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Court : Rajasthan

Decided On : Sep-09-1991

Reported in : 1993ACJ652

Judge : Milap Chandra Jain, J.

Appeal No. : S.B. Civil Misc. Appeal Nos. 58, 122 and 137 of 1985

Appellant : Sheokaran and ors.

Respondent : Surjit Kaur and ors.

Advocate for Def. : Bhagwati Prasad, Adv.

Advocate for Pet/Ap. : B.L. Purohit,; M.L. Garg and; R.N. Munshi, Advs.

Disposition : Appeal dismissed

Judgement :

Milap Chandra Jain, J.

1. The appeal No. 58 of 1985 has been filed by the owner of the tractor No. RRK 6396, Sheokaran, appeal No. 122 of 1985 has been filed by the driver Gurdev Singh of the bus No. RSG 3005 and appeal No. 137 of 1985 has been filed by the owner of this bus, Rajasthan State Road Transport Corporation, Jaipur, against the award passed by the learned Member, Motor Accidents Claims Tribunal, Sri

Ganganagar, dated November 29, 1984, granting compensation to the claimants to the tune of Rs. 2,00,000/- with interest at the rate of 9 per cent per annum. The facts of the case giving rise to these appeals may be summarised thus.

2. On January 3, 1980, the claimants Surjeet Kaur, Gurnam Kaur and Manjeet Singh, widow, mother and son of the deceased Darshan Singh respectively, filed claim petition with the allegations that July 8, 1979. The same day at about 7 p.m. Darshan Singh had gone to Padampur on bus No. RSG 3005 stopped near the office of the truck union, Padampur, it was going from Ganganagar to Gajsinghpur and was being driven by its driver Gurdev Singh, Late Darshan Singh boarded it. It started with great speed. When the bus came in front of the office of the truck union, Padampur, a pipe fixed in the trolley of tractor No. RRK 6396 standing on the road struck on the head of late Darshan Singh. It entered in the bus through its window and it also damaged the window. He fell down there. The accident occurred due to the rash and negligent driving of the said bus by its driver Gurdev Singh and also due to the keeping of the said tractor and trolley on the road. Darshan Singh died on the spot. Report was lodged in the Police Station, Padampur and investigation commenced. Late Darshan Singh was 23 years old. He was carrying on the business of sale and purchase of cattle besides doing agriculture and selling milk. His monthly income was about Rs. 1,000/-. If he would not have died in the accident, he would have attained the age of 75 years at least. The claimants were fully dependent upon him. They are entitled to get Rs. 9,50,000/- with interest.

3. The Rajasthan State Road Transport Corporation admits in its written statement that the said bus No. RSG 3005 belongs to it, it was being driven by its driver Gurdev Singh at the time of the accident, accident took place near the office of the truck union, Padampur, late Darshan Singh boarded the bus and in the accident he received injuries and died on the spot. The remaining allegations of the claim petition have been denied. It has further been averred that late Darshan Singh boarded the bus after it had started and was in motion, he was standing on the footboard of the bus at the time of the accident, the open door of the bus struck with the trolley and as a result thereof it got broken and the accident occurred due to the negligence and carelessness of the deceased himself. Similar is the written

statement of the driver of the said bus, Gurdev Singh. He has also averred that the owner of the tractor No. RRK 6396 is a necessary party as the accident occurred also due to his negligence. On April 2, 1980, the claimants moved an application that the owner, driver and the insurance company of the tractor No. RRK 6396 may also be impleaded as parties in the claim petition. It was allowed. Amended claim petition was filed on April 9, 1981. The owner of the tractor Sheokaran filed his written statement admitting that he is owner of the said tractor No. RRK 6396, accident occurred on January 3,1980, Darshan Singh received injuries and died the same day. The remaining averments of the claim petition have been denied by him. He has further averred that he has been impleaded in the claim petition after expiry of limitation, as such it deserves to be dismissed against him on the ground of limitation also, his tractor and trolley were not at all responsible for the accident, at the time of the accident they were standing at a great distance from the main road and the trolley of the tractor belongs to his brother Govind Ram. Govind Ram has also filed his written statement traversing almost all the averments of the claim petition and stating that he has no concern with the said tractor and trolley and the claim petition is also time-barred.

4. After framing necessary issues and recording the evidence of the parties and hearing them, the Tribunal held that the accident occurred due to the negligence and carelessness of the driver of the said bus No. RSG 3005 and the owner of the tractor No. RRK 6396, the driver of the bus is responsible for the accident to the extent of 90 per cent and the owner of the tractor to the extent of 10 per cent, the deceased was 25 years old at the time of the accident, he was earning Rs. 1,000/- per month and accordingly granted compensation as said above. It has also held that the claim petition against the tractor owner Sheokaran is not time-barred.

5. It has been contended by the learned Counsel for the tractor owner Sheokaran that the tractor was not standing on the road, it was standing on the kachi patri at the time of accident, at the time of accident door of the bus was open and it struck with the trolley due to rash and negligent driving of the bus by its driver and if he would have been a little careful and vigilant the accident would not have occurred. The learned Counsel for the owner and driver of the said bus No. RSG 3005 contended that the accident occurred due to the carelessness and negligence on

the part of the deceased Darshan Singh himself, he boarded the bus after it had started and gained speed, the accident occurred while he was on the footboard of the gate of the bus and the door was open. They also contended that the trolley of the said tractor was on the pucca road and it also greatly contributed in the said accident. They further contended that the learned Member, Motor Accidents Claims Tribunal, Sri Ganganagar, has not properly appreciated the evidence on record and has committed serious error in holding that the driver of the bus was responsible for the accident to the extent of 90 per cent and the owner of the tractor to the extent of 10 per cent only.

6. The learned Counsel for the claimants duly supported the award under appeals. He contended that the learned Member of the Tribunal has given the aforesaid findings after thorough discussion of the evidence on record which could not be successfully challenged. He contended that an adverse inference should be drawn against the Rajasthan State Road Transport Corporation for not producing the conductor of the said bus and also the driver of another bus, namely, Jagdish Singh, who, according to Gurdev Singh, had seen the accident with his own eyes and narrated actual facts to the driver Gurdev Singh. He also contended that no reliance can be placed upon the testimony of the bus driver Gurdev Singh and tractor owner Sheokaran as they are highly interested witnesses and Raghunath Singh, PW 2, who is also very much interested in Gurdev Singh, both being residents of the village Gajsinghpur. He lastly contended that the accident occurred due to the composite negligence of the bus driver and tractor owner.

7. The first question for consideration in these appeals is whether the claim petition against the tractor owner Sheokaran was barred by limitation. It is correct that he was impleaded as opposite party No. 4 after the expiry of the limitation. A claim petition under Section 110-A, Motor Vehicles Act, 1939 and Rule 3, Rajasthan Accidents Claims Tribunals Rules, 1964, was required to be filed in the prescribed proforma 'A'. Its column No. 9 requires that the names and addresses (if known) of the drivers, owners and insurer of the motor vehicle are to be given. It does not require that without giving their names and addresses claim petition cannot be filed. Sub-section (3) of Section 110-A of the Act, 1939, enshrines that no application for such compensation should be entertained unless it was made

within six months of the occurrence of the accident. Admittedly, the accident occurred on July 8, 1979 and claim petition was filed on January 3, 1980. Obviously, it was within limitation. Its proviso further provided that the Claims Tribunal could entertain the application after the expiry of the said period of six months if it was satisfied that the applicant was prevented by reasonable cause from making the application in time. The claimants came to know about the name of the owner of the tractor during the pendency of the claim petition and soon thereafter, they moved an application for his impleadment. It cannot, therefore, be said that the claim petition against the tractor owner Sheokaran was time-barred.

8. The second question for consideration is whether the accident resulting in the death of Darshan Singh occurred due to his own fault in boarding the bus while it was in motion or due to the composite negligence of the driver of the bus and the owner of the tractor and trolley in keeping them on the road. Admittedly, the accident occurred at 7 p.m. on July 8,1979, near the office of the truck union, Padampur (Sri Ganganagar). F.I.R., Exh. 1, relating to this accident was lodged by Chainaram, PW 1, a passenger of the bus, within 15 minutes of the occurrence. It is clearly stated in it that the bus RSG 3005 stopped at some distance from the office of the truck union at Padampur, some passengers got down from it and some persons including late Darshan Singh boarded it and thereafter, the bus staited. It has also been stated that when the bus came in front of the office of the truck union, a pipe protruding out of the trolley of a tractor standing on the road struck Darshan Singh who was standing on the gate of the bus and as a result thereof, he received serious injuries on his head and fell down. In his statement on oath Chaina Ram, PW 1, has also deposed so. Nothing damaging could be elicited out in his cross-examination. He has categorically denied the suggestion put in his cross-examination that the deceased Darshan Singh boarded the bus after it had started and while it was in motion. No other eye-witness has been examined by the claimants. The diiver of the bus Gurdev Singh, OPW 1, has stated in his cross-examination that he did not see late Darshan Singh either opening the door of the bus or boarding it. He has also disclosed in his cross-examination that he asked the conductor of his bus to caiefully close the door of the bus and at the time of the accident ft was closed. He admitted in his cross-examination that Darshan Singh had boarded the bus at the place where other 15-

20 passengers boarded it. This admission totally demolishes the case of the opposite parties that Darshan Singh boarded the bus after it had started and when it was in motion. He also admits that he did not complain to his higher authorities that the deceased Darshan Singh boarded his bus after opening its door while it was in motion. He has also stated in his examination-in-chief that behind his bus another bus of the Rajasthan State Road Transport Corporation of the route Hanumangarh-Padampur was standing and its driver Jagdish Singh told him that the deceased Darshan Singh opened the door of the bus while it was in motion and then the pipe of the trolley of the tractor hit him. Neither the conductor of the bus No. RSG 3005 nor the driver of the other bus, Jagdish Singh, has admittedly been produced. He has also disclosed that Raghunath Singh Patwari, OPW 2, told him that the accident occurred while Darshan Singh boarded his bus. No reliance can be placed on the testimony of Raghunath Singh Patwari for more than one reason. Firstly, both Gurdev Singh, OPW 1 and Patwari Raghunath Singh, OPW 2, belong to village Gajsinghpur. Secondly, his name does not find mention in the F.I.R., Exh. 1. Thirdly, he says that the pipe of the trolley did not touch the body of the bus. He denies that the tinsheet covering the window of the bus was damaged. This is against the report, Exh. 13, of the M.T.O. Gurdayal Singh, PW 6. Fourthly, he admits that he did not lodge any report about the accident and he proceeded to Gajsinghpur by another bus. Fifthly, he says that he duly noted the number of the bus and requested the conductor of the bus to note his name and address. This is against human conduct and most unnatural. Sixthly, he admits that he did not take any permission to leave his headquarters and his diary does not mention about this journey. Seventhly, the learned Member of the Tribunal has given a note in his statement about his demeanour to the effect 'the witness does not answer the questions straightaway and he tries to avoid to give answer to a question'. Sheokaran, OPW 1, has deposed that the accident occurred as the deceased Darshan Singh boarded the bus while it was in motion. This fact has not been stated in his written statement. He has simply stated that it seems that the accident occurred due to the fault of the deceased Darshan Singh. It has not been said in it that the bus was boarded by deceased Darshan Singh while it was in motion. It is thus well proved from the evidence on record that the accident had occurred after the deceased Darshan Singh boarded the bus, a pipe was

protruding out from the trolley of the tractor, the trolley was standing on the pucca road and this pipe entered into the bus thiough its window of the door while it was passing and struck the head of the deceased Darshan Singh, causing his death on the spot. Protruding of the pipe was against the provisions of Rule 159, Rajasthan Motor Vehicles Rules, 1951. It runs as under:

159. Dangerous projections.-(a) No mascot or other similar fitting or devices shall be carried by any motor vehicle registered in Rajasthan, on or after the date of the coming into force of these Rules, in any position where it is likely to strike any person with whom the vehicle may collide, unless the mascot is unlikely to cause injury to any person by reason of any projection thereon.

(b) No motor vehicle shall be permitted to be used which is so constructed that any axle, hub or hub cap projects laterally more than four inches beyond the rim of the wheel to which it is attached, unless the hub or hub cap does and project laterally beyond the body or wings of the vehicle and is provided with an adequate guard.

No precaution was also taken by the tractor owner to alarm the oncoming traffic.

9. The eye-witness Chaina Ram, PW 1, has deposed that the tractor and trolley were standing on the road forming an angle with its central line, all the tyres of the trolley were on the pucca road and the pipe was protruding out of the trolley to the extent of three feet. The investigating officer Tek Singh, PW 3, has deposed that immediately after the accident, he went to the place of occurrence and saw the tractor and trolley on the road in an angular position. The bus driver Gurdev Singh and tractor owner Sheokaran have deposed that the rear portion of the trolley was on the road. According to the site plan, Exh. P-7, the tractor and trolley were standing on the road in an angular position. It is thus well proved from the evidence on record that the trolley of the tractor was standing on the pucca road immediately before the accident without any signal for the oncoming traffic and a pipe was protruding out to the extent of three feet from its trolley. M.T.O. Tek Singh, PW 6, has deposed that the door of the bus was badly damaged, its tin-chaddar got loose and the angle iron of the side of the trolley got cracked. Dr. C.S. Bhati, PW 5, conducted the post-mortem examination on the dead body of the deceased Darshan Singh. He has deposed that he found the right and left

temporal and occipital bones of the deceased fractured and the brain and skull were badly damaged. These facts leave no manner of doubt that the pipe of the trolley hit the deceased Darshan Singh and the door of the bus with a great force. Admittedly, the pipe of the trolley was stationary. This great force was provided by the bus. It means that the speed of the bus was very high. The driver of the bus Gurdev Singh admits that the accident occurred immediately after a little distance from the place wherefrom he stalled his bus. Thus the bus was started with a tremendous speed. If the speed of the bus would not have been tremendous, the deceased would not have received the said serious injuries on his head and the body of the bus would not have been damaged so badly. The high speed was responsible for the accident. If the speed would not have been high, the driver Gurdev Singh, OPW 2, would have been able to stop his bus after seeing that the pipe of the trolley was protruding out to the extent of three feet.

10. Section 81 of the Motor Vehicles Act, 1939, ran as under:

81. Leaving vehicle in dangerous position.-No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or to be likely to cause danger, obstruction or undue inconvenience to other users of the road.

As already observed above, the trolley of the tractor was on the road immediately before the accident. If it would not have been in this position, the accident would not have occurred. Under these facts and circumstances, the accident occurred due to the composite negligence of the driver of the bus in rashly and negligently driving it and the owner of the tractor and trolley in keeping them in the said position. In the case of composite negligence there is no question of apportionment of liability so far as third parties are concerned. Both the wrongdoers are jointly and severally liable to pay the entire amount of compensation.

11. The surviving question is about the quantum of compensation. It is well proved that the deceased Darshan Singh was 25 years old at the time of the accident. The widow of the deceased, Surjeet Kaur, has deposed that her husband used to

carry on the business of purchase and sale of milch cattle besides doing the agriculture and selling milk. She has further deposed that he used to earn Rs. 300/- by selling milk, Rs. 600/- by selling milch cattle and Rs. 600-700/- from agriculture. She has further deposed that after the death of her husband, a servant on a monthly wage of Rs. 500/- has to be kept for doing agriculture work on her land measuring 1 murabba. Nothing damaging could be elicited out in her cross-examination. No other witness has thrown any light on this point. The learned Tribunal has rightly held that monthly income of the deceased Darshan Singh was Rs. 1,000/-. The Tribunal has been liberal in holding that the deceased Darshan Singh spent half the amount of his income on himself. Multiplier of 30 has been applied in calculating the compensation. Keeping in view the said age of the deceased Darshan Singh and the liberal deduction of the amount spent on himself, the multiplier of 30 cannot be said to be unreasonable. The Tribunal has not committed any error in calculating the amount of compensation at Rs. 1,80,000/-. The learned Tribunal has further awarded Rs. 20,000/- under the head of mental shock and consortium. This amount cannot be said to be excessive. Thus there is no force in any appeal.

12. The award of the Tribunal granting compensation to the claimants to the tune of Rs. 2,00,000/- with interest at the rate of 9 per cent per annum from January 2, 1980, is affirmed. The respondents, namely, Rajasthan State Road Transport Corpn., Gurdev Singh and Sheokaran are jointly and severally liable to pay the entire amount of compensation with interest. To this extent, the award of the learned Tribunal is modified.

13. The appeals are accordingly disposed of.

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