
(2016) 11 RAJ CK 0061
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1285 of 2009

Smt. Sangeeta

APPELLANT

Vs

Gokul Singh

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, Section 166

Citation : (2017) AAC 1081 : (2017) 1 DNJ 263 : (2017) 2 WLC 250 : (2017) 1 WLN 183

Hon'ble Judges : Mr. Vijay Kumar Vyas, J.

Bench : Single Bench

Advocate : Shri Ram Sharan Sharma, Advocate, for the Claimant/Appellant;
Shri Rizwan Ahmed, Advocate, for the Respondent No. 3

Final Decision : Partly Allowed

Judgement

Vijay Kumar Vyas, J. - The appeal has been preferred against the judgment dated 11.7.2008 passed by learned Additional District Judge (Fast Track) No.7, Jaipur City, Jaipur ? cum - Motor Accident Claims Tribunal, in Motor Accident Claim Case No.117/2004 (1488/2001), whereby an award of Rs.4,33,000/- has been passed in favour of appellant and respondents No. 6 and 7, against respondent No.4 only along with interest @ Rs.6% p.a. from the date of presentation of claim petition. Out of the awarded amount, Rs.1,00,000/- was apportioned in addition to Rs.40,000/- already awarded under section 140 of the Motor Vehicles Act, in favour of the appellant and rest of the amount was apportioned between respondents No.6 and 7.

2. Brief facts giving rise to the appeal are that initially respondents No.6 and 7 submitted a claim petition impleading the appellant as respondent No.6, against rest of the respondents impleaded in the present appeal, stating inter alia that on 2.7.2000 their son deceased Sushil Kumar was coming from Delhi to Jaipur in Tata Sumo No.RJ14-4C- 1735. Near village Sherpur, a Tanker No.HR38-2656, coming from the side of Jaipur, driven rashly and negligently, collided with the

Tata Sumo, whereby Sushil Kumar and driver of the Tata Sumo were died and others were injured. FIR No.334/2000 was registered at Police Station Behrod, wherein after investigation, police filed charge-sheet against the driver of Tanker for offence u/s 279, 337 and 304-A IPC. At the time of death, Sushil Kumar was 22 years of age and was working as Supervisor in Saraswati Engineering Works, Jaipur, earning Rs.4,000/- per month. Claimants are his parents whereas respondent No.6 (Smt. Sangeeta Devi) is wife of the deceased. But, she has left after death of husband, her matrimonial house severing all the relations and not returned despite many efforts. After filing reply by respondent No.6 - Smt. Sangeeta Devi, learned Tribunal directed the claimants to implead Smt. Sangeeta Devi as claimant No.3. On completion of pleadings following issues were framed by the Tribunal :-

1- vk;k iz"uxr okgu la[k;k ,p0vkj0 38&2656 ds pkyd foi{kh la[k;k&d xksdqyflag ds }kjk fnukad 2&7&2002 dks us"kuy gkbZos la[k;k&8 ij mDr okgu dks mis{kk@mrkoysiu ls pykdj dh xbZ nq?kZVuk esa vkbZ pksVksa ds ifj.kkeLo:i lq"khy dqekj dh e`R;q gqbZ \\\

2- vk;k mDr okgu pkyd rc mDr okgu Lokeh foi{kh la[k;k nks ds fu;kstu esa gksdj mlh ds fgrkFkZ ,oa ykHkkFkZ dk;Z dj jgk Fkk \\\

3- vk;k foi{kh l[a;k&rhu chek dEiuh }kjk vius fyf[kr dFku dh izkjfEHkd vkifRr;ksa ,oa fo"ks"k dFku ds en~nsutj chek dEiuh vius nkf;Ro ls eqDr gks ldrh gS ugha rks bldk izHkko \\\

4- vk;k nq?kZVuk esa okgu la[k;k vkj0 ts0 14&4 lh&1735 ds pkyd dk Hkh la;qDr nkf;Ro Fkk \\\

5- vk;k nkosnkj vius nkosa@nkok esa vafdr iz"uxr jkf"k ;k vU; dksbZ U;k; IEer jkf"k ik ldk gSa gka rks dkSu&dkSu nkosnkj fdruh&fdruh jkf"k] fdl&fdl foi{kh ls ,ao fdl izdkj ls ik ldrs gSa \\\

6- vuqrks"k \\\

3. Learned Tribunal decided the claim after hearing all the parties vide judgment dated 11.7.2008 and passed the award as stated herein above.

4. Learned counsel for the appellant submitted that learned Tribunal committed a grave error of law while deciding Issue No.3 in favour of respondent Insurance Company. It has held that the deceased was traveling in the vehicle as a third party and the Insurance Company was not liable to pay compensation as there was a breach of condition of policy by the insured. The insurance company has nowhere averred that third party is not covered by the policy taken by the owner of the vehicle. To inform the insurance company about occurrence of an accident is a matter between owner and insurance company. In absence of such information, the insurance company cannot escape from its liability to indemnify the owner.

5. Learned counsel for the appellant submitted that after investigation, police

chargesheeted driver of the Tanker only holding him solely responsible for the incident. Claimants submitted a copy of the charge sheet, site plan, postmortem report and other documents relating to investigation, but learned Tribunal while interpreting the memo of site inspection has given a finding that the accident took place due to rash and negligent driving of the driver of the Tata Sumo and not that of driver of Tanker. The finding of learned Tribunal is based on surmises and conjectures.

6. Learned counsel for the appellant submitted that the appellant had preferred the claim petition against both the vehicles because the deceased Suhsil Kumar was third party traveling in one of them and for him, it was a case of composite negligence and he can recover the awarded amount from any of them. In support, he referred MACD 2015 (SC) 97, Khenyei v. New India Assurance Co. Ltd.

7. Learned counsel for the appellant submitted that the insurance company did not produce any evidence to substantiate that at the time of accident, driver of the Tata Sumo i.e. Subhash, was not having any valid and effective driving licence. Despite it, learned Tribunal has absolved him from liability.

8. Learned counsel for the appellant submitted that Sushil Kumar was husband of the appellant. She has lost love & affection of her husband. She would be deprived of consortium throughout her life but learned Tribunal has awarded a meager amount of compensation in this head. Looking to the age 22 years of the deceased, multiplier of 17 has also been applied wrongly. Income of the deceased has been accepted by the Tribunal as Rs.3,000/- per month only, whereas he was earning Rs.4,000/- per month. Learned Tribunal did not consider the fact that the claimants have incurred a huge amount of expenses on funeral, transportation and religious rites. The compensation awarded in this head is not commensurate with the expenses. The compensation awarded in the head of loss of love & affection towards parents is also very paltry. Learned Tribunal did not consider the future prospects of the deceased. Therefore, the compensation awarded on these counts require enhancement. In support, MACD 2013 (SC) 186, Rajesh & Ors. v. Rajbir & Ors. has been referred.

9. Learned counsel for respondent No.3 submitted that learned Tribunal has rightly held that the driver of the Tata Sumo was driving rash and negligently. As per site inspection memo, the Tata Sumo was being driven covering the area of other vehicles approaching from opposite side and as a result the accident has taken place. Challan filed by police is not conclusive proof that the driver of the Tanker was negligent and responsible for accident.

10. Learned counsel for respondent No.3 has further submitted that even if the driver of the Tata Sumo was not having valid licence, the insurance company of the Tata Sumo could be directed to pay the compensation with liberty to recover the same from the owner of the insured vehicle. In support, he has placed reliance on National Insurance Co. Ltd. v. Swaran Singh and Ors., 2004(3) SCC

297.

11. Learned counsel for respondent No.3 has further submitted that the vehicle Tata Sumo was insured under comprehensive policy and no evidence was produced on record by the concerned insurance company to prove that the risk of the deceased traveling in Tata Sumo was not covered under the policy of insurance. Therefore, the insurance company of the Tata Sumo cannot escape from the liability of payment of compensation.

12. Learned counsel for respondent No.3 has submitted that the deceased was not engaged in a permanent and stable job. Therefore, his legal heirs are not entitled for grant of future prospects. He has further submitted that the issue regarding entitlement of future prospects by the claimants who are not in regular employment is still *res integra* as the same is pending consideration with Supreme Court in a matter of reference. Reliance was placed on *Shashikala and others v. Gangalakshamma and another*, 2015(9) SCC 150, *National Insurance Co. Ltd. v. Pushpa and Others*, 2015 (4) SCC (Civil) 335.

13. I have given thoughtful consideration to the rival submissions made at Bar and perused the material available on record.

14. Respondent No.3 averred in his reply to the claim petition that the accident took place only due to rash and negligent driving by the driver of the Tata Sumo. On the basis of this averments, issue No.4 was framed and onus to prove was on the respondent but respondent No.3 produced no evidence to discharge the onus.

15. On the contrary, to prove issue No.1 in his favour, claimants produced and exhibited all the documents relating to the investigation made by police, including FIR (Ex.1), Postmortem report (Ex.2), charge sheet (Ex.3) and site inspection (Ex.4). Though no eye witness has been examined by the claimants, yet the documents relating to investigation exhibited by the claimants are sufficient to prove the fact that the accident took place due to rash and negligent driving of driver of Tanker. The concerned insurance company failed to produce any evidence in rebuttal of these documents.

16. Learned Tribunal has interpreted the memo of site inspection (Ex.4) taking it to be as true and proved. Whereas, contents of this memo have neither been proved by producing any evidence nor have been tested on the touchstone of cross examination. Learned Tribunal has observed that there was no eye witness of the occurrence but from the charge-sheet and FIR, it reveals that Anita and Sonu were also traveling in the Tata Sumo at the time of incident, according to the charge-sheet they were eye witnesses. It is an established law that in absence of rebuttal, documents relating to investigation produced by the claimants are to be believed and on the basis thereof, the rash and negligent driving can be construed as proved.

17. In the instant matter, documents relating to investigation are there in favour of the claimants, whereas nothing is on record to support the averments of the

insurance company of the Tanker that the accident was result of rash and negligent driving of the driver of the Tata Sumo. The findings of the Tribunal on issues No.1 and 4 are not based on correct appreciation of the material available on record.

18. Respondent No.3 has examined Pravesh Nigam, Administrative Officer, as NAW 1, but he did not utter single words in his deposition that vehicle Tata Sumo was not insured by a comprehensive policy. He has also not stated that "Act only Policy" was issued for the vehicle Tata Sumo.

19. Pravesh Nigam (NAW 1) has stated that at the time of accident, Tata Sumo was being driven by Subhash who also died in the instant accident. Police did not seize his driving licence. He states that therefore, the driver of Tata Sumo was not having valid driving licence. He has denied in cross examination that insurance company conducted an investigation in this regard. On the other hand, police has not given any conclusion in the charge-sheet (Ex.3), that at the time of accident, the driver of Tata Sumo was not having a valid driving licence. It was duty of the insurance company to investigate independently as to whether the driver of the insured vehicle was having the valid and effective driving licence at the time of accident. The insurance company cannot get absolved from its liability merely by saying that police did not seize the driving licence, therefore, it may be presumed that the driver of the insured vehicle was not having valid and effective driving licence at the time of accident. The insurance company cannot be exonerated on the basis of some probability. The finding of learned Tribunal on issue No.3 is without basis of any evidence.

20. It is undisputed fact that the deceased Sushil Kumar was traveling in the Tata Sumo. He was neither driver nor owner of the vehicle. It is also undisputed that the accident occurred due to head on collision of two vehicles. The claimants have impleaded driver, owner and insurance company of both the vehicles as respondents. In such situation, it is established that for payment of compensation vis-a-vis the deceased Sushil Kumar, a passenger of one of the vehicle ? liability is a composite one. For deceased, both the vehicles are tort feorsors. He can claim compensation from both of them, jointly as well as severally.

21. In Khenyei's case (supra), it has been held that in the case of composite negligence, claimant is entitled to the both or any one of the joint tort feorsors and to recover the entire compensation as liability of joint tort feorsors is joint and several. Therefore, the finding of the Tribunal that respondent No.1, 2, 3 and 5 are not responsible to pay the compensation, is not based on correct appreciation of evidence and application of law.

22. So far as enhancement in the quantum of compensation is concerned, claimant Sangeeta stated in her statement as PW-1 that she has not married other person but admitted that after death of her husband, she is living at her parental house and talks of remarriage are going on. But other witnesses i.e.

Banwari (AW-2), Bhanwar Lal (AW-3) and Smt. Asha Devi (AW-4) have categorically stated that she has left her matrimonial house and remarried with a person, namely, Pokhar S/o Shri Shedu Kumawat, R/o Udaipura, Tehsil Nawa and living with him. It is pertinent to mention here that statement of Sangeeta Devi (AW 1) was recorded and completed on 17.2.2004, whereas evidence of Banwari (AW 2), Bhanwar Lal (AW-3) and Smt. Asha Devi (AW 4) were recorded afterwards in the year 2004-2005. No rebuttal is available on record of the fact that Sangeeta has remarried and she is no more living with parents of the deceased.

23. Learned Tribunal has accepted monthly income of the deceased as Rs.3,000/- only. No evidence was adduced by the claimants to substantiate their claim that the deceased was earning Rs.4,000/- per month. Therefore, looking to the nature of job of the deceased and other factors, learned Tribunal has not committed any error in holding Rs.3,000/- monthly income of the deceased. At the time of death, the deceased was of 22 years, thus multiplier of 17 has rightly been applied in consonance with the schedule attached to the Motor Vehicles Act.

24. In *Sarla Verma v. Delhi Transport Corporation*, (2009) 6 SCC 121, it was held that when the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. Whereas, in *Rajesh's case* (supra), it has been clarified that in the case of selfemployed or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.

25. However, the above clarification made in *Rajesh's case* (supra), is pending in *Pushpa's case* (supra) for authoritative pronouncement by Apex Court and the matter is still *res integra*. Therefore, in the instant matter, as the deceased was not in a permanent employment, loss of increase and future prospects cannot be added in the income of the deceased.

26. In the light of principles laid down in *Sarla Verma's case* (supra) and *Rajesh and Ors.'s case* (supra), the amount awarded in the head of loss of love & affection, loss of consortium as well as expenses of funeral, transportation, etc. awarded by the Tribunal are found to be on very lower side and require enhancement. Therefore, in the head of expenses of funeral and transportation, the amount of compensation is increased from Rs. 5,000/- to Rs. 25,000/. Considering the age of the parents who have crossed 60 years, in the head of loss of love & affection, the compensation is increased from Rs.5,000/- to Rs. 10,000/- each to mother and father. While considering the fact of remarriage entered into by Sangeeta, wife of the deceased, compensation in the head of loss of consortium is being enhanced from Rs. 5,000/- to only Rs.25,000/-.

27. In the result, the compensation awarded in different heads by the Tribunal and enhanced by this court are as under :

S.No.

Head

Awarded By Tribunal

Awarded By This Court

1

Funeral&transportation

Rs.5,000/-

Rs.25,000/-

2

Loss of love & affection to the parents

Rs.5,000/-each = Rs.10,000/

Rs.10,000/- each = Rs.20,000/-

3

Loss of consortium (wife)

Rs.5,000/-

Rs.25,000/-

Total

Rs.20,000/-

Rs.70,000/-

28. Thus, the total compensation payable to the claimant/s is enhanced by Rs.50,000/- as detailed out above. The claimants will be entitled to interest on the enhanced amount of compensation @ 6% p.a. from the date of filing the claim application, till the date of realisation.

29. Accordingly, the appeal is partly allowed in the above said terms. The respondents No.1 to 5 shall be liable to pay the whole amount of compensation, including enhanced one, jointly and severally, by way of Demand Draft/s in favour of the claimants or deposit the same with interest as awarded, even on the enhanced compensation, before the Tribunal after deducting the amount already paid to the claimants within six weeks from the date of receipt of certified copy of this judgment.