
(1987) 10 RAJ CK 0002
In the Rajasthan High Court

Smt. Lali and Others

APPELLANT

Vs

Guru Bux Singh and Others

RESPONDENT

Date of Decision : 28-10-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 100D

Citation : (1990) 2 ACC 588

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

A.K. Mathur, J.—This is an appeal against the award given by the Motor Vehicles Accident claims Tribunal, Udaipur dt. 7-8-82 in the claim case No. 73/79, whereby claim petition of the claimant has been dismissed.

2. Aggrieved against this award dt. 7-8-82, claimants have filed the present appeal u/s 100-D, Motor Vehicles Act (herein-after referred as to "The Act").

3. Brief facts giving rise to this appeal are that on 31.1.79 on Batewar Mangalwar Road, one vehicle No. R.S.M. 1387 whose owner was Guru Bux Singh and the same was being driven by Kishan Lal over run deceased Naru and thereafter it struck against the tree. Thus, it is alleged that the vehicle was driven in rash and negligent manner by the driver. Deceased Naru died on the spot itself. Naru was aged 40 years and spending 5,00/- rupees on the family. Therefore, claim of Rs. one lakh for the loss of the income and one Lakh for the mental agony i.e. two Lakh was filed before the Tribunal by heir of deceased. The vehicle was insured with the National Insurance Company Limited Bapu Bazar, Udaipur. claim was contested by non claimants No. 1 and No. 2 as well as by non claimant Insurance Company No. 3. It was alleged that the vehicle was not driven in rash and negligent manner but because of the mechanical failure, the vehicle turned towards the field and incidentally ran over the deceased. The Insurance Company supported the Non-claimants i.e. owner and driver of the vehicle. It further submitted that in view of stand taken by non claimant No. 1 and No. 2 that the vehicle was not run in a rash and negligent manner therefore, Company

is not liable to indemnify the claimant.

4. On the basis of the pleadings of the parties, two issues were framed.

5. The claimant examined about live witnesses and respondent did not examine any witness however, they relied on the first information report, post mortem report and mechanical report. The Learned Judge decided issue No. 1 against the claimant and held that the vehicle was not driven in rash and negligent manner. The Issue No. 2 was decided against the claimant that since the claimant have failed to prove the death by rash and negligent act, therefore the Insurance Company is not liable to indemnify the claimants.

6. Aggrieved against this claimants have filed present appeal Mr. Mehta learned Counsel for the appellant submits that the learned Tribunal has committed a serious illegality in deciding issue No. 1 against claimants. Learned counsel has taken me to the statement of witnesses and submitted that according to the testimony of p.w.4 Mangi Lal and p.w.5 Uda it clearly transpire that the deceased was hit by vehicle and he was over run. But learned Tribunal has found that the evidence which has been produced by the claimant is not consistent. On account of inconsistency in the statement of the witnesses, Tribunal came to the conclusion that the benefit of doubt should be given to the non claimant that the vehicle was not driven in rash and negligent manner. I have gone J.S. Chouhan through statements of witnesses specially statement of p.w.4 Mangi Lal and p.w.5 Uda, who have seen the occurrence. Mangi Lal has said that he witnessed the accident from 200 yards and Uda from 40-50 yards, both of them have deposed that the deceased was going on the right side when he was hit by the vehicle and vehicle over run the deceased, he has crushed to death. The plea of the respondent that there was mechanical failure therefore, the vehicle could not be kept under control. The situation like mechanical failure the driver and owner cannot be absolved of their liability. The act of mechanical failure is reject able to human negligence that vehicle was not properly kept. Thus, I hold that taking a vehicle which is not properly maintained resulting in death of victim is a rash & negligent act. The vehicle was insured with of Insurance Company there, the National Insurance Company cannot escape from its liability. Now coming to the quantum of compensation, the deceased was 40 years old and he was only doing the job of cycle reparis and his income cannot exceed Rs. 2,000/- out of that he would be spending at least 150/- rupees per month for maintaining his large family. On account of the death of the deceased and family was put to loss at least Rs. 150/- per month. The deceased was 40 years at the time of death and at least, he would have remained alive up to 60 years, therefore, it would be proper to employ multiplying of 20 years under $150 \times 12 \times 20$ that comes to Rs. 36,000/-. The National Insurance Company, non-petitioner No. 3 shall pay a sum of Rs. 36,000/- to claimants. The out of Rs. 36,000/- two thousand may be paid cash to the widow smt. Lali and Rs. 2,000/- to the son of deceased Naru. No claimants No. 3 to No. 8 are minor children and non claimant No. 9 is Dasu, father of the Naru. since he was aged 75 years therefore, whether he is still

surviving or not is not known. The claimants No. 3 to No. 8 are minor there fore, their interest can be protected by their natural guardian mother Smt. Lali. Thus, the amount of Rs. 32,000/- may be deposited in the fixed deposit for a period of five years in schedule Bank, the interest may be paid quarterly to Smt. Lali for a period of five years. After period of five years, the amount may be evenly distributed among all claimants except claimant No. 9 Das.

7. In the result, the appeal is allowed and parties are left to bear their own costs.