

(2008) 02 RAJ CK 0113
In the Rajasthan High Court

Sarda Devi and Others

APPELLANT

Vs

Birbal Ram and Others

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Citation : (2009) ACJ 2780

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.P. Gupta, J.—This appeal has been filed by the claimants against the award of the Motor Accidents Claims Tribunal, Nohar dated 29.2.1996, dismissing the claim petition in toto.

2. A perusal of the award shows that thereby 6 claim petitions were decided by a common judgment and all the claim petitions were dismissed. However, out of this judgment, the only one appeal is before me, arising out of the Claim Petition No. 3 of 1993.

3. The necessary facts are that according to the claim petition, on the fateful day being 13.8.1992, the deceased Chimnaram was travelling in the bus No. 1864, which was overloaded, rather many passengers were travelling on the rooftop also. The bus was being driven rashly and negligently and the driver having lost control it went off the road towards the south side and rolled down twice or thrice, with the result that many passengers sustained injuries and 4 persons including this Chimnaram died. Regarding quantum of compensation it is claimed that the deceased was an experienced tractor driver and was earning Rs. 1,800 per month apart from daily allowances. He is claimed to be 30 years of age at the time of death and a total compensation of Rs. 22,59,000 has been claimed under various heads. It is pleaded in para 12 of the claim petition that the bus driver was not having any driving licence and the bus was not insured either. It was also being plied without any permit between Neolakhi and Nohar and was

being illegally operated. The owner-defendant No. 2 submitted a reply denying the allegation of vehicle being driven negligently or at a fast speed, rather the factum of Chimnaram travelling in the bus was also denied. It was pleaded that as a matter of fact Chimnaram boarded the bus without permission of the driver and conductor, without their knowledge and without obtaining ticket, on the rooftop. The bus was being driven carefully at a normal speed and it was only by way of an act of God that the right tube was burst, with the result, that bus went off the road and fell in the borrow pits, caused by the brick manufacturer, by removing earth. It was pleaded that the bus was carrying only passengers to the permissible capacity. The allegations regarding income, etc. were denied. Then in additional pleas it was pleaded, that it is the responsibility of the State to keep the road plain and transport worthy. Likewise, it is responsibility of Mining Department to prevent creation of illegal pits on the roadside, and it was on account of indifferent attitude of the State and illegal excavation by the brickkiln owners, that on account of the pits on the roadside by act of God, the tyre burst and the bus could not be stopped and fell in the pits. Since all the claim petitions were consolidated, the evidence was recorded in Claim Petition No. 91 of 1992.

4. The claimants examined as many as 9 witnesses, while the defendant driver appeared as DW 1, and also examined DWs 2 and 3 and various documentary evidence was also produced, including the F.I.R., post-mortem report, charge-sheet, site inspection note, site plan, mechanical inspection report, supardaginama of the bus, etc.

5. The learned trial court framed issues and while deciding the issue relating to negligence, after cataloguing the evidence, including documents on page 8 onwards, concluded that the accident occurred after the bus had travelled some distance from Rajasar, and it cannot be said that the bus was moving at a fast speed and that it cannot be said that tyres were not roadworthy or that the vehicle was not in a proper condition on that count and that the accident was simply an act of God, comprising burst of the tube of the front tyre, resulting into bus falling in the pits, and thus it was found that there was no negligence on the part of Birbal Ram in driving the bus. Then deciding the issue relating to quantum, the learned trial court had found that from the evidence it is established that the deceased was earning Rs. 1,800 per month and after deducting 1/3rd amount as the personal expenditure, the dependency of family was assessed at Rs. 1,200 per month. The deceased was found to be 32 years of age and employing multiplier of 25, the quantum was assessed at Rs. 3,75,000.

6. Learned Counsel for the appellant assailed the finding of the learned trial court on issue No. 1 relating to negligence. Learned Counsel read to me in detail the findings recorded by the learned trial court.

7. I have gone through the record also and the entire evidence, oral as well as documentary.

8. In the present case, this much is clear that in the accident no other vehicle

was involved, bus was moving on the road, the bus fell down in the pits existing in the south side of the road and on account of this fall, the deceased sustained injuries and died. At least, on this aspect there is no controversy. The controversy precisely is as to whether there was any negligence on the part of the driver in driving the bus, inasmuch as the bus was being driven at a fast speed and in an uncontrolled condition as deposed by the claimants' witnesses, or that the bus left the road only on account of the tube burst or tyre burst and if so, whether it was an act of God, or it is attributable to any negligence on the part of the owner?

9. From this standpoint, if the matter is considered, the learned trial court has catalogued the evidence comprising the claimants' witnesses, wherein AW 4 has deposed that the bus was being driven at a fast speed and the driver did not slow it down despite being asked and, therefore, the bus left the road and fell in the pit and that the tyre of the bus did not burst. Then AW 8 deposed that bus was being driven at a fast speed negligently and went out of control and fell down in the pits, he also deposed the tyre having burst. Then Puranram has deposed that the bus was being driven in uncontrolled condition and fell in the pit, that the driver did not slow it down despite being asked. This entire evidence has been discarded in one word, being interested witnesses, and that they can tell lies, as in the opinion of the learned trial court, the cause of accident is not decipherable from this evidence. It was also considered that from mechanical report, Exh. 6, two tyres of the bus have been found to be worn out and not roadworthy. Likewise, the photograph of the bus shows that one tyre is appearing flat, which shows that probably the tube had burst. Then the evidence of Kumbha Ram, AW 5, was considered who had deposed that on account of fast speed, the tyre of bus burst, and the bus fell in the pit, and that this witness feels the bursting of the tyre to be on account of negligence of the driver. However, the stand of the owner Ranjeet Singh is that it was an act of God in which regard the evidence of driver Birbal Ram, NAW 1, has been considered who has deposed that there were pits of the brickkilns wherein the bus fell down being dragged off the road. Likewise, evidence of NAW 2 another passenger of the bus had been considered who had deposed that he was sitting by the driver side seat and had become unconscious, though he had deposed that the bus fell down in the pit on account of sudden tyre burst, likewise, NAW 3 also deposed about seeing the tyre burst and bus falling in the pit and that it has come in the evidence that these tyres were got changed one month ago, this has come in the evidence of Birbal Ram and that it has come from the photographs that the tyres are appearing to be new one. Thus, the mechanical report, Exh. 6, was not believed and the above finding was recorded.

10. In my view, the finding recorded by the learned trial court cannot be sustained inasmuch as the stand taken in the reply of the owner in this regard is that by an act of God, the right tube of the wheel got burst and the bus left the road and fell in the pit. It is not the plea in the written statement that the tyre was got changed a month ago. With this, coming to the evidence of Birbal Ram

who was driving the vehicle, it shows that he has deposed that when he proceeded from Rajasar to Nohar and moved some 30-40 paces, the bypass road was being constructed whereon grit was lying and on account of the grit hitting the tyre, the right front tyre got burst and the bus fell in the pits, which were at a distance of one pace. The pit was said to be about 20 ft deep. He denied the suggestion about the tyre being worn out and being not roadworthy. Then he deposed ignorance of the mechanical examination of the bus so also the MTO report. However, he had admitted to have been challaned for the incident. Then he denied the suggestion about the bus having not overturned on account of the tyre burst, but on account of his negligence, so also denied the suggestion of passengers having told him to slow down the vehicle. Then a look at the statement of NAW 2, another co-passenger, shows that according to him the driver had put the bus in the second gear and at that time the front tyre got burst, resulting the vehicle being dragged towards the driver side and fell in the pit, which was at a distance of some 4-5 ft. He has also deposed that in the case of tyre burst, if there is a flat space to the extent of 40-50 ft, the vehicle can be controlled and the vehicle would not overturn. Then in the cross-examination, he has deposed ignorance about the tyres being new or old. Then he has denied the suggestion about there being no stones on the site and no stones having hit the tyre. Then he has also deposed that the distance of bypass from Rajasar is 40-50 ft. In this background, a look at the site plan, Exh. 4, shows that the road is from east to west, the place where the bus went out of control is shown by mark "X", which is on the southern side of the road. Then it is also mentioned that the pit is at a distance of 13 ft. By figure 6 this place is shown towards the south side of the road and the road is shown by figure 7, which is 13 ft wide, neat and clean road. The width of the bus has been mentioned to be 7 ft. It is also mentioned therein, that the distance between fields and road is 24 ft 6 inches. In this sequence, a look at Exh. 6, the mechanical examination report shows that two tyres of the bus are reported to be worn out and not roadworthy. Then at point 2, it is also mentioned that the brake operates on 3rd paddle, obviously meaning thereby that the brake was not in a proper working capacity. Thus, what transpires is that on a 13 ft wide road, which was neat and clean, the bus was moving at the extreme southern end, where, even thereafter, there was 13 ft more open space available before bus falling in the pits. This coupled with the fact that according to Birbal Ram, the tyre got burst only on account of the grit having hit the tyre, which grit was lying on the road, as the road was in the construction process, for a bypass. This story is not supported by site inspection note, Exh. 4, nor is it the case pleaded in the reply, nor has it been suggested to the witnesses of the claimants, rather the suggestion was that there were pits on the road and not that a bypass road was under construction, which was carpeted with grit and the grit having hit the tyre, resulted into tyre burst. Likewise, there was no pleading in the written statement about new tyres having been installed one month ago.

11. Thus, it is clear that the story about tyre burst on account of the grit

available on the road, is ex facie unreliable. Then as mentioned in Exh. 4, that when the road is neat and clean and if the tyre or tube had burst, obviously, it was the duty of the owner to establish that he had taken all care and caution to see that the tyre and tube were roadworthy, he was required to lead all evidence as to when the burst tyres were installed in the bus, how much kilometres had they run, and that during this period, the tyre or tube had not sustained any impact fractures. The question of availability of the defence of mechanical breakdown is no more res Integra and in a series of judgments, including those in *Barkway v. South Wales Transport* (1948) 2 All ER 460; *Muniammal Vs. G. Mohan and Others*, ; *Hayat Bi and Others Vs. Nissar Ahmed and Others*, ; *Kumari Swaranlata Kapoor and Others Vs. Joginderpal and Others*, ; *Radha Devi and Another Vs. Aalumul Gyanchand and Others*, and in *Mela Ram Vs. Mohan Singh and Others*, , it has been consistently held that mere plea of mechanical breakdown does not provide any defence, unless owner further pleads and proves that he had taken all requisite care and caution on his part.

12. In my view, thus, the finding recorded by the learned trial court on issue No. 1 relating to negligence, is required to be, and is set aside and it is found that the driver and owner were negligent in driving the bus on road with tyres and tubes, one of which had burst, and caused the accident and they failed to prove that they had taken all care and caution to see that the tyre was roadworthy.

13. Obviously therefore, since the finding on the question of negligence has been set aside, the claimants are entitled to compensation.

14. Then coming to issue of quantum the learned trial court as observed above had assessed dependency at Rs. 1,200 per month and calculated the compensation by employing multiplier of 25 while according to the recent trend of judgments of Hon'ble Supreme Court, the appropriate multiplier to be employed, in case of persons of age of the deceased, is 13 and, therefore, the quantum is to be calculated by employing multiplier 13, which comes to Rs. 1,82,000. Then the other amount of Rs. 15,000 as assessed by the learned Tribunal, does not require any interference. Thus, claimants are found entitled to a total compensation of Rs. 1,97,000. Claimants are also held entitled to interest on the said amount, at the rate of 9 per cent per annum, from the date of claim petition till actual payment.

15. Nobody appears for the owner and Mr. Mehta, though appearing for New India Assurance Co. Ltd., but since as pleaded in the claim petition that the bus was not insured, no liability is fastened on the insurance company and the claim is decreed only against Birbal Ram and Ranjeet Singh, respondent Nos. 1 and 2.

16. Appeal is accordingly allowed. The impugned award is set aside and the claim petition of the appellants is decreed against the respondent Nos. 1 and 2 Birbal Ram and Ranjeet Singh, and they are awarded a total compensation of Rs. 1,97,000 with interest at the rate of 9 per cent per annum from date of claim petition till realization.