

(1991) 02 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Miscellaneous No. 112 of 1989

State of Rajasthan

APPELLANT

Vs

Teejo and Others

RESPONDENT

Date of Decision : 27-02-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1992) ACJ 678

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : J.P. Joshi, for the Appellant; J.S. Chowdhari, for the Respondent

Final Decision : Partly Allowed

Judgement

Milap Chandra Jain, J.—This appeal has been filed u/s 110D, Motor Vehicles Act, 1939 against the award of the learned Member, Motor Accidents Claims Tribunal (Addl. District Judge), Banner dated December 15, 1988 by which the claimant-respondents have been granted Rs. 1,49,500 as compensation with interest at the rate of 12 per cent per annum.

2. The facts of the case giving rise to this appeal may be summarised thus:

On February 1, 1986, at about 7 p.m. late Bhagwana Ram, husband of the claimant-respondent No. 1 and father of the claimant-respondent Nos. 2 to 6, was going on his bullock-cart on the correct side of the road. Water-tanker No. RJC 3798 came along from behind and dashed against the bullock-cart. As a result thereof, Bhagwana Ram was flung off the cart impetuously and succumbed on the spot, the bullocks received serious injuries and the cart was badly damaged. Police Station Barmer registered a case against the tanker driver Shankarlal. The claimants filed their claim petition for Rs. 4,48,877/-averring that at the time of the accident, Bhagwana Ram was serving as a Key-man in the Northern Railway, Barmer, he was getting Rs. 951/- per month as his salary, he was to retire on February 29, 1996, his next promotion on the post of Mate was

due on 1.1.1988 and after retirement he was to get pension at the rate of 50 per cent of his pay. The non-petitioner-appellants admit in their written statement that the said tanker RJC 3798 belonged to them, it was being driven by its driver Shankarlal, the said accident took place on February 1, 1986. Bhagwana Ram died and he was in the service of Northern Railway, Barmer and challan has been filed by the police against the driver Shankarlal in respect of the said accident. The remaining averments of the claim petition were denied. They further averred in their reply that the accident took place as the bullocks got scared on hearing the noise of the oncoming water-tanker, the speed of the water-tanker before the accident was quite normal and Shankarlal was driving the tanker with due care and caution. After framing necessary issues and recording the evidence of the parties, the learned Tribunal passed the said award holding that the accident took place due to rash and negligent driving of the water-tanker by the driver Shankarlal and claimants are entitled to get Rs. 1,49,500/-with interest at the rate of 12 per cent per annum.

3. It has been contended by the learned Additional Advocate General that the learned Claims Tribunal has seriously erred to hold that the accident took place due to the rash and negligent act of the driver Shankarlal. There is no force in this contention. The eyewitness Udaram, AW 4, has deposed that the deceased Bhagwana Ram was going on his bullock-cart, the water-tanker No. RJC 3798 passed along, it was being driven by Shankarlal at an excessive speed and it dashed against the bullock-cart from behind and at that time he was repairing the pedal of his cycle at a distance of 50 ft. from the place of the accident. He has further deposed that Bhagwana Ram died on the spot, the bullock-cart was badly damaged and the bullocks also received grievous injuries. Nothing damaging could be elicited out in his cross-examination. Immediately after the accident, S.I. Padam Singh, P.S. Barmer reached the place of accident and on his report Exh. A-1 case was registered against the tanker driver Shankarlal. It is clearly mentioned in it that Udaram, AW 4, was found at the place of accident. It may also be mentioned here that Udaram, AW 4, is an attesting witness of the memos Exh. A-2 and A-4. Jawaharlal, AW 5, Assistant Engineer, P.W.D., Banner, in charge of maintenance of water-tankers including the said tanker No. RJC 3798, has deposed that immediately after the accident he went to the place of occurrence and found the driver Shankarlal and the khalasi Kishorsingh there and on his query Kishorsingh disclosed that Shankarlal had dashed the bullock-cart from behind with his water-tanker. The non-petitioner-appellants examined Junior Engineers Khinvarj, NAW 1 and Mohammed Rafiq, NAW 2. Both of them have deposed that the driver Shankarlal admitted before them that the accident took place due to his mistake. All these facts and circumstances leave no manner of doubt that the accident took place due to rash and negligent driving of the water-tanker by its driver Shankarlal.

4. It was next contended by the learned Additional Advocate General that the learned Claims Tribunal seriously erred to award Rs. 1,49,500/- as compensation. He contended that in the absence of pay certificate it could not be

held that the pay-scale was revised from Rs. 225-308 to Rs. 825-1200 and at the time of the accident Bhagwana Ram was getting Rs. 951/- per month as his salary. He also contended that the learned Tribunal was not justified to reduce 25 per cent only of the emoluments as the amount spent by the deceased upon himself and to allow Rs. 5,000/- spent in performing last rites of the deceased.

5. Widow of the deceased, Teejo, AW 1, has deposed that her husband was getting Rs. 950/- per month as his pay at the time of his death. Upper Division Clerk of the Office of the Assistant Engineer, Northern Railway, Sona Ram, AW 2, has deposed that he is in the establishment section of his office, he was knowing the deceased Bhagwana Ram, he was Key-man in the Gang No. 67, the previous grade of Key-man was Rs. 225-308 and now it is Rs. 825-1200. Bhagwana Ram was getting Rs. 950/- per month as his salary, his next promotion was due on 1.1.1988 and on promotion his pay would have been Rs. 1,310/- per month. He has further deposed that his date of retirement was 29.2.1996 and on his retirement his pension would have been 50 per cent of his salary. In the cross-examination, he disclosed that he has not brought the service-record of the deceased but he has perused it before giving his statement. A.D. Jain, AW 6, has deposed that he is Assistant Engineer in the Northern Railway, Barmer and he is in charge of the establishment section. He has further deposed that he was knowing the deceased Bhagwana Ram, he was promoted on the post of Key-man in February, 1982, the promotion order Exh. A-6 was issued by him, it bears his signature and his next promotion was due in 1988 and on promotion his pay would have been Rs. 1,110/- per month.

6. The accident took place on 1.2.1986. It is well proved from the statement of Sona Ram, AW 2, that the date of superannuation of the deceased Bhagwana Ram was 29th February, 1996. Had the accident not taken place he would have been in service for ten years and one month more. Prior to 1.1.1986, the pay scale of Key-man was Rs. 225-308. On coming into force of the IV Pay Commission Report with effect from 1.1.1986, the pay-scale was revised to Rs. 825-1200. Teejo, AW 1, has deposed that her husband Bhagwana Ram was getting Rs. 950/- per month as his salary at the time of his death. Sona Ram, AW 2, has also said so. Both have not been cross-examined on this point. Pay Certificate is not the only mode for proving monthly pay. It is well-proved from these unrebutted and unchallenged statements. On fixation in Revised Pay Scale, he would have obtained more than Rs. 950/- per month. During this period he would have obtained Rs. 1,13,050 as his emoluments calculating at the rate of Rs. 950/- per month and without taking into consideration any promotion, increase in dearness allowance and increments. It has been held in Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, that average life of an Indian may be taken to be 65 years. After retirement, Bhagwana Ram would have lived for atleast seven years more. At the time of his retirement, his pay would not have been less than Rs. 1,200/- per month without taking into consideration his promotion. During the period, he would have obtained Rs. 50,400/- as pension, calculating at the rate of 50 per cent of the last monthly

pay. The total amount comes to Rs. 1,63,900/-.

7. It is correct that Teejo, AW 1, admits that she is getting family pension at the rate of Rs. 600/- per month. No amount is deductible on this account. Reference to N. N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another, may be made here.

8. No amount is admissible under the heads of performance of last rites of the deceased and mental agony as he died immediately after the accident at the spot. As such the Tribunal should not have awarded Rs. 5,000/- and Rs. 8,000/-.

9. The Tribunal has not awarded any amount as consortium to the widow Teejo, AW 1. It should have awarded at least Rs. 20,000/- under this head as she was below 40 years at the time of the death of her husband. Reference to Rajasthan State Road Transport Corporation Vs. Smt. Kistoori Devi and Others, may be made here.

10. The Tribunal has effected deduction at the rate of 25 per cent towards personal expenses of the deceased. It should have been deducted at the rate of 33 1/3 per cent. After this deduction, the amount comes to Rs. 1,09,277/-.

Thus the total amount of compensation comes to:

(1) Loss of contribution Rs. 1,09,277/- (2) Consortium Rs. 20,000/- (3) Death of bullock & damage to the cart Rs. 5,000/- ----- Total Rs. 1,34,277/-
Say Rs. 1,34,300/-

11. Consequently, the appeal is partly allowed. The amount of compensation is reduced from Rs. 1,49,500 to Rs. 1,34,300/-. To this extent the award of the Tribunal is modified. The amount deposited u/s 92A, Motor Vehicles Act, 1939 will be adjusted in the amount of award. The parties will bear their own costs of this court.

12. The Tribunal will pass necessary orders for apportionment of the amount of compensation amongst the claimant respondent Nos. 1 to 6 and also for their safe and beneficial investment.