

(1986) 10 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 13, 24, 36 and 73 of 1984

Smt. Ratna Ganguly and Another

APPELLANT

Vs

Ranjit Kumar Ganguly and Others

RESPONDENT

Date of Decision : 17-10-1986

Acts Referred:

Citation : (1987) 1 WLN 321

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

Bench : Single Bench

Judgement

Guman Mal Lodha, J.—All these four appeals are from one accident compensation dispute & since all the four have been decided by the common judgment by the Accident Claims Tribunal, Bundi in MACT case No. 30 of 1982, they are decided by one judgment. On 22nd June, 1978, a bus belonging to respondent R.S.R.T.C. and having No. RSG 651 was going from Jaipur to Kota. The said bus collided with truck RSR 167, as soon as it crossed the village Chatarganj at 2.30 p.m., 16 Kms. from Bundi. Consequently, the claimant Ladharam sustained injuries on the right hand and other passenger died. The claimant Ladharam has stated in his petition that at the material time he was serving in M/s/ Unicem Laboratories Ltd. as one of the executives and was drawing Rs. 2151/-per month. The claimant Ladharam was treated at Bundi. Thereafter he was treated in the Sawai Man Singh Hospital Jaipur for the injuries sustained by him on his right hand.

2. The other claim petition has been filed by Ratna Ganguly and Rame Ganguly. Ratna Ganguli is w/o G.K. Ganguli, who died in this accident. Rama Ganguli is daughter of G.K. Ganguli and is minor. The Tribunal has allowed Rs. 59,000/- to the claimant widow Ratna Ganguli and daughter. The Tribunal has allowed Rs. 26,000/- to Ladharam. The two appeals have been filed by the claimants and the other two by the United Insurance Company. Now the first question is that the claimants case is that in addition to the negligence of the truck-driver, driver of the bus of Rajasthan State Road Transport Corporation was also negligent in this accident.

3. The counsel for the corporation on the contrary stated that there was no negligence of the driver of the bus and he took the vehicle in Kachha and tried to save the accident and in that process if the bus could not be stopped for some time and for some distance it was on account of the anxiety of the driver to cause minimum loss to the passengers, because sudden application of the brakes might have resulted in the collision and further that the passengers might have been hurt by various internal mechanical iron railings and other things in the bus on account of jerk and jolt.

4. Mr. Gupta submitted that the judgment of the Tribunal is very reasoned and detailed reasons have been given for holding that there was no negligence of the bus driver.

5. Contrary to it, Mr. Soral and Mr. Srivastava appearing for the claimants submitted that the statement of Ladharam injured itself is sufficient to prove negligence of the bus driver. According to Ladha Ram the bus was being driven at a very fast speed and both truck and bus collided on account of speed of both being fast and therefore both are responsible.

6. I have carefully considered the rival contentions of learned Counsel for the parties and have also gone through the relevant record.

7. Mr. Gupta is primarily, generally, normally correct when he says that the anxiety of the bus driver is to cause minimum loss or injuries to the passengers and therefore he may be conservative in the use of the brake. However, this is not intelligible argument nor for can be appreciated immediately when the accident has taken place. When an accident takes place then the first and the foremost duty of the driver is to stop the vehicle for the simple reason that after the accident there may be imbalance and the vehicle because uncontrollable and it would be difficult for him to stop it and it would result in any damage in any part because the impact of the accident cannot be foreseen nor it can be guessed or imagined in advance. The accident is an accident and therefore once it happens or it appears, then it is too imminent and the driver is duty bound to apply the brakes and stop the vehicle. The case would of course be different, if there is a ditch or there is a river of there or any such hazard on account of which he cannot take the risk of plunging the bus within the death trap. This is not the precise case here. Here it is true that inspite of the accident the bus stopped after distance of about 54 feet. That being so it is obvious that the speed of the bus was fast and excessive. I am therefore of the opinion that though the negligence of the truck driver was much more and it has been held by the Tribunal and that finding has not been challenged by the owner of the truck who has not filed any appeal, yet the part played by the bus driver was also equally objectionable and his negligence is found to be established.

8. In the facts and circumstances of the case, looking to the evidence and the various factors which have been proved on the record as per the judgment of the Tribunal and the evidence assessed that the part of the negligence of the bus

driver issue third and two third is that of the truck driver. Consequently, both are normally liable and responsible this proportion for the purposes of payment of compensation to the injured as well as the claimants who claim on account of the death of Ganguli. But as it is composite negligence both would be partly and severally liable to pay the whole amount.

9. Now the next question is as to what should be the liability of the insurance company because the insurance company has filed two appeals. The principal these of arguments of Mr. Kumawat appearing for the insurance company is that the driver of the truck had no driving licence and therefore the insurance company is not responsible. For this he relied upon the finding of the Tribunal, which is based primarily on the so called admission of the truck owner. It has been repeatedly held by this court and other High Courts also in such matters the burden of proving that there was no driving licence lies with the insurance company and merely because the driver cum owner comes with the plea that there was no driving licence, it cannot be held that this burden has been discharged. In *Bhairon and Others Vs. Nandram and Others*, and *New India Assurance Co. Ltd. Vs. Sushila Devi Sharma and Others* this principle has been repeatedly asserted, established and enunciated and emphasised by this court. In the instant case the insurance company has not made any attempt or effort to prove that the truck driver had no driving licence. Contrary to it has only been contended by the driver or the owner of the truck. It is always in the interest of a driver who comes in a compensation case to take such a plea and therefore his statement cannot be treated as admission against the claimants.

10. An admission against the claimants can only be if the admission is against the interest of the person who makes it. A person who states something which is not against his interest is not making any admission. The claimants have not admitted therefore there is no admission of the claimants. would therefore hold that this part of the finding of the Tribunal cannot be sustained that the driver had no valid licence. The burden was on the insurance company and the insurance company has miserably failed to prove it. In the instant case the driver has not come in evidence nor he has filed a written statement. There is no assertion or allegation or statement of the driver regarding the driving licence. The owner has only filed a written statement and the driver was never called in evidence. This is an additional factor, in the present case which would go to show that the burden of proof of the driving licence was not there had not been discharged by the insurance company.

11. Mr. Kumawat further argued that the owner of the truck has also stated that the driver was not driving the vehicle under his instructions. This is not an unusual but usual exercise when an accident happens to get rid of the liability. Such sweeping general bogus statement by the owner that the driver was not authorised to drive the vehicle without licence cannot establish that the driver who was driving the vehicle was without authority of the owner. It is established law that normally there is a presumption whenever a vehicle is found being

driven by a person, that it was being driven by a person who was either expressly or impliedly having the permission of the owner and was acting under his authority and according to his instructions and was his agent. This presumption can be rebutted by a stronger evidence. So such evidence has been produced in this case. Consequently, the owners liability cannot be discharged only on this ground nor can the insurance company make any capital out of it.

12. That being so both the appeals of the company have no force and deserve to be dismissed.

13. Now the question comes of the amount awarded against which the claimants have filed appeals First of all Ladha Ram, who is the injured is to be considered. It has come in evidence that Ladha Ram's hand has been amputated. Ladha Ram was earning Rs. 21 15/-at the time of accident and was 42 years of age. Ladha Ram continued to earn this amount according to the evidence. So far as the loss of future income an account of loss of hand is concerned, directly there has been no loss because the income continued to be same. Of course it has come in evidence that promotion has been given as a matter of grace and feeling pity on him on account of imputation and further it is obvious that the future chances in the career by having a change over and by having some other work have been retarded and Ladha Ram is now crippled so far as his hand is concerned and is a handicapped man. That being so the Tribunal should have awarded the damages for loss of expected increase or enhancement in the status in the service and income also. This amount has not at all been allowed by the Tribunal. U has come in evidence that Ladha Ram is now required to keep a driver for the purpose of" his car because he cannot drive himself. Thus it would be fair to allow damages for loss of income or prospects of income or even though he is drawing the same salary or even if he has been promoted. Since his income has not been reduced practically, therefore I allow Rs. 200/- per month as damages on this hand as loss of damages only, or nominal damages only. This would come to Rs. 200 x 12 x 18 because he is 42 years, taking the expectancy of age of 60 years upto which he can earn. Thus this amount would be 43,200/ rupees. Ladhu Rain has been allowed, general damages on account of mental agony and loss of status in society etc. on account of handicapped to the extent of Rs. 25,000/- by the Tribunal and the same is upheld. For the purpose of medical treatment amount has been allowed. Ladha Ram hand has been amputated and he had undergone serious treatment. For this purpose the claims of Rs. 2 000/-and the same is allowed. Ladha Ram treatment continued for three months therefore he was required to take medical leave which could have been otherwise encashed an amount of Rs. 6,000/- or around it for the same. thus, in the net result Ladha Ram would be entitled to Rs. 78,200/-. The claimant would also get interest on this amount at rate of 12 percent from the date of application till the date of realisation. The claimant can realise this amount for any one of the non applicants, because for him it is a case of composite negligence I have held in Mohan Lal's case that in case of composite negligence the claimants can realise is from any one, Thus according to the principles laid down in one 1985

ACJ 32 Mohanlal v. Balwant Kaur, the claimant would be entitled to recover this amount from all and any the of non-applicants.

14. Now the case of Ratna Ganguli is to be considered. The deceased was of thirty one years of age to that time. The Tribunal has found that claimants were expected to have dependency of Rs. 300/- from the income of deceased Chiranj Kumar Ganguli. The deceased being of 31 years and the average age being 65 to 70 years, atleast the Tribunal should have allowed the compensation applying the multiplier of 29 years. In this view of the matter. the compensation permissible would be $300 \times 29 \times 12 = 1,04,400/-$ The wife of the deceased Smt. Ratna Ganguli has been deprived of her husband's company for the whole of the life. She must get the amount of consortium Rs. 5 000/-. All the members of the family have been deprived of love and affection and on account of death of Chiranjikumar Ganguli. For this the father mother, and daughter all should get an amount of Rs. 3,000/- and thus this amount would be Rs. 9,000/- Thus the total amount of compensation would increase to Rs. 1,16,400/-. From the above amount the widow Smt. Ratna would get 50% of the amount from the balance of the amount the mother.father Ranjitkumar, Basanti and the daughter Uma would get one third each. The amount of Rs. 1,000/- allowed by the Tribunal for funeral expenses is also to be added as it is confirmed.

15. The claimant should also get interest at rate of 12% from the date of application till the date of realisation. The claimants again would be entitled to recover this amount from any one of the applications as the negligence is composite for them as held above.

16. The investments, deposit and payment of the amount to compensation for all concerned would be according to the principles laid down in Pisto Agrawal's case 1986 RLR 137. The parties would bear their own costs of all these four appeals here in this court.