

Manorma Devi and ors. Vs. Mohan Lal and ors.

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Court : Rajasthan

Decided On : Dec-09-2004

Reported in : 3(2005)ACC150

Judge : Dallip Singh, J.

Appellant : Manorma Devi and ors.

Respondent : Mohan Lal and ors.

Judgement :

Dallip Singh, J.

1. This appeal has been filed by the claimant-appellants against the award passed by the Motor Accident Claims Tribunal, Tonk dated 27.5.1994 in MACT Claim Case No. 12/1988 for the enhancement of the award passed by the learned Tribunal.

2. Brief facts giving rise to the instant appeal are that on August 18, 1987 the deceased Naresh Chandra Bansal, husband of the appellant No. 1 Smt. Manorma Devi, father of the appellant Nos. 2 to 4 and son of appellant Nos. 5 and 6 was going, in his car bearing registration No. RND-9318 from Jaipur to Jhalawar. The said car was being driven by the deceased. He met with an accident with a bus bearing registration No. RNP-960 belonging to Rajasthan State Road Transport Corporation (hereinafter referred to as 'the R.S.R.T.C') respondent No. 2 which

was being driven by Mohan Lal, respondent No. 1. It was the case of the appellant that bus in question was being driven rashly and negligently by the driver Mohan Lal, respondent No. 1 at the time of the accident.

3. The learned Counsel for the appellants has submitted that in this case learned Tribunal has arrived at a finding regarding the monthly dependency of the family of deceased as Rs. 5,600/-. Further, the learned Tribunal after multiplying the said monthly dependency by 12 arrived at the annual loss of income and used the multiplier of only 12 whereas the learned Tribunal estimated the age of deceased as 45 years. The submission of the learned Counsel for the appellant is that in the case of the deceased being 40-45 years of age, a multiplier of 15 has been prescribed in the II Schedule appended to the Motor Vehicles Act, 1988. Learned Counsel for the appellants further submits that since the deceased was employed in United India Insurance Company, a Government of India Public Sector Undertaking, he was expected to serve till the age of superannuation which is 60 years and in that event assuming the age of the deceased as 45 years, the deceased would have served for a period of further 15 years. Thus, the learned Counsel for the appellant submits that the amount of compensation on account of its dependency deserves to be calculated at Rs 5600 x 12 x 15 which is equal to Rs. 10,08,000/-. The learned Counsel appearing on behalf of the R.S.R.T.C. does not contest the position that under the II Schedule appended to the M.A.C.T. Act, 1988 the multiplier of 15 has been prescribed in the case of persons who died in the age group of 40 to 45 years. In this view of the matter, I am inclined to agree with the submission made by the learned Counsel for the appellant and consequently in the light of the provisions contained in II Schedule the multiplier of 15 would apply in place of 12. Accordingly, the amount of dependency for loss of income is assessed as Rs. 5600 x 12 x 15 = Rs. 10,08,000/-.

4. The second submission of the learned Counsel for the appellants is that learned Tribunal has erred in holding that the deceased contributed to the accident inasmuch as the deceased was also negligent and driving the car No. RND-9318 at the time of accident as a result of which he received injuries and on account of which he died in the said accident. Learned Counsel for the appellants submitted that respondents in the instant case did not lead any evidence as would be evident

from the passage after the three issues were reproduced by the learned Tribunal in its judgment. The said portion reads as follows:

Pratipakshigan ki ore se koi saksha prastut nahin ki gayee hai.

5. The submission of the learned Counsel for the appellant is that no evidence at all was led by the respondents before the learned Tribunal in respect of the aforesaid plea that deceased had contributed to the accident and, therefore, respondents failed to discharge the initial burden that was upon them to prove their plea. Learned Counsel for the appellants further submits that learned Tribunal has erred in taking into consideration the alleged site plan which was filed by the learned Counsel for the respondents before the learned Tribunal without leading any oral evidence or making any attempt to prove the same. The said site plan which was filed before the Tribunal on 29.4.1994 by the learned Counsel for the respondents was not proved by the respondents. On 29.4.1994, the case was fixed for final arguments as would be evident from the order sheets dated 4.4.1994 and 29.4.1994. On 4.4.1994, the learned Tribunal has recorded as follows:

Vakulaya fariken upastit, Bahas ko awsar chaha. Atah patrawali vaste bahas antim dinank 29.4.1994 ko pesh ho.

On 29.4.1994, the learned Tribunal has recorded as follows:

Vakulaya fariken upastit Vakil vipakshi sankhya 3 ne nakshe mouke ki prati pesh ki. Skamil rahe. Bahas antim suni gayee. Patrawali vaste nirnay 4.5.1994 ko pesh ho.

6. From the above material, learned Counsel for the appellants submits that the said document was merely filed before the learned Tribunal without making any attempt to prove the same or tender it in evidence. The same was not put to the claimant-appellants by way of cross-examination or otherwise and thus, the appellants had no opportunity to meet with the alleged piece of evidence. In this view of the matter, learned Counsel for the appellants submits that said evidence deserves to be ignored particularly when no oral or documentary evidence was produced by the respondent R.S.R.T.C. before the learned Tribunal. Learned

Counsel appearing on behalf of the R.S.R.T.C. was at a loss to explain the aforesaid position which is borne out from the record.

7. The learned Counsel for the appellants has relied upon a judgment of the Division Bench of Karnataka High Court in the case of Zareen Bega v. New India Assurance Co. Ltd. and Ors. reported in In para No. 11 Their Lordships of the Karnataka High Court has held as under:

the police records cannot be considered as a piece of substantial legal evidence because the author was not examined before the M.A.C.T. and the appellant had no opportunity to cross-examine him.

8. The learned Counsel for the appellant has further relied upon a judgment of Patna High Court in the case of Laxmi and Co. v. Savitri Devi Agarwal (Loyalka) and Ors. reported in , wherein the Single Bench of Patna High Court has taken a view that onus of burden of proving the contributory negligence lies upon the defendant and an adverse inference may be drawn in case the driver of the offending vehicle was not examined who was a competent witness to explain the position. The learned Counsel for the appellants submits that in the instant case the respondents have not led any evidence and the only eye-witness who was the driver of the bus belonging to the R.S.R.T.C. ought to have been examined by the R.S.R.T.C. to substantiate their plea. It is further submitted by the learned Counsel for the appellants that since the R.S.R.T.C. has failed to discharge the burden and has withheld the best evidence available with them, the learned Tribunal ought to have drawn an adverse inference against the R.S.R.T.C. and, therefore, the learned Tribunal has erred in holding that compensation which is liable to be paid in the instant case is liable to be reduced to half on account of contributory negligence of the deceased. This finding of contributory negligence if without any evidence and is liable to be set aside.

9. In the facts and circumstances of this case, particularly, as per the findings of the learned Tribunal itself that neither any evidence was led by the R.S.R.T.C. nor any attempt was made to examine the driver of the bus who was the most competent witness and who was in the service of the respondent R.S.R.T.C., the important material and substantial piece of evidence has been deliberately

withheld by the respondents. Consequently, it is held that respondents have failed to discharge their burden and on account of withholding the evidence, an adverse inference is liable to be drawn against the respondents for non-production of the driver of the bus. The learned Tribunal has committed error in coming to the conclusion that deceased had contributed towards the accident and in reducing the amount of compensation on account of contributory negligence of the deceased. Further, the learned Tribunal while taking into consideration the site plan (Exhibit P-5) which had not been tendered in evidence has committed a serious illegality. As held by Their Lordships of the Karnataka High Court in Zareen Bega's case (supra), police records by itself cannot be considered as a substantial legal evidence particularly when the same has not been proved by any oral evidence by any police officer who prepared the same and the claimants have been deprived of cross-examining the witnesses. In the instant case also, the claimants have also been deprived from cross-examining the person who prepared the alleged site plan. In that view of the matter, the alleged documents, i.e., site plan could not have been looked into by the learned Tribunal and deserves to be ignored.

10. This appeal deserves to succeed on the ground that learned Tribunal has committed a serious error in law by holding that deceased had contributed towards the accident and on ground of contributory negligence, reduced the compensation which was liable to be awarded. Therefore, the finding of contributory negligence arrived at by the learned Tribunal is liable to be set aside.

11. In the result, this appeal succeeds and is allowed. The finding of contributory negligence of the deceased is set aside. The appellants would be entitled to receive the entire amount of compensation i.e., Rs. 10,08,000/- under the head of loss of income. The amount of Rs. 4,45,700/- which has been paid under the award is liable to be reduced from the amount of Rs. 10,08,000/- and the appellants would be entitled to the enhanced amount of Rs. 5,62,300/-. The appellants would be entitled to receive the aforesaid amount from the respondents and the same amount shall be paid to the appellants by way of demand draft/ crossed cheque within a period of three months from today. In case, the said amount is paid or deposited within a period of three months, the appellants would

be entitled to the interest at the rate of 6% per annum from the date of filing of this appeal i.e., 18.8.1994. However, in case the respondents fail to pay or deposit the enhanced amount of compensation as awarded herein within the stipulated period of three months, the appellants would be entitled to the interest at the rate of 9% per annum from the date of filing of claim petition before the learned Tribunal i.e., 13.1.1988 till the date of realisation.

12. There shall be no order as to costs.

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