

Uttam Kumar Vs. Chandmal and ors.

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Court : Rajasthan

Decided On : May-01-1991

Reported in : 2(1993)ACC325

Judge : Milap Chandra Jain, J.

Appellant : Uttam Kumar

Respondent : Chandmal and ors.

Judgement :

Milap Chandra Jain, J.

1. These appeals have been filed against the common award of the Motor Accidents Claims Tribunal, Udaipur, dated 24th January, 1985, by which Rs. 15,200/- has been awarded as compensation to the claimant-respondent Chandmal in appeal No. 60 of 1985 and Rs. 51,600/- to the claimant-respondent Nos. 1 to 8 in appeal No. 85 of 1985 which has been given in two claim petitions arising out of the same accident. The facts of the case given rise to these appeals may be summarised thus.

2. On January 28, 1981, bus No. RJL 9433 proceeded from Tonk for Bahubaliji (Mysore) via Jaipur, Ajmer, Udaipur, etc. It was being driven by its owner Uttam Kumar himself. During the night intervening 28th and 29th January, 1981, on the National Highway No. 8 near village Mokhampura, it dashed against the stationary

truck No. RSY 6565. As a result thereof, the bus passengers Surajmal and his wife Kamla died on the spot and Chandmal and Ors. received injuries. The legal representatives of deceased Surajmal and Kamla filed claim petition No. 149 of 1981 claiming Rs. 3,40,709/- as compensation and the injured Chandmal filed claim petition No. 148 of 1981, claiming Rs. 2,77,560/- as compensation.

3. The bus owner and driver Uttam Kumar admits in his written statements that the accident occurred on the said date and time, his bus No. RJL 9433 collided with the stationary truck No. RSY 6565. The bus was insured with National Insurance Co. Ltd. and as a result of the accident, Surajmal and Kamla died and Chandmal and Ors. received injuries. He has further averred that he was not driving the bus, it was being driven by Rampal at the relevant time and the remaining allegations of the claim petitions were denied. The National Insurance Co. Ltd. admits in its written statement that the said bus No. RJL 9433 was insured with it at the time of the accident. Similarly, the Oriental Fire and General Insurance Co. Ltd. admits in its written statement that the said truck No. RSY 6565 was insured with it at the time of the accident. The remaining allegations of the claim petitions were either denied or ignorance had been pleaded by both the insurance companies. The case proceeded ex pane against the truck owner Bherulal and truck driver Mangilal. Both the claim petitions were tried together vide order-sheet dated August 2,1982. After framing necessary issues and recording the evidence of the parties and hearing them, the learned Tribunal passed the common award as said above.

4. The claimants of both the claim petitions have filed cross-objections for the enhancement of the amounts of compensation,

5. It has been contended by the learned Counsel for the appellant Uttam Kumar that the learned Tribunal has seriously erred to hold that the accident occurred due to rash and negligent act on the part of the driver of the bus. He also contended that the said truck was standing on the asphalted part of the road with no back light or any other indication for incoming vehicles durin the dark night and as such the truck driver was wholly responsible for the accident. He further contended that the amount awarded to the injured Chandmal is very excessive. The learned

Counsel for the National Insurance Co. Ltd. also supported him.

6. The learned Counsel for the appellant Oriental Fire and General Insurance Co. Ltd. contended that the Tribunal seriously erred to hold that the accident took place on account of the rash and negligent act of the truck driver also. He also contended that the accident took place due to rash and negligent driving on the part of the bus driver and if he would have been vigilant and careful the accident would not have taken place as it is well proved from the evidence on record that the stationary truck was visible from a distance of 30-40 feet. He also contended that no finding has been given by the Tribunal regarding the proportion in which the drivers of the said vehicles were responsible for the accident. He lastly contended that the amounts awarded to the claimants are very excessive and they deserve to be reduced.

7. The learned Counsel for the claimants of both the claim petitions duly supported the findings of the Tribunal on rash and negligent acts of the drivers of the two vehicles and they also contended that the amounts of compensation awarded are not adequate and they deserve to be enhanced.

8. The first question for consideration in these appeals is whether the accident took place due to rash and negligent act on the part of the truck driver or on the part of the bus driver or on account of their composite negligence.

9. The injured passenger Kumari Anjana, AW 2, has categorically stated on oath that immediately before the accident the truck was standing on the middle of the road and with no back light. The bus owner Uttam Kumar, NAW 1, has also deposed that immediately before the accident the truck was standing in the middle of the road. The F.I.R. Exh. 10, challan Exh. 11 and the site inspection memo Exh. 13 duly corroborate their statements. Photos, Exhs, 15 and 16, of the collided vehicles were taken after the accident and they show that the truck was standing on the asphalted road. As already said above, the cases have proceeded ex parte against the owner and driver of the truck. It is thus well proved from the oral and documentary evidence on record that the truck was standing stationary on the asphalted road immediately before the accident, it has no back light and there was no indication of its being standing stationary for the incoming vehicles. There is

also nothing on the record to indicate that stone pieces or thorny bushes were scattered on the road to warn the incoming vehicles and to avoid collision with them. Section 81, Motor Vehicles Act, 1939, runs 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 be likely to cause danger; obstruction or undue inconvenience to other users of the road.

Rule 151, Rajasthan Motor Vehicles Rules, 1951, provided that a vehicle shall carry one rear lamp showing red light visible from 500 feet. These statutory provisions were framed for the safety of the traffic. Their violation endangers the lives as well as safety of the property. Injured passenger Kumari Anjana, AW 2, has categorically stated on oath that immediately before the accident the bus was being driven with an excessive speed and it was wavering. The injured claimant Chandmal, AW 5, has deposed that immediately before the accident the bus was being driven with an excessive speed. Both these witnesses have not been cross-examined on this point. Uttam Kumar, NAW 1, has deposed that due to if the bursting of the tyre of the front wheel the bus became out of control and dashed with the truck. He does not say that immediately before the accident its speed was slow or its speed was normal. The mechanical report of the bus, Exh. A-2, mentions that the tyre of the front wheel of the bus was found burst and it was fresh. This shows that the speed of the bus was excessive immediately before the tyre got burst and accident took place. The photos Exhs. 15 and 16 also show that the bus was tilted on account of the bursting of the left front tyre. In view of these facts, circumstances and statutory provisions, it can well be said that the accident occurred due to the composite negligence of the drivers of both the vehicles.

10. The next question is about the ratio of their contributory negligence. The truck driver is largely responsible for the accident. If he would not have stopped his truck on the asphalted portion of the road or his truck would have rear light or he would have taken necessary precautions by spreading stone pieces or thorny bushes nearabout his truck, the accident would not have taken place. It can well be said that he is liable to the extent of 75 per cent and the bus driver is liable to 25 per

cent only. It has been observed in *Premlata Nilamchand Sharma v. Hirabhai Ranchhodbhai Patel* 1983 ACJ 290 (Gujarat), para 23, as follows:

(23) A similar question arose before the Division Bench of this Court in the case of *Shakurmiya Imammiya Shaikh v. Minor Surendra Singh Rup Singh* 1978 ACJ 130 (Gujarat). It was found that the truck was parked on the tar road and it had been left there by opponent No. 1, driver, without any back light or reflector or without any headlight at the rear and without leaving any signal to indicate the presence of the parked truck. A scooter, under circumstances similar to the present case, collided with the parked truck and the pillion rider was killed. The driver of the parked truck ran away with the truck after the accident and did not file written statement or gave evidence in the witness-box. The learned Tribunal apportioned the liability in the proportion of 75:25 per cent between the truck driver and the scooter driver. The importance of apportionment of liability did not arise in that case as it was a case of composite negligence and the victim of the accident could recover the entire amount of compensation from either of them. During the course of the judgment the following observation was made: It appears that the motor-cyclist having been dazzled had collided with this parked truck. Therefore, from the primary facts of leaving the parked truck wholly on the tar road on such dark cloudy night without any rear light or reflector or signal to show presence of this parked truck and when the driver, opponent No. 1, and the conductor had been sleeping in the truck, negligence of the parked truck clearly emerges. Neither the driver nor the conductor has come in the witness-box to rebut the presumption of negligence which arises from these primary facts.

Reference to *Oriental Fire and General Insurance Co. Ltd. v. Deep Kaur* 1980 ACJ 100 (P&H), para 17, may also be made here.

11. The appellant Uttam Kumar has not challenged the amount of compensation awarded to the legal representatives of the deceased Surajmal and Kamla (claimants of the case No. 149 of 1981). He has not even preferred an appeal against the part of the common award given in this claim case No. 149 of 1981. The other appellant Oriental Fire and General Insurance Co. Ltd. cannot challenge the quantum of compensation. The Tribunal has awarded compensation to the

extent of Rs. 40,000/- to the claimants Harakh Chand and Ors. holding that the deceased Surajmal was earning Rs. 1,000/- per month from his business and he was 53 years old at the time of the accident and applying a multiplier of 5. The Tribunal has seriously erred in applying the multiplier of 5. Multiplier of 12 should have been applied as the deceased was 53 years old only at the time of the accident. It has been held in *Manjushri Raha v. B.L. Gupta* 1977 ACJ 134 (SC) that the average life of an Indian is 65 years. Applying this multiplier, the amount under the head of loss of earning comes to Rs. 96,000/- ($1,000 \times 12 \times \frac{2}{3} \times 12$).

12. The claimants have been awarded Rs. 1,600/- spent on carrying the dead bodies of Surajmal and Kamla. This amount does not need enhancement. The claimants have been awarded Rs. 10,000/- under the head of the loss of love and affection on account of the death of their father and mother despite observing that claimant Nos. 1 to 5 are students and unmarried. Both father and mother died in the accident. The agony of the claimants on account of the simultaneous death of their father and mother must have been very much. The amount of Rs. 10,000 is inadequate. It deserves to be enhanced to Rs. 20,000/-.

13. As such the claimants Harakh Chand and Ors. of the claim petition No. 149 of 1981 are entitled to get Rs. 96,000/- + Rs. 1,600/- + Rs. 20,000/- =Rs. 1,17,600/- as compensation.

14. The claimant Chandmal has been awarded Rs. 15,200/- only. He has deposed that he is not able to do any work to earn his livelihood. Uttam Kumar, NAW 1, admits in his cross-examination that Chandmal nowhere serves or works (paper No. B-52/3). In the end of his cross-examination, he says that due to old age, he earns nothing (paper No. B-52/7). Chandmal, AW 5, has deposed that he cannot move without 'baisakhi' and he needs a helper every time. The following note is given in his statement dated 6.10.1982.

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Chandmal has not been cross-examined and appellant Uttam Kumar, NAW 1, has also not said anything in his statement on this point. It is thus well proved that as a result of the injuries received in the accident, the injured Chandmal has been

rendered incapable to do any work or to earn his livelihood. His age at the time of accident was 52 years. The Tribunal has held that his monthly income was Rs. 350/- in spite of unrebutted evidence to the effect that it was Rs. 600/- per month.

15. In disablement cases, compensation awards are always higher than in cases of death because the disabled person suffers from the whole of life physically, economically, emotionally and socially. The Tribunal has awarded the following amounts to the claimant Chandmal injured:

(1) Loss of income (at the rate of

Rs. 350/- p.m. for one year) Rs. 4,200/-

(2) Expenses incurred-in treat-

ment and nourishing diet Rs. 6,000/-

(3) Pain and suffering Rs. 5,000/-

Total Rs. 15,200/-

The Tribunal has taken into consideration the loss of income at the inadequate rate of Rs. 350/- per month for one year only. It should have taken into consideration up to the age of 65 years. Even taking the monthly income to be Rs. 350/- or annual income to Rs. 4,200/-, the loss of earning comes to Rs. 36,400/- [4,200/- x 2/3 (after deducting personal expenses) x 13 (multiple)].

Thus under this head, the amount of compensation deserves to be enhanced from Rs. 4,200/- to Rs. 36,400/-. There exists no good ground for the enhancement of other amounts awarded. Thus the claimant Chandmal is entitled to get Rs. 47,400/- (36,400/- + 6,000/- + 5,000/-).

16. The Tribunal has not at all awarded interest to Chandmal and has conditionally awarded interest at the rate of 12 per cent per annum to Harakh Chand and Ors. The drivers, owners and insurance companies of both the vehicles have not been made jointly and severally liable and their composite negligence has not been apportioned.

17. Consequently, both the appeals are dismissed and cross-objections are allowed with costs. The claimants Harakh Chand and Ors. of the claim petition No. 149 of 1981 are entitled to get Rs. 1,17,600/- as compensation and the claimant Chandmal of the claim petition No. 148 of 1981 is entitled to get Rs. 47,400/- as compensation with costs and interest at the rate of 12 per cent per annum from August 1,1981, to the date of payment. The truck driver Mangilal, owner Bherulal Yadav and insurer Oriental Fire and General Insurance Co. Ltd. are liable to pay to the extent of 75 per cent of the above-mentioned amounts of compensation, costs and interest. The bus owner-cum-driver Uttam Kumar is liable to pay to the extent of 25 per cent of the above-mentioned amounts of compensation, costs and interest. The deceased Surajmal and Kamla and the injured Chandmal being passengers of the said bus, the National Insurance Co. Ltd. is liable to pay to the claimants to the extent of Rs. 5,000/- for each deceased and injured with proportionate costs and interest out of the 1/4th of the said amounts, costs and interest

18. Each claimant of the claim petition No. 149 of 1981 will get equal amount out of the said amounts of compensation, costs and interest.

19. The Oriental Fire and General Insurance Co. Ltd. and National Insurance Co. Ltd. will make payment to each claimant through A/c payee draft in his/her name which may directly be sent to them through registered A/D post or may be deposited in the Tribunal.

20. Amount already paid or deposited may be adjusted.

21. The composite award given in the Claim Case Nos. 148 and 149 of 1981 by the Motor Accidents Claims Tribunal, Udaipur of January 24,1988, is modified accordingly.