

(1984) 08 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 15 of 1977

Shahabuddin

APPELLANT

Vs

Dayala and Another

RESPONDENT

Date of Decision : 21-08-1984

Acts Referred:

Citation : (1986) ACJ 394

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : K.N. Tikku, for the Appellant; G.C. Mathur and R.N. Munshi, for the Respondent

Final Decision : Dismissed

Judgement

Guman Mal Lodha, J.—This appeal is directed against the award passed by the learned Judge of the Motor Accidents Claims Tribunal, Tonk, dated 15th November, 1976. This appeal relates to an accident which took place on 4th January, 1975 in which the wife of the Respondent No. 1, Dayalaram, namely Gulab Devi expired. The Respondent No. 1 had filed a claim petition claiming Rs. 56,020/- against the Appellant Shahabuddin and the Rajasthan State Road Transport Corporation, Jaipur.

2. It is not in dispute that Shahabuddin, the Appellant, was the driver of the vehicle bus No. RRL 1923 and the deceased, Gulab Devi, died in an accident. As alleged, while Gulab Devi, wife of the Respondent No. 1 was going towards Sabzi Mandi of Tonk city, on the road to Malpura, Corporation's vehicle came and struck Gulab Devi.

3. Mr. K.N. Tikku, the learned Counsel for the Appellant-driver, submitted that the accident did not occur by the front side of the bus but, when the Appellant was taking the vehicle to Malpura bus stand, it can be guessed that the speed was slow. Gulab Devi died accidentally as she was hit by a cow with the result, she came under the back wheel of the bus and consequently died.

4. On a careful analysis of the evidence, I am in agreement with the finding of the Tribunal that Narayan (PW 2), Nanda (PW 3) and Motilal (PW 4) have corroborated and proved that the vehicle was coming at fast speed and further that the accident took place on account of rashness and negligent driving of the driver of the vehicle.

5. Mr. Tikku then pointed out that the evidence of Shahabuddin (OW 1), Ladu (OW 2) read with evidence of Chhotu (OW 4) and Harvilas (OW 5), shows that there was no rashness and negligence in driving on the part of the driver. The Tribunal, while discussing the evidence has observed that Narayan who lodged first information report of the incident after the accident took place, was undoubtedly an eye-witness. The statement of Shahabuddin has been disbelieved by the Tribunal as being in contradiction with the evidence of Ladu (OW 2), who stated that the bus was fully loaded with passengers but, Shahabuddin stated that there were only two passengers. The other two witnesses also contradicted each other.

6. Similarly, regarding the story of cow it is not believable as Ladu (OW 2) and Harvilas (OW 5) have given a different version than Chhotu (OW 4). According to Chhotu (OW 4), the cows fought themselves, but, other two witnesses stated that the cow was running. The evidence of Harvilas (OW 5), Chhotu (OW 4) and Ladu (OW 2) therefore, appears to be unreliable as they have been introduced to play false game. The only witness whose presence was corroborative and who was produced is Gulab Chand (OW 3) but, he also did not support Shahabuddin on this point. Exh. 2 to Exh. 9 also corroborate the evidence of claimants and their witnesses.

7. Regarding compensation, Mr. Tikku submitted that Dayalaram was a labourer and used to earn only for 20 days in a month.

8. However, I find that the evidence of Nan-da (PW 3) and other witnesses corroborates the claimants evidence that Gulab Devi used to earn Rs. 4/- per day.

9. Mr. G.C. Mathur, in support of cross-objections, relied upon the decision in C. Venkatesham v. General Manager, Andhra Pradesh State Road Transport Corporation, 1977 ACJ 536 (AP), wherein a house-hold lady of 21 years of age died on account of accident and compensation of Rs. 18,000/- for loss of services of the deceased lady and Rs. 6,000/- for loss of consortium to the claimant-husband and loss of love and affection to the children was awarded.

10. I am in agreement with the above view.

11. Mr. Tikku submitted that the pleading in this respect is also silent and conspicuous. I am of the opinion that in matters of accident claims, the pleadings are not to be scrutinised like civil suit. It is well known that by the legislative enactments, in the form of compensation Rs. 15,000/- are allowed even for no fault as compensation and there is no necessity of proving income or loss of income.

12. Similarly, the question of general damages to be allowed, is not to be scrutinised on the basis of the pleadings, like an ordinary civil suit. Obviously, when Gulab Devi died on account of the accident, she was of 40 years of age and therefore, I feel that in view of the decision, referred to above, Rs. 15,000/- atleast, as compensation for loss of service including (sic. Rs. 5,400 as loss of) income to the claimant and Rs. 5,000/- for loss of consortium, should be allowed.

13. Consequently, the amount of compensation awarded is increased by adding Rs. 20,000/- as indicated above, which comes totally to Rs. 25,400/-. The claimants would get interest at the rate of 12% on the above amount from the date of application till the date of realisation. The liability of payment of compensation would be joint and several.

14. In the result, the cross-objections succeed and are allowed with costs, as indicated above and the appeal is dismissed with costs.