

(2004) 12 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 692 of 1992

Sohanlal and Others

APPELLANT

Vs

Mangilal and Others

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Citation : (2006) ACJ 1323

Hon'ble Judges : Dalip Singh, J

Bench : Single Bench

Advocate : Sandeep Mathur, for the Appellant; T.P. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Dalip Singh, J.—This appeal has been filed against the award dated 30.10.1992 passed by the Motor Accidents Claims Tribunal, Sikar (hereinafter referred to as "the Tribunal") in Claim Petition No. 104 of 1989 filed by the appellants whereby the Tribunal has dismissed the claim petition filed by the appellants for the death of their son Banwari aged 15 years and who was a student of VII class at the time when the accident occurred on 14.9.1989.

2. The brief facts of the case are that the deceased was travelling on a bus No. RJV 5952 from Fatehpur to his village. It is also the case of the appellants that he was travelling on the roof of the bus and as a result of the rash and negligent driving of the driver, the deceased fell down from the roof in front of the bus and was run over by the tyre of the bus. The learned Tribunal while deciding issue Nos. 1 and 5 held that there was no rash and negligent driving on the part of the driver of the bus and the deceased had travelled on the roof of the bus at his own peril. In the facts and circumstances of the present case, Tribunal rejected the claim petition on account of the finding arrived at on issue Nos. 1 and 5.

3. Learned counsel for the appellants has submitted that it is not in dispute that the deceased was travelling on the roof of the bus and fell down and sustained the injuries on account of being run over by the tyre of the bus. Learned counsel

for the appellants has further submitted that the deceased fell down from the roof in front of the bus and was run over by the tyre of the bus, goes to show that in fact it was only on account of abrupt stoppage or reduction of the speed of the bus that the deceased fell down from the roof in front of the moving bus and was run over by it resulting in injuries and his consequential death. To suggest that on account of there being a turn on the road, the speed of the bus was reduced by the driver who was driving the bus carefully, goes contrary to any scientific approach as in the event of the bus not having been driven at sufficient speed, there being a turn there would be no occasion for the deceased who was on the roof of the bus to have fallen from the roof in front of the bus so as to be run over by the tyre of the bus. It is only when the vehicle in question which was running at a sufficient speed came to an abrupt stoppage or using brakes there will be reduction in speed as a result of which the deceased would fall in front of the bus and consequently run over by the tyres of the bus. In this view of the matter, it cannot be said that the driver had taken sufficient precautions and contrarily it goes to show that the driver was driving the bus rashly and negligently. It has also come in the evidence that apart from the deceased other passengers were also travelling on the roof of the bus as has been stated by Murali Dan, AW 5 and Bhagirath, AW 6. In these circumstances, the conductor and driver did not take adequate precautions and due care by not ensuring that there were no persons travelling on the roof of the bus where they should not have been allowed to travel, shows failure on the part of the conductor and the driver to ensure such unauthorised travelling on the roof of the bus which also amount to negligence on their part which had resulted in the said accident. In this view of the matter, the Tribunal has found that the bus was not being driven rashly and negligently deserves to be set aside.

4. The learned Counsel appearing on behalf of the respondent No. 3 submits that the testimony of Murali Dan, AW 4 and Bhagirath, AW 6, cannot be relied upon inasmuch as these persons who were alleged to be the co-passengers had not produced any valid tickets that they were travelling in the said bus. Learned counsel for the respondent further submits that the deceased Banwari who was travelling in the ill-fated bus was travelling without a ticket.

5. It was not a point of dispute before the Tribunal that the deceased did not have a ticket while travelling in the bus. The plea that the deceased was travelling on the roof of the bus without the knowledge of the conductor as has been pleaded does not amount to same thing as, the deceased was not having valid ticket. It is not uncommon that on buses plying in the rural areas that despite the fact that the passengers having valid tickets on account of the lack of space inside the bus, passengers take the risk of sitting on the roof of the bus while travelling. This common knowledge cannot be ignored particularly, while deciding cases of motor accident claims. Further, such travel by passengers benefits the owners who overload their vehicles. In this view of the matter, since the question with regard to the deceased not having valid ticket was not in dispute by the parties and the same having been raised by the respondents for

the first time in appeal need not be gone into while deciding this appeal.

6. So far as the fact with regard to the applicant witnesses AW 4 and AW 6 co-passengers being disbelieved on account of the fact that they did not produce their tickets in order to show that in fact, they were the passengers in the bus on the date when the accident took place, suffice it to say that it cannot be expected that on the date of examination of these witnesses in court on 27.7.1992 and 22.2.1992, i.e., after merely 3 years of the accident which took place on 14.9.1989 that these witnesses would retain their tickets in order to show that they were the bona fide passengers on the said bus. The aforesaid contention raised on behalf of the respondents is consequently, devoid of merits and is hereby rejected. It is held that they were co-passengers along with deceased who were travelling on the roof of the bus which was overcrowded and the driver and conductor allowed them to travel on the roof with full knowledge and for the benefit of the owner.

7. In the facts and circumstances of the case, therefore, I am inclined to hold that the death of the deceased took place on account of the vehicle in question being driven by the driver rashly and negligently. As a result of the aforesaid accident, the deceased fell down from the bus and was consequently run over by tyres of the bus.

8. The submission of the learned Counsel for the appellants is that in view of the decision of their Lordships in the case of Shanti Bai and Others Vs. Charan Singh and Others, , wherein their Lordships have held that in the case of minor assuming that he was a non-earning person, in such cases, the Hon''ble Apex Court has been pleased to award a sum of Rs. 1,50,000 (Rs. one lakh fifty thousand only) as compensation for death of the deceased. Consequently, in conformity with the decision of their Lordships of the Supreme Court the case of Shanti Bai v. Charan Singh (supra) in the case of death on account of accident, where the age at the time of death of the deceased was 15 years and being minor I would accordingly allow the lump sum amount of compensation of Rs. 1,50,000.

9. Learned counsel for the respondents has submitted that as the deceased was travelling on the roof of the bus he should be held responsible for having contributed to the said accident as it was not expected of a passenger to travel on the roof of the bus. In response to the aforesaid, learned Counsel for the appellants has relied upon the two judgments; one is reported in the case of Manjit Kaur and Others Vs. Pepsu Road Trans. Corpn. and Others, and another judgment is reported in the case of Vijay Singh Vs. Haryana Roadways and another, wherein Punjab and Haryana High Court has dealt with the similar situation wherein the passenger was travelling on the roof of the bus and sustained injuries. It was held that the said passenger would not have been said to be guilty of the contributory act. Even though, it may not be permissible in law for him to travel on the roof of the bus.

10. I am in respectful agreement with the view expressed by Punjab and Haryana High Court and consequently this submission of the respondents is rejected.

11. Learned counsel for the respondent No. 3 submits that the insurance company may be given the liberty to recover the amount paid in excess to the statutory liability from the respondent Nos. 1 and 2. The liberty is granted to the respondent No. 3. In case the insurance company pays any amount in excess of the statutory liability it shall be entitled to receive the same from the owner and driver of the vehicle.

12. In the result, the appeal is allowed the appellants would be entitled to receive compensation of Rs. 1,50,000 (Rs. one lakh fifty thousand only) from the respondents who are jointly and severally liable and the respondents will pay them by way of crossed cheque of demand draft or the deposit with the Tribunal the said amount within a period of three months from today along with the interest at the rate of 6 per cent per annum w.e.f. the date of filing of the appeal, i.e., 1.12.1992. However, in case the aforesaid amount is not paid or deposited within the stipulated period of 3 months, the appellant would be entitled to recover the said amount from the respondents along with the interest at the rate of 9 per cent per annum w.e.f. the date of filing of the claim petition, i.e., 15.12.1989.

13. The parties shall bear their own costs.