
(1991) 04 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 23 of 1986

State of Rajasthan and Others

APPELLANT

Vs

Laxmi Sharma and Others

RESPONDENT

Date of Decision : 14-04-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1992) ACJ 895

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : S.K. Vas, for the Appellant; R.K. Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Milap Chand Jain, J.—This appeal has been filed u/s 110-D, Motor Vehicles Act, 1939, against the award of the Motor Accidents Claims Tribunal, Udaipur dated October 29, 1985 awarding compensation to the tune of Rs. 1,39,000/- with interest at the rate of 10 per cent per annum. The facts of the case giving rise to this appeal may be summarised thus.

2. On May 24, 1983, the deceased Kailash Chandra Sharma, Assistant Engineer, Drilling and Hand Pump Division I, Public Health Engineering Department, Jaipur, was going in the Government jeep No. RRB 6279 on Government duty from Jaipur to Udaipur. The jeep was being driven by its driver Gajendra Singh, respondent No. 7. It overturned and fell in a deep ditch on the National Highway No. 8 in between Nathdwara-Delwara near village Nevra. He received serious injuries. He was immediately taken to the Government Hospital, Udaipur where he succumbed to his injuries on May 25, 1983. On August 29, 1983, a claim petition was filed claiming Rs. 4,30,000/-stating that the claimants were wholly dependent upon the deceased, he was 42 years of age at the time of the accident, his monthly salary was Rs. 2,356/-, the jeep belonged to the Government of Rajasthan and it was being driven negligently and rashly by its driver. In their reply, the non-petitioners-respondents admitted that the jeep

belonged to the Government of Rajasthan, accident took place, the deceased Kailash Chandra Sharma was Assistant Engineer in the Public Health Engineering Department, he was getting Rs. 1,956/- per month as his salary and he was 42 years old at the time of the accident. The remaining averments of the claim petition were denied. It has further been averred that the accident occurred on account of the failure of the tie-rod of the jeep, a son of the deceased has been given employment, family pension has been granted, payment of amount of gratuity etc. has been made and Rs. 10,000/- have also been granted as aid to the claimants on humanitarian considerations. After framing the necessary issues and recording the evidence of the parties, the Tribunal held that the accident occurred on account of the rash and negligent driving of the jeep by its driver Gajendra Singh and the claimants are entitled to get Rs. 1,39,000/- as compensation and passed the award as said above.

3. It has been contended by the learned Government Advocate that the learned Member of the Tribunal has seriously erred to hold that the accident took place due to rash and negligent driving of the jeep by its driver on the basis of the statements of Laxmi Bai, AW 1, Dr. N.S. Kothari, AW 2 and Laxmilal, AW 3, despite the fact that they were not eye-witnesses. He further contended that the learned Member of the Tribunal seriously erred to disbelieve the statement of the driver Gajendra Singh, NAW 1. He categorically stated on oath that the accident occurred due to breaking of the steering rod (tie-rod) and the report Exh. 4 of the mechanical inspection of the jeep duly corroborated his statement. He also contended that the amount of compensation awarded is highly excessive, particularly when a son of the claimant has been given employment by the Government of Rajasthan, family pension has been granted to the claimants and Rs. 10,000/- had been given to them on humanitarian grounds.

4. The respondent Nos. 1 to 6 have filed cross-objections for the enhancement of the amount of compensation and rate of interest. It has been contended by the learned counsel for the claimant-respondents that the learned Member of the Tribunal has seriously erred to apply the multiplier of 8 only and the multiplier of 23 should have been applied as admittedly the deceased was 42 years old at the time of the accident. He also contended that the Tribunal did not take into consideration future promotions and increments and the deduction on account of personal expenses has been effected in excess. He further contended that the interest awarded at the rate of 10 per cent is inadequate and it should have been at the rate of 12 per cent from the date of the filing of the claim petition. He lastly contended that the Tribunal should have allowed payment of some amount in cash out of the compensation to meet the expenses for the marriage of the claimant No. 5 Chitra and for the education of the other minor claimants.

5. There is no substance in the appeal, in this case the principle of *res ipsa loquitur* applies. Admittedly, the jeep skidded, overturned and fell in a deep ditch. It has been stated in group No. 6 of the memorandum of appeal as follows:

(6) That it is admitted case that respondent No. 7, NAW 1 Gajendra Singh, was

the driver of the ill-fated jeep which accidentally fell in the deep ditch due to the breaking of tie-rod. It is also the admitted case that the jeep fell in the ditch in which the deceased Assistant Engineer was travelling and was being driven by respondent No. 7. Therefore, the rash and negligent act cannot be inferred to respondent No. 7, the driver of the jeep. It was simply a mechanical defect which ultimately cropped up during the travelling and not due to the rash and negligent act of NAW 1 Gajendra Singh, respondent No. 7. This was an act of vis major and was beyond the control of respondent No. 7, Gajendra Singh. Therefore, no rash and negligent act could be attributed to respondent No. 7 who was driving the jeep at the time of the accident. The judgment and award of the learned Judge, Motor Accidents Claims Tribunal, suffers from serious illegality and infirmity and deserves to be set aside.

Thus the admitted case of the appellants is that the accident occurred due to the breaking of the tie-rod. It has not been pleaded and proved that the jeep was regularly maintained in a roadworthy condition by taking all necessary care and precautions. There is nothing on the record to indicate that the jeep was checked before the commencement of the journey. The sudden breaking of the tie-rod is not in itself sufficient to establish that the accident was not due to negligence of the respondents. It has been observed in *Oriental Fire and General Insurance Co. Ltd. and Others Vs. Satya Deo Dubey*, as follows:

(7) In the present case the vehicle was manufactured in the year 1962 and the accident took place in the year 1973. There is no evidence produced on the part of the defendant-appellants to show as to in what manner the vehicle was being maintained. It has not been specifically shown that the vehicle was periodically checked and its parts including the tie-rod were found to be in working order. In these circumstances negligence on the part of the owner of the vehicle and its driver is established.

The learned Member of the Tribunal rightly held that the accident occurred on account of the rash and negligent act of its driver.

6. The contention of the learned Government Advocate that the amount of compensation awarded is excessive is devoid of force. As a matter of fact, the amount awarded is inadequate and the cross-objection deserves to be allowed. Admittedly, the deceased Kailash Chandra Sharma was 42 years of age at the time of accident and he was Assistant Engineer in the Public Health Engineering Department, Government of Rajasthan and his monthly salary was Rs. 1,956/-. Deducting his own expenses at the rate of 33 per cent monthly pecuniary loss to the claimants comes to Rs. $1956 - 1956/3 = 1304$, rounded off to Rs. 1,300/-. If the accident would not have occurred, the deceased would have served the Government of Rajasthan till the age of 58 years, i.e., for 16 years more. Thus the pecuniary loss to the claimants comes to Rs. 2,49,600/- ($1300 \times 12 \times 16$). It has been held in *Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others*, that the average life of an Indian may be taken to be 65 years. Even after the retirement at the age of 58 years the deceased Kailash Chandra might have done

something and earned for his family. Even ignoring the future promotions and increments, pensionary benefits and engagement after retirement, the claimants are entitled to get the said amount of Rs. 2,49,600/-.

7. The Tribunal has awarded Rs. 12,200/- to the claimants as consortium. This amount is quite reasonable. It neither needs reduction nor enhancement. The Tribunal has further awarded Rs. 1,000/- for performance of last rites. It is not admissible. Rs. 1,000/- have been awarded for bringing the dead body from Udaipur to Jaipur. This amount is admissible. As such the claimants are entitled to get Rs. 2,49,600 + Rs. 1,000 + Rs. 12,200 = Rs. 2,62,800/-.

8. Interest at the rate of 10 per cent per annum has been awarded on the condition that the amount of compensation is deposited within three months failing which it would be payable at the rate of 12 per cent per annum. Interest is generally awarded at the minimum rate of 12 per cent per annum.

9. The learned Tribunal has apportioned the amount of compensation amongst the claimants in equal proportions. As a matter of fact, the widow of the deceased is entitled to get more amount. She should get at least Rs. 82,800/-. The remaining amount of Rs. 1,80,000/- is to be divided in equal proportion amongst the remaining claimants, i.e., Rs. 36,000/- each.

10. Consequently, the appeal is dismissed with costs. Cross-objection is partly allowed. The amount of compensation is enhanced from Rs. 1,39,000/- to Rs. 2,62,800/-. Interest would be payable at the rate of 12 per cent per annum from the date of institution of the claim petition, i.e., August 29, 1983, to the date of deposit in the Tribunal. Out of the said amount of Rs. 2,62,800/-, the claimant-respondent No. 1 Laxmi Sharma will get Rs. 82,800/- and the remaining claimants will get Rs. 36,000/- each. The amount of interest will be divisible in the same ratio. As ordered by the Tribunal, the amount of compensation will be invested in some Fixed Deposit Scheme fetching maximum rate of interest of any nationalised bank. The claimants will get quarterly interest. The Tribunal may permit the claimant/claimants to withdraw the amount from the Fixed Deposit Receipts as may be deemed reasonable by it for meeting the expenses of marriage and education.