

Rsrc Vs. Smt. Kamla Devi and ors.

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Court : Rajasthan

Decided On : Aug-10-2006

Reported in : RLW2006(4)Raj3203

Judge : Shiv Kumar Sharma, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 96(1)

Appeal No. : S.B. Civil Misc. Appeal No. 2459 of 2004

Appellant : Rsrc

Respondent : Smt. Kamla Devi and ors.

Advocate for Def. : Praveen Jain, Adv.

Advocate for Pet/Ap. : Virendra Agrawal and J.P. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Since all these appeals relate to the compensation awarded to the claimants with respect of casualties caused by an accident occurred on July 24, 1998, I proceed to decide these appeals by a common order.

2. Contextual facts depict that on July 24, 1998 at 8.15 AM near village Kohada a bus of Rajasthan State Road Transport Corporation (for short 'RSRTC') bearing No. RJ-01/ P-2539 and a jeep bearing No. RJ-26/ P-408 collided as a result of which 14 persons, along with the driver of the jeep, lost their lives. Out of 13 claim petitions filed before Motor Accident Claims Tribunal Kekri (Ajmer) (for short 'Tribunal') 12 were decided by common award dated December 7, 2001 One claim petition bearing No. 35/2002 was decided on July 4, 2002. Appeals No. 1911/2002 and 1840/2002 pertains to the award dated July 4, 2002 and in the remaining appeals award dated December 7, 2001 is under challenge. In appeal No. 1991/2002 claimants have prayed to enhance the award.

3. Learned Tribunal in the impugned award held that the RSRTC and Insurance Company were respectively liable for compensation at the ratio of 25% and 75%.

4. It is contended on behalf of RSRTC that the accident occurred due to sole negligence of the jeep driver. Moti Singh, driver of the bus of RSRTC lodged FIR (Ex. 1) at Police Station Kekri wherein it was stated that the jeep came to the wrong side and collided with the Bus. This fact stood corroborated by all the witnesses examined by the claimants. Even the site plan (Ex. 12) clearly demonstrates that the jeep was on the wrong side. Since there was no negligence of Bus driver, the RSRTC could not be held liable to pay compensation.

5. The submission of Insurance Company however is that the accident took place because of the negligence of bus driver. Although, the jeep driver was partly negligent, still the Insurance Company was not liable for any compensation as there was breach of terms of policy. The capacity of the jeep was only for 10 passengers but at the time of accident 14 passengers were travelling in the jeep. The driver was also not holding valid licence. No specific finding has been recorded regarding the issue No. 2, 4 and 5 as such the insurance company was wrongly been made liable for the compensation.

6. The claimants Kamla and others were awarded compensation in the sum of Rs. 3,12,000/-, but they are dissatisfied with this amount on the ground that agricultural income of the deceased was not considered and proper multiplier was not adopted.

7. I have pondered over the submission and scanned the material available on record.

8. A look at the impugned award goes to show that in para 9 of Tribunal observed thus:

9- bl izdkj gekjh jk; esa bl izdj.k esa tks mijksDr ekSf[kd o nLrkosth lk{; izkFkhZi{k dh vksj ls izLrqr xokg ih- M- 12 jken;ky ds vykok vU; dksbZ izkFkhZ i{k dk xokg ?kVuk ckr crk;k gS ijUrq ih- M- 12 ds :i esa Lo;a Lora= xokg jken;ky izLrqr gqvk gS vkSj og vius c;kuksa esa Li'V dFku djrk gS fd nksuksa gh okgu pkykdksa ds okguksa dh xfr 90&95 izfr ?kUVk Fkh vkSj blh dkj.k os nksuksa okgu vkeus lkeus Vdj;k;s vkSj thi esa CkSBs 14 O;fDr;ksa dh e`R;q gks xb ZA vc tgka rd thi esa cSBs lHkh 14 O;fDr;ksa dh e`R;q gksus dk iz'u gS ;g ekSf[kd o nLrkosth lk{; ls Hkyh Hkkafr fl) gSaA

The contention of insurance company is that since there was headon collusion, drivers of both the vehicles ought to have been held equally responsible. Reliance is placed on Bijoy Kumar Dubar v. Vidyadhar Dutta 2006(1) WLC (SC) 757 wherein their Lordships of the Supreme Court indicated as under:

The MACT, in our view, has rightly observed that had it been the knocking on one side of car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collusion, the drivers of both the vehicles should be held responsible to have contributed equally to the accident.

9. Having scrutinised the facts of the instant case, I notice that although it was the driver of the jeep who drove the jeep rashly and negligently but the driver of bus was also driving the bus at a fast speed. Even according to Ram Dayal (PW. 12) the bus was driven at a speed of 90-95 Km per hour. In my opinion the Tribunal has rightly held that bus driver was also 25% negligent for the accident. I do not find any merit in the submission of learned Counsel for the RSRTC that since bus driver lodged the FIR, he could not be held liable. Negligence of the drivers of vehicles could not be measured on the basis of site plan because it only showed the position of vehicles after the accident.

10. In so far as the contention in regard to breach of policy is concerned, the insurance company has failed to establish that breach was committed by the driver of jeep to the knowledge of jeep owner. In *Sohan Lal Passi v. P. Shesh Reddi* : AIR 1996 SC2627 it was indicated as under:..The insurer has also to satisfy the Tribunal or the Court that such violation of infringement on the part of the insured was willful. If the insured has taken all precautions by appointing a duly licensed driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the insurance company cannot repudiate its statutory liability under Sub-section (1) of Section 96.....While interpreting the contract of insurance, the Tribunals and Courts have to be conscious of the fact that right to claim compensation by heirs and legal representatives of the victims of the accident is not defeated on technical grounds. Unless it is established on the materials on record that it was the insured who had willfully violated the condition of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insurer shall be deemed to be a judgment-debtor in respect of the liability in view of Sub-section (1) of Section 96 of the Act....

11. I also do not find any merit in the appeal preferred by appellants Kamla and others. Compensation in the sum of Rs. 3,12,000/- was granted to them. Since no documentary proof of income was filed, the Tribunal assumed the income of deceased Bajrang Lal as Rs. 2000/- per month and after applying multiplier of 17 and deducting the income the compensation was calculated.

12. For these reasons, the appeals being devoid of merit stands dismissed without any order as to costs.