
(2015) 10 RAJ CK 0050
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 533/2004

Tulsi Devi Choudhary

APPELLANT

Vs

Mangi Bai and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Citation : (2015) 10 RAJ CK 0050

Hon'ble Judges : Vijay Bishnoi, J.

Bench : Single Bench

Advocate : Ranjeet Joshi, for the Appellant; Vipul Dharnia for Vipul Singhvi and H.S. Rajpurohit for Manish Pitaliya, for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—This appeal has been filed by the appellant being aggrieved with the judgment and award dated 29.1.2004 passed by the Motor Accident Claims Tribunal, Chittorgarh whereby the learned Tribunal has directed the appellant and the respondent No. 4 to pay compensation of Rs. 2,07,000/- along with interest at the rate of 9% per annum to the respondent-claimants No. 1 to 3.

2. The respondent-claimants No. 1 to 3 filed a claim petition against the appellant and the respondents No. 4 and 5 while alleging that on 14.2.1999, deceased Ratan Lal was traveling from Kankarwa to Bhupalsagar on a tractor bearing No. RJH 6081 and trolley No. RJH 6082 which was being driven by its driver Santosh Nath rashly and negligently and due to rash and negligent driving, the wheel of the tractor went into a pit of pavement and it lost balance and fell into a chasm (gorge) and turned turtle, under which the deceased was crushed and succumbed to the injuries instantaneously. It was claimed that the accident took place due to rash and negligent act of driver Santosh Nath, who was under employment of appellant Tulsi Devi, owner of the tractor.

3. Though initially the insurance company was arrayed as party respondent in the claim petition, however, the insurance company denied the fact that the

tractor, involved in the accident, was insured with it and, therefore, the respondent-claimants withdrew their claim against the respondent No. 5 Insurance Company and the name of the insurance company was deleted from array of respondent by the tribunal vide order dated 12.8.2002. On the basis of the pleadings of the parties, the tribunal framed as many as five issues and, after pondering over the evidence produced on behalf of respondent-claimants No. 1 to 3 and the appellant, decided the issues No. 1, 3 and 4 in favour of respondent-claimants and against the appellant. The tribunal has held that the accident, in which deceased Ratan Lal died took place on account of rash and negligent driving by the driver respondent No. 4 Santosh Nath. The Tribunal has also held that the tractor was owned by the appellant and the respondent No. 4 Santosh Nath was employed by her as driver.

4. The tribunal has assessed compensation amount as Rs. 2,07,000/- along with interest at the rate of 9% per month and has fastened the liability of paying compensation upon the appellant and the respondent No. 4.

5. The present appeal has been filed by the appellant, who is owner of the tractor involved in the accident.

6. Learned counsel for the appellant has argued that learned tribunal has grossly erred in not taking into consideration the fact that the respondent No. 4 Santosh Nath was never hired by the appellant as driver of the tractor involved in the accident and on the day of accident he was not authorized to drive the tractor. It is also argued that the appellant has produced evidence to the effect that at the time of accident, in fact, Devi Lal Damani was hired as driver to drive the tractor and when he parked the tractor at a hotel near Udaipur-Bhupalpura road, the respondent No. 4 Santosh Nath along with deceased has unauthorizedly took away the tractor and later on, the tractor fall into gorge and on account of that, Ratan Lal died. It is further argued that the appellant has sufficiently proved that the respondent No. 4 Santosh Nath was never engaged as driver by her on the day of accident. He was driving the tractor involved in the accident unauthorizedly and, therefore, the appellant cannot be held liable for paying compensation for the death of Ratan Lal. It is contended that the said piece of evidence has totally been ignored by the learned tribunal and, therefore, the findings, in respect of issues No. 1, 3 and 4 given by the tribunal, are liable to be set aside. It is also argued that the learned tribunal has awarded excessive compensation of Rs. 2,07,000/- without there being any definite proof regarding income of deceased.

7. On the strength of above arguments, learned counsel for the appellant has prayed that the impugned award may kindly be set aside.

8. Heard learned counsel for the appellant and perused the impugned judgment and carefully scrutinized the record.

9. Learned tribunal, after taking into consideration the evidence produced by the parties, has held that the respondent-claimant No. 1 Mangi Bai has specifically

stated in her statement before the Court that at the time of accident, the respondent No. 4 Santosh Nath was working as driver on the tractor involved in the accident and the owner of the tractor was appellant. She has also got exhibited the FIR registered by the police in relation to accident in which Ratan Lal died and the charge sheet was filed by the police against respondent No. 4 Santosh Nath. The tribunal has also taken into consideration the evidence produced on behalf of the appellant. It is noticed that the appellant has not been produced as witness, however, her son Rajender Choudhary has been produced before the tribunal as NAW-1 and Devi Lal Damini was produced as NAW-2. The tribunal has discarded testimonies of defence witnesses while observing that though as per the statement of Rajender Choudhary NAW-1, Devi Lal NAW-2 was regular driver of the tractor and parked the tractor at a hotel from where the respondent No. 4 Santosh Nath took away the tractor unauthorizedly, but both the witnesses have failed to produce any documentary evidence to the effect that Devi Lal was hired as a regular driver by the appellant. The tribunal has also observed that the appellant has not produced the owner and worker of the hotel to prove that on the day of accident, NAW-2 Devi Lal parked the tractor at a hotel from where Santosh Nath took away the tractor unauthorizedly. The tribunal has also observed that the appellant has not produced Santosh Nath as witness to verify the defence story.

10. Having considered the facts and circumstances of the case and after going through the evidence produced on behalf of the claimants as well as the appellant, I am also of the opinion that the tribunal has rightly held that the appellant has failed to prove before the tribunal that on the day of accident NAW-2 Devi Lal was hired as a regular driver of the tractor and respondent No. 4 Santosh Nath took away the tractor unauthorizedly. The appellant has not produced any documentary evidence before the tribunal to prove the fact that Devi Lal was the regular driver of the vehicle.

11. So far as quantum of compensation awarded by the tribunal is concerned, it is noticed that the tribunal has assessed monthly income of the deceased as Rs. 1500/- per month and after deducting 1/3 amount of his income as personal expenses, has assessed the annual income of the deceased as Rs. 12,000/-. I am of the opinion that the tribunal has not committed any illegality in assessing the income of the deceased and the finding of the tribunal to this effect is not liable to be interfered with.

12. In view of above discussions, I do not find any merit in this appeal. The same is hereby dismissed.