

Sajjan Devi Vs. Mool Chand and ors.

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Court : Rajasthan

Decided On : Jul-28-2005

Reported in : III(2006)ACC233; 2006WLC(Raj)UC223; 2006(3)ACC233; 2006(4)ALJ514(E)

Judge : Prakash Tatia, J.

Appellant : Sajjan Devi

Respondent : Mool Chand and ors.

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the parties.

2. Brief facts of the case are that an accident occurred on 1st December, 1992 and in that accident one Sujan Chand died. Sujan Chand's wife and his son submitted a claim petition before the Motor Accident Claims Tribunal, Bhilwara. The registered owner of the vehicle as well as transferee of the vehicle were impleaded as party non-claimants in the claim petition. The Tribunal exonerated the Insurance Company from any liability as the vehicle was not insured. The driver of the vehicle was also impleaded as party. The Tribunal held that it was the sole negligence of the driver of the vehicle in the accident and, therefore, the driver is liable to pay the compensation and, consequently, the registered owner

as well as the transferee of the vehicle both are also liable vicariously, jointly and severally. However, the Tribunal awarded interest @ 9% per annum in the award dated 20th November, 2000. Hence, the S.B. Civil Misc. Appeal No. 196/2001 has been filed by the claimants for enhancement of the interest from 9% per annum to 12% per annum.

3. The S.B. Civil Misc. Appeal No. 285/2001 has been filed by the transferee of the vehicle from the registered owner. According to learned Counsel for the appellant the Tribunal committed serious error while deciding issue of negligence of the driver of the vehicle. According to learned Counsel for the appellant, in fact, it was the sole negligence of the victim himself as he tried to ride on the bus when the bus was running. In fact, a scooter hit victim and the victim fell down and rear wheel of the bus ran over the victim and in the alternative; it is submitted that even if it is held that there was no accident from the scooter in view of the judgment of the Hon'ble Supreme Court delivered in the case of Mohammed Ayunddln Alias Miyam v. State of Andhra Pradesh reported in : 2000 CriLJ3508 , the driver cannot be held responsible in such circumstances when any person tried to ride the bus when bus is in movement, a Learned Counsel Mr. Sachin Acharaya appearing on behalf of the transferee informs registered owner of the vehicle tried to submit that the amount awarded by the Tribunal is on very higher side. According to both the Counsel, the salary certificate produced by the claimants of the deceased, has not been proved and there is no proof of income of the deceased. It is also submitted that even if the salary given in the salary certificate is accepted to be true then the Tribunal without any reason assessed the income of the deceased as Rs. 2500 despite the fact that the claimants produced salary certificate for Rs. 1,859 only. Learned Counsel for the owner of the vehicle also submitted that the deceased was on the age of 54 years and was to retire after four years only. Therefore, the Tribunal has wrongly applied Multiplier of 10.

4. I considered the submissions of learned Counsel for the parties and perused the record also. So far as award of interest @ 9% per annum is concerned, the reason may not be sufficient, but the fact remains is that in the light of the subsequent judgments of the Hon'ble Supreme Court, the interest could have been only 9% per annum. Therefore, I do not find any merit in the appeal preferred by the

claimants for enhancement of the interest from 9% to 12%.

5. So far as contention of learned Counsel Mr. Sachin Acharaya appearing for the transferee that the liability of the entire amount should have been fastened upon the registered owner is concerned, that argument is contrary to law laid down by the Hon'ble Apex Court as the Hon'ble Apex Court held in the cases that registered owner as well as the transferee both are liable to pay the compensation to the claimants as the vehicle stands sold to transferee on payment of consideration to the transferor by the transferee. The registered owner is also liable to pay the compensation as he is deemed owner under the provisions of the Motor Vehicles Act till the registration is transferred in the name of transferee.

6. In view of the above, the contention of learned Counsel for the appellant that the Tribunal should have fastened the liability only upon the registered owner cannot be accepted.

7. So far as allegation of contributory negligence is concerned, the facts reveal that the bus was, in fact, in a market area and furthermore the accident occurred at a turn where the driver should not have driven the vehicle with such a fast speed that any person can be met with accident in the manner in which the accident occurred in the case. Learned Counsel for the appellant has shown the site map (Ex. 5), which also supports the income given by the Motor Accident Claims Tribunal rather to the appellant. Therefore, I do not find any error of fact in Tribunal's holding that it was sole negligence of the driver of the bus.

8. The judgment relied upon by learned Counsel for the appellant delivered in the case of Mohammed Ayunddin (supra) it is clear that the Hon'ble Supreme Court held that merely because a passenger fell down from the bus while boarding it presumption of negligence cannot be drawn against the bus driver. There is no quarrel about it, but in the present case it has been shown by evidence that there was negligence of the driver of the vehicle and because of that only the passenger died while boarding the bus. Here in this case as stated above, the driver of the bus driven the bus with fast speed at turn that too, in market area. Therefore, the circumstantial evidence also suggests that it was the fault of the driver of the bus and not of the victim, who tried to ride the bus. Apart from it, it will be worthwhile to

note that the judgment of the Hon'ble Supreme Court was delivered in a criminal case where the Hon'ble Supreme Court held that conviction of the driver of the offending vehicle is unsustainable. In the Civil Courts, the cases are decided on the basis of preponderance of probabilities and, therefore, in the facts of this case, the judgment of the Hon'ble Supreme Court referred to above, is of no help to the appellant.

9. So far as quantum awarded by the Tribunal is concerned, it is clear that the victim was in service of the Municipal Council. His salary certificate has been placed on record containing salary of Rs. 1,859. He was of the age of 54 years. The Tribunal awarded total compensation of Rs.2,19,000 only. Assuming for the sake of argument that the Tribunal has increased the salary of the victim by taking into account the future prospects and the Tribunal has assessed the income somewhat more arithmetically, but the conclusion has not resulted into awarding of compensation on higher side in any manner. The multiplier of 10 was applied and the victim was in the service and he was entitled for the retiral benefits, which include pension for himself and his family members till his life. The pension, which may be allowed to the dependents of the victim, was certainly less than which deceased would have given if he would have survived. The total amount as awarded is only Rs. 2,19,000, therefore, I do not find any reason to interfere in the compensation awarded to the claimants, particularly, in view of the fact that rate of interest is also awarded to the claimant @ 9% per annum only.

10. In view of the above, I do not find any force in both the appeals and the same are dismissed.

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