

Kalawati Devi Vs. Sunil Kumar and anr.

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Court : Rajasthan

Decided On : Jan-18-1994

Reported in : 1(1994)ACC358

Judge : K.C. Agrawal, C.J.

Appellant : Kalawati Devi

Respondent : Sunil Kumar and anr.

Judgement :

K.C. Agrawal, C.J.

1. This appeal, under Section 110-D of the Motor Vehicles Act, has been filed by Smt. Kalawati Devi for more compensation than what had been awarded by the Motor Accidents Claims Tribunal, Jaipur.

2. The accident took place in the night of 28th Feb., 1983. According to the claimant's case, Hanuman Sahai was sleeping in the Metador No. RSK 2955 with its owner. The truck No. HYK 5551, which was running at a very high speed, dashed against the Metador and as a result of the accident, Hanuman Sahai died on the spot. The allegation of the appellant is that the truck was being rashly and negligently driven by the respondent. On account of the speed of the truck, the driver had no control over the same. On account of the accident, the Metador damaged badly and its engine became useless.

3. Therefore, the appellant filed a claim petition under Section 110-A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal, Jaipur claiming Rs. 5,82,000/- for the death of her husband. Amrit Lal, who was the owner of the Metador, also filed a claim petition claiming Rs. 82,000/- for the damages done to the Metador.

4. The respondent denied that the truck was being rashly and negligently driven. It was claimed by the respondent that the Metador had been parked on the main road, as a result of which, the driver of the truck could not save the same.

5. Both the sides adduced evidence in support of their respective cases.

6. After hearing both the parties and analysing the evidence of the parties, the Judge, Motor Accidents Claims Tribunal, Jaipur awarded Rs. 84,100/- to Smt. Kalawati Devi for the death of her husband. The Motor Accidents Claims Tribunal (hereinafter to be referred as 'the Tribunal') also awarded interest @ 12% per annum from the date of filing of the petition i.e. 16.7.1983. The Tribunal awarded Rs. 9,000/- to Amrit Lal for the damages done to the Metador. The Tribunal also awarded interest @ 12% per annum from the date of filing of the petition i.e. 16.7.1983.

7. Against the aforesaid judgment of the Tribunal dated 5.5.1988, the present appeal has been filed by Smt. Kalawati Devi claiming for enhancement of compensation.

8. Both the sides adduced oral evidence. The oral evidence of the claimant consisted of Smt. Kalawati Devi, Amritlal Jain and Harji Ram, whereas the evidence of the respondent consisted of Gulshan.

9. I have gone through the statements of the aforesaid witnesses. On the basis of the circumstances proved on the record and the statements of the witnesses produced, it appears to me that the accident was the result of negligence and rash driving of the truck. Had the driver of the truck been careful, the accident could be avoided.

10. One of the facts which was noticed and considered by the Tribunal was that the driver of the Metador was also responsible for the negligence and taking that fact into account, the fault of the driver of the Metador was assessed at 10% by the Tribunal. In my opinion, the Tribunal was correct in giving this finding. The mistake of the driver of the Metador was that he had parked the Metador occupying a portion of the main road which he should have desisted from doing so. Therefore, the Tribunal was right in making deduction of 10% from the award amount.

11. In *India Insurance Co. Ltd. v. Nirmala Devi* : [1979]118ITR507(SC) , the Supreme Court held that the determination of the quantum must be liberal, not niggardly since the law values life and limb in free country in generous scales.

12. In *Manju Shri Raha v. B.L. Gupta* : [1977]2SCR944 , the Supreme Court awarded compensation by multiplying the life expectancy without making any deductions.

13. In *Jyotsna Dey v. State of Assam* 1987 ACJ 172 : 1987 ACC 173, the Supreme Court observed that the span of life should be taken to be 70 years in view of the high rise in life expectancy.

14. The dispute, in the instant case, was about the application of multiplier.

15. The respondent's Counsel, relying on the decision of the Supreme Court in *G.M. Kerala State Road Transport Corporation v. Mrs. Sushma Thomas and Ors.* (arising out of S.L.P. (Civil) No. 9583 of 1992 decided on Jan., 6, 1993), contended that the multiplier could not be higher than that of 16.

16. This multiplier had been applied by the Supreme Court in *G.M. Kerala State Road Transport Corporation's case* (supra). On the facts of the present, however, I find that the multiplier applied by the Tribunal does not need any interference. Smt. Kalawati Devi has not been awarded any higher rate of compensation than to which she was entitled to. The Tribunal took into account all the relevant facts and rightly allowed the compensation claimed.

17. Some of the arguments were advanced about the burden of proof as well. The case of the respondent was that as the burden had not been discharged by the appellant, the compensation could not be thrown on the shoulders of the respondent.

18. The principle to be born in mind for awarding compensation had been stated in paragraph 509 of the American Jurisprudence-2nd Volume 14-Second edition. The said paragraph is being reproduced below:

The immense increase of business, the inestimable value of the commodities now entrusted to the charge of common carriers, and the vast distances to which they are transported have multiplied the difficulties of the owner who seeks or recover for the loss of his goods, and have added greatly to the opportunities and temptations of the carrier who might be disposed of neglect or violate its trust. Furthermore, it is apparent that while the dangers of embezzlement and collusion with thieves, generally given as the cause, might be sufficient when the property is lost, such a reason has no application when it is delivered at its place of destination in a damaged condition. The carrier's exclusive possession of evidence, the difficulties under which the shipper might labour in discovering and proving the carrier's fault, his inability to contradict the carrier's witnesses, the necessity of avoiding the investigation of circumstances impossible to be untravelled, the importance of stimulating the care and fidelity of the carrier, and the convenience of a simple, intelligible, and uniform Rule in so extensive a business-in other words, commercial necessity plus public policy and convenience-constitute much broader grounds and are the basis for the acceptance of the Rule at the present time.

For the reasons given above, the appeal fails and is dismissed.