per month and deducting 1/3rd towards personal expenses and taking multiplier of 15 years at Rs. 9,36,540/-, Rs. 35,000/- towards loss of consortium/love and affection and Rs. 20,000/- towards funeral expenses.

6. It is submitted by learned counsel for the appellants that the Tribunal committed error in holding the driver guilty for rash and negligent driving. In fact the deceased himself acted in a manner which resulted in the accident and in any case he contributed in the accident and, as such, the claimants are not entitled to any compensation and/or the compensation needs to be reduced on account of contributory negligence of the deceased. The amount awarded by the Tribunal was also claimed as excessive.

7. Replying to the submissions learned counsel for claimants submitted that the finding recorded by the Tribunal does not require any interference, inasmuch as, a detailed analysis of the oral evidence has been made by the Tribunal and the appellants have failed to point out anything contrary. It was submitted that in view of the law laid down by Hon"ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the award in fact is on the lower side as the deduction of 1/3rd is contrary to the law laid down in the said judgment.

8. I have considered the rival submissions made by learned counsel for the parties.

9. The foundation of the argument on behalf of the appellants is that when Bhagwana Ram was taken to the hospital, Narayan Lal gave it in writing vide Exhibit-47 that Bhagwana Ram fell down from the bus while getting down and he does not want to lodge police complaint and want treatment to be done, which clearly shows that there was no negligence on the part of driver of the bus and that the deceased fell down on account of his own negligence without waiting for the bus to stop. It is apparent that the said note given by AW-2 Narayan Lal vide Exhibit-47 does not indicate that the deceased fell down on account of his own negligence and the same from the language employed clearly shows that it was

given as Bhagwana Ram required urgent attention by the hospital authorities, as such, the said document by itself cannot prove that the deceased was either himself negligent or that he contributed in the said accident. The only evidence, which is relevant for the purpose of the said issue, is that of AW-2 Narayan Lal, the co-passenger/relative and NAW-2 Govind Singh, the conductor of the bus. While the statement of Narayan Lal AW-2 is totally in consonance with the case of the claimants that while getting down, the driver of the bus, without instructions from the conductor, moved forward the bus suddenly, which resulted in Bhagwana Ram falling down and suffering injuries. The said statement has not been shaken/displaced in the cross-examination.

10. On the other hand, NAW-2 Govind Singh in his statement admitted that he did not report to any authority regarding the deceased falling down from the bus on account of his negligence and also admitted that Exhibit-47 does not indicate that deceased suffered injuries on account of his own negligence. Further, when he was specifically asked about the driver starting bus on his instructions, he denied, which clearly shows that the driver was negligent in moving forward the bus even before the deceased got down from the bus. As such, it cannot be said that the driver did not drive the bus rashly and negligently and that the deceased had in any way contributed to the said accident.

11. So far as the quantum of compensation is concerned, the same is very much in consonance with the law laid down by Hon''ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and though there is substance in the claim of the respondents that the deduction for personal expenses is on the higher side, in absence of any cross-objection, the same cannot be interfered with. Consequently, there is no substance in the appeal and the same is, therefore, dismissed. The interim order passed by this Court on 23.07.2007 consequently stands vacated, therefore, the application filed by the claimants being I.A. No. 2166/2013 is rendered infructuous.