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**(1996) 05 RAJ CK 0059**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 76 of 1990

Union of India (UOI) and Another

APPELLANT

Vs

Smt. Mangi Devi and Others

RESPONDENT

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**Date of Decision :** 28-05-1996

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33  
Motor Vehicles Act, 1988 — Section 168, 173

**Citation :** (1997) ACJ 1370 : AIR 1997 Raj 61

**Hon'ble Judges :** Mohammed Yamin, J

**Bench :** Single Bench

**Advocate :** S.S. Lal, for P.P. Chaudhary, for the Appellant; H.R. Panwar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Mohammed Yamin, J.—This appeal has been directed against the award dated 21-9-1989 passed by learned Judge, Motor Accident Claims Tribunal, Barmer.

2. Briefly stated the facts of the case are that in village Chauhtan one Vira Ram resident of Chauhtan while coming out of house of his relative in the evening of 28-3-1989 proceeded towards shops of Kheta Ram with Shyam Lal. He was on the left side of the road. When he was moving towards road of Gram Panchayat, a truck hit him from behind. Respondent No. 8 S.K. Gurang was the driver of the truck who drove it rashly and negligently. As a result of hit, Vira Ram fell down and truck ran over him. Vira Ram sustained serious injuries and he became unconscious. The driver ran away with the truck. Vira Ram was taken to Chauhtan hospital and since he was very serious, he was shifted to Barmer hospital. He died on 29-3-1989. After the accident, the truck was chased by a jeep. A report was also lodged in the Police Station and the matter was investigated.

3. Parents, and other legal representatives of deceased Vira Ram filed claim petition before learned Motor Accident Claims Tribunal. Barmer on 25-7-1988

wherein they claimed Rs. 3,30,000/-, alleging inter alia that Vira Ram was 20 years of age. He was educated up to VII standard and was earning Rs. 700/- per month by embroidery work. He spends Rs. 100/- per month on himself and the remaining being given to the family. His life expectancy was up to 65 years of age. The total loss of dependency to the family was claimed at Rs. 2,70,000/-. Vira Ram was first taken to Chauhtan hospital and then shifted to Barmer hospital. He was taken in a taxi. Quite substantial amount was spent for medicines. After his death, respondents had to incur funeral expenses etc. The total amount of expenditure under this head was estimated to be Rs. 10,000/-. Loss of love and affection and loss of consortium was estimated at Rs. 50,000/-.

4. The case of the appellant-non-claimants before learned Tribunal was of total denial by a joint reply dated 15-12-1988. On the basis of pleadings of the parties, learned Tribunal frame relevant issues and held under Issue No. 1 that it was S.K. Gurang-driver of the truck No. BRX 07724 P45 TF who drove the truck rashly and negligently and caused the accident, resulting into death of Vira Ram. Under issue No. 2 learned Tribunal held that Vira Ram would have contributed Rs. 30,000/-. For loss of love and affection as well as consortium, the learned Tribunal awarded compensation of Rs. 50,000/- and for medical and funeral expenses, Rs. 10,000/- were awarded. The total amount of compensation awarded came to Rs. 90,000/-. Interest at the rate of 12 per cent per annum on the awarded sum was also allowed.

5. It is against this award that Union of India has preferred this appeal. I have heard learned Counsel for the parties. The respondents have not submitted any cross-objection yet their counsel has urged that the amount of claim should be enhanced as this Court has ample powers under Order 41, Rule 33 of the Code of Civil Procedure.

6. I would like to consider about the factum of accident first. Learned Counsel for the appellants has urged before me that it is not proved that it was respondent No. 8 (S.K. Gurang) who caused the accident.

In view of ample evidence on record I find no force in this argument of the learned Counsel for the appellant. PW 2 Mishri Lal not only saw the accident but chased the truck by his jeep along with Gopal Singh Khinchi (PW 3). Bhagirath also saw the truck causing accident. He was also one of the persons who chased the truck. PW 6 Shyam Lal supports their evidence. Further, it was admitted by PW1 S.K. Gurang -- the driver of the truck that he was stopped by a jeep and that a criminal case was registered and investigated by the Police against him. DW 2 Dev Raj also admits that the truck driven by Gurang was stopped by a jeep and Gurang was handed over to the Police. PW 8 Ram Singh -- the ASI has deposed that a case was registered against the driver of the truck and during investigation the site-plan Ex. 4, memo Ex. 5 were prepared. Truck was also seized. In view of this evidence on record the learned Tribunal was correct in holding that the accident did take place. There is ample evidence of above witnesses about the rash and negligent driving by driver of the truck. Thus, the

accident was caused due to negligent and rash driving of the driver of the truck, resulting into death of Vira Ram. The argument of learned Counsel for the appellant, therefore, is not tenable.

7. Learned Counsel for the appellants next argued that the amount granted for pain and suffering, to the tune of Rs. 50,000/-, is excessive. He submitted that the loss of dependency has been assessed at Rs. 30,000/- and therefore, the amount on account of pain and suffering etc. ought not to have been more than Rs. 30,000/-. He further contended that amount of Rs. 10,000/- awarded under the head of medical and funeral expenses is also excessive. For loss of earnings, he submitted that Rs. 30,000/- also appears to be excessive. He also submitted that deduction was not allowed and it should be allowed now.

8. On the other hand, learned Counsel for the respondents-claimants has urged that though cross-objection has not been filed, this Court has ample powers under Order 41, Rule 33, C.P.C. to enhance the amount of compensation and that in the present case it should be done. He relied on 1994 Acc CJ 993: AIR 1994 SCW 5083), Haji Zainullah Khan (Dead) by L.Rs. v. Nagar Mahapalika, Allahabad, wherein the deceased aged 20 years was student of B.Sc. and claimants were mother, sisters and brothers. In that case, the Apex Court awarded Rs. 1,50,000/-. He also relied on an unreported decision of this Court in S.B. Civil Misc. Appeal No. 99/86, Smt. Ganga Devi v. Sita Ram, decided on November 16, 1995, wherein deceased was 21 years of age and was employed at the shop of one Manmohan Singh and was earning Rs. 700/- per month. In that case, an award of Rs. 1,35,000/- was allowed. According to learned Counsel, enhancement can be considered only where Court comes to conclusion that it was so necessary to do, under Order 41, Rule 33, C.P.C., as no cross-objection has been filed.

9. True, this Court has powers under Order 41, Rule 33, C.P.C. to make any order which ought to have been passed by the learned Tribunal in the peculiar facts and circumstances of a case.

Evidence on record show that dependency of the family was Rs. 250/ - per month because Vira Ram, was a student as well. The amount of Rs. 30,000 / - under this head cannot be said to be excessive from any angle.

10. Learned Counsel for the appellants says that the quantum allowed for loss of love and affection at Rs. 50,000/- is on higher side as it could not have been more than the loss of income. It may be mentioned that deceased left his parents and six brothers and sisters. If this amount is distributed equally among seven persons, it would be lesser than Rs. 10,000/- to each one of them. So, for seven persons, the amount awarded cannot be said to be excessive.

11. Vira Ram was taken to Chauhtan hospital and then to Barmer hospital in injured condition. Amount was spent on medicines when he was admitted to hospitals and was alive for two days after the accident. After death, his dead body was taken to his village from Barmer. There were funeral expenses. The

learned Tribunal calculated this amount to be Rs. 10,000/- which is also not excessive.

12. There was no evidence on behalf of appellants to rebut the evidence of claimants before the learned Tribunal. Therefore, in View of peculiar circumstances of this case, I find that the quantum of compensation awarded on above counts is neither excessive nor inadequate.

13. Learned Counsel for the appellants urged that the deduction for lump-sum payment should be allowed. This argument is also not tenable. No amount was paid till appeal was filed and this Court ordered for payment of Rs. 25,000/- on March 26, 1990, I am fortified in view of this point by decision of the Apex Court in Urmilla Pandey and others Vs. Khalil Ahmad and others,

14. There appears to be no ground for enhancement of the amount of compensation under Order 41, Rule 33, C.P.C. Respondent-claimants had enough opportunity to file cross-objection or file a cross appeal against the award, which they failed to do. There are no such circumstances that amount of compensation may be enhanced under the provisions of Order 41, Rule 33, C.P.C.

15. Learned Counsel for the respondents cited decision rendered in Sardar Ishwar Singh v. Howadilal Puri 1990 Acc CJ 965. In that case the amount of compensation was enhanced in appeal because the compensation awarded for three deaths was just Rupees 12,500/-, which was much on lesser side and cause of justice required that it should be increased obviously, the ratio of that case does not apply to the instant case as here the compensation is not meagre so as to call for enhancement by this Court under Order 41; Rule 33, C.P.C.

In view of aforesaid discussion, this appeal has no force and it is hereby dismissed. No orders as to costs.