

(2005) 11 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 758 of 1996

Shankar Lal and Another

APPELLANT

Vs

Nand Lal Meena and Others

RESPONDENT

Date of Decision : 19-11-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 1 ACC 589 : (2006) 1 RCR(Civil) 769 : (2006) 1 RLW 341 : (2006) 1 WLC 182

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Advocate : Mahendra Goyal, for the Appellant; Sita Ram and Tej Prakash, for the Respondent

Final Decision : Allowed

Judgement

Narendra Kumar Jain, J.—Heard the learned Counsel for the parties.

2. The claimant-appellants have filed this appeal u/s 173 of the Motor Vehicles Act against the judgment of Motor Accident Claims Tribunal, Neem-ka-Thana, Sikar in MAC No. 43/89, whereby the learned Tribunal allowed the compensation of Rs. 80,000/- in favour of the appellants and deducted 40 out of which towards negligence on the part of the deceased, therefore, total compensation of Rs. 48,000/- was allowed.

3. The appellants are parents of the d Upendra Kumar who was admittedly travelling in a bus by sitting on the roof top of it. The appellants filed an application for compensation in respect of death of Upendra Kumar who died while travelling on the top roof of the bus.

4. The non-claimants No. 1 and 2 owner and driver filed their written reply wherein contents of the application were denied. The Insurance Company filed a separate reply to the claim petition and denied the contents of the application and submitted that their liability to the compensation is limited only upto 50,000/-.

5. The learned Tribunal framed 8 issues and also heard learned Counsel for the both the parties. The claimants examined AW1 to AW4 and produced documentary evidence Ex.1 to Ex.P.6. The non-claimants examined NAW-1 to NAW-4 and produced documents Ex.NA-1 to Ex.NA-4. The learned Tribunal after considering the evidence on record decided issue No. 1 and 5 holding that bus driver was negligent upto 60% and deceased was negligent upto 40%. So far as quantum of compensation is concerned, the learned Tribunal while considering issue No. 2 held that as per contents of application for compensation itself, the d was earning Rs. 364/- per month as salary as he was working on temporary basis in Water Works Department. The deceased was unmarried. The age of the father of he deceased was 48 years. The Tribunal on the basis of the salary certificate assessed Rs. 4,368/- as salary for one year which was rounded off to Rs. 4500/-. On third amount was deducted for personal expenses and Rs. 3,000/- per year was assessed for the purpose of compensation. The span of life of father was treated as 68 years and as such awarded compensation for 20 years. Rs. 3,000/- per month was multiple by 20 and awarded Rs. 60,000/-. The Tribunal further awarded Rs. 20,000/- under all other heads and as such total compensation of Rs. 80,000/- was assessed and because of 60% negligence on the part of bus driver, a amount of Rs. 48,000/- was awarded in favour of the claimants-appellants. The Tribunal also awarded 12% interest from the date of application i.e. 18.10.1989 with a condition that case payment is not made within 2 months then the rate of interest will be 15% per annum.

6. The learned Counsel for the appellant contended that deceased was travelling in the bus by sitting on the roof-top of it was in the knowledge of the driver and as such, the Tribunal has committed illegality in deducting 40% of the amount of compensation for the negligence of the deceased. He cited Managing Director, Andhra Pradesh, S.R.T.C. Bangalore and Anr. v. Smt. Sunanda and Anr. 20041 T.A.C. 826 Kant wherein the Division Bench of the Karnataka High Court held as under:

It is not in dispute that the deceased was travelling on the top of the bus in question. It is also not in dispute that the deceased has loaded tin sheets on roof-top of the bus. For the purpose of loading these tin sheets on roof-top, the deceased must have taken sufficient time and the same cannot be done without the knowledge of the driver and conductor of the bus. Such loading of the goods on the top of the bus will not be allowed without the conductor having collected the requisite fair from the passenger, it was the duty of the conductor and the driver of the bus to have noticed if there were any passengers on the roof-top and to ask them to alight from the roof-top and to board the bus. Boarding of the bus necessarily pre-supposes that the passenger will have to get inside the bus, either sit in the seat or stand in the place reserved for standing. The conductor of the bus has to comply with this statutory duty. In case, the passenger is on the roof-top of the bus itself, the conduct ought to have asked the passenger to get down and thereafter ought to have signalled to the driver of the bus to proceed. The driver of the bus was also enjoined with the duty to ensure that the bus

move only after there was safe travelling conditions for the passengers. The deceased, who loaded his goods on to the roof of the bus and sat on the roof-top of the bus could not have done so stealthily. Neither the driver nor the conductor cautioned the said deceased not to travel on the roof-top of the bus, the deceased having fallen off the roof of the bus and denied cannot be held to have contributed to the negligence. There is neither pleading nor proof of contributory negligence. There is no evidence on record to show that the deceased had refused to alight from the roof-top inspite of the directions from the driver or the conductor or he was cautioned about the risk, he was undertaking by travelling on the roof of the bus. The MACT having arrived at a positive conclusion that there was no negligence on the part of the deceased in travelling on the roof of the bus no exception can be taken to the said finding.

7. The next contention of the learned Counsel for the appellants is that deceased was 19 years of age, therefore, amount of Rs. 80,000/- awarded in the present case was a meager amount and the same should be enhanced. He referred Hazi Zainullan Khan Dead by L.Rs. v. Nagar Mahapalika, Allahabad T.A.C. 1950 S.C. 13 and submitted that in similar circumstances where deceased was 20 years of age, the Hon"ble Supreme Court enhanced amount of Rs. 1,46,900/- to Rs. 1,50,000/-, therefore, his contention is that the amount Rs. 48,000/- should be enhanced to Rs. 1,50,000/-.

8. The learned Counsel for the Insurance Company respondent No. 4 contended that finding of the learned Tribunal in respect of contributory negligence as well as quantum both are correct and based on evidence and the record and as such this is not a case for interference on any issue by this Court.

9. I have considered the submissions of the learned Counsel for both the parties and examined he impugned judgment as well as the record of the trial court.

10. In this case AW-2 Jairam Saini AW-3 Girdhari and AW-4 Ganpat were travelling in the same bus and have stated that the deceased was coming down from the roof-top of the bus but all the sudden bus started and deceased fell down and died, the bus driver Ratan Lal has been examined as NAW-1 who has stated that he was not in the knowledge that any person is sitting on the roof-top of his bus. He stated that there were only 30-35 passengers in the bus. NAW-3 Mali Ram Conductor of the bus stated that he was not aware about any passenger sitting on the roof-top of the bus but that when he heard some hue and cry from the top of the bus then the bus was immediately stopped and he came to know that one passenger has died on the top of the bus. NAW-2 Suwa Lal who was travelling in the bus stated that bus was in a very low speed and there was only one passenger on the top of the bus. He could not see as to when the passenger went at the top of the bus he stated that there was no negligence on the part of the bus driver. The Tribunal while considering Issue No. 1 considered the evidence of both the parties and after discussing the evidence in detail recorded a finding that even if there was an offer to the deceased to sit on the top of the bus by Conductor then still he should not have taken the risk for

travelling while sitting on the top of roof of the bus, therefore, the deceased was definitely responsible for travelling while sitting on the top of the bus. The Tribunal assessed 40% negligent on the part of the deceased and held that bus driver was negligent upto 60% and consequently awarded Rs. 48,000/- out of total compensation of Rs. 80,000/- being 60% negligence attributed to bus driver with interest @ 12% with stipulation that in case payment is not made within 2 months then interest rate will be 15% per annum.

11. I have considered the statement of applicant witnesses as well as non-applicant witnesses and also the finding of the learned Tribunal. There is no dispute that deceased was travelling while sitting on top of the bus. Whether he was travelling with permission or without permission of the conductor but still he himself took a risk for travelling sitting on the top of the bus, therefore, no absolutely negligence can be attributed to the bus driver. If the deceased would not have travelled sitting on the top of the bus then the accident would not have taken place. In the facts and circumstances of the present case, I do not find any illegality or perversity in the findings recorded by the Tribunal so far as issue No. 1 is concerned.

12. Now, I come to issue No. 2 wherein the learned Tribunal awarded Rs. 60,000/- towards loss of income and Rs. 20,000/- under all other heads. No doubt that in the present case documentary evidence in respect of the income was available on record and there is nothing wrong on the part of the Tribunal to assess the income of the deceased on the basis of admitted documents of the claimants. Admittedly the deceased was unmarried and the claimants are only parents. The age of father was 48 years and Tribunal assessed the span of life as 68 years and applied the multiplier of 20. The assessment of income as well as span of life as 68 years are in accordance with the provisions of law. However, in view of the above referred judgment of the Hon''ble Supreme Court in Hazi Zainullah Khan v. Nagar Palika supra I consider it just and proper to enhance the amount of compensation from Rs. 80,000/- to Rs. 1,50,000/- as a lumpsum amount for loss of income and under all other heads. The amount of compensation awarded by the Tribunal appears to be a meager amount and after considering the age of the deceased and all other facts and circumstances of the case including the judgment referred above, I consider that ends of justice would met if a lumpsum amount of Rs. 1,50,000/- is awarded to the claimants appellants as compensation. However, the claimants will be entitled to receive 60% of amount of it, meaning thereby the appellant would be entitled to receive Rs. 90,000/- in place of Rs. 48,000/- awarded by the Tribunal.

13. So far as the decision in the case of Managing Director, A.P.S.R.T.C. v. Smt. Sunanda and Anr. supra is concerned, the evidence and facts and circumstances of that case are different from the facts of the present case, on the scrutiny of the evidence, therefore, the same is distinguishable and not applicable in the present case.

14. Consequently, the appeal is allowed the amount of compensation of Rs.

80,000/- is enhanced to Rs. 1,50,000/- but in view of finding on issue No. 1 the appellants will be entitled to receive Rs. 90,000/- in place of Rs. 48,000/- as awarded by the Tribunal. The appellants will also be entitled to receive interest @ 6% from the date of application, till date of the deposit of the enhanced amount. Two months time is allowed to deposit the amount of compensation with interest in the Tribunal. The Tribunal is directed to deposit the entire amount in the Monthly Income Scheme in the Post-Office in the name of the appellants and they will be allowed to withdraw monthly interest accrued thereon. No order as to costs.