

Jagannathi Vs. Mohan Singh and ors.

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Court : Rajasthan

Decided On : Dec-17-1987

Reported in : 2(1988)ACC71

Judge : Inder Sen Israni, J.

Appellant : Jagannathi

Respondent : Mohan Singh and ors.

Judgement :

Inder Sen Israni, J.

1. These two appeals arise out of the award dated November 23,1985 passed by the Motor Accident Claims Tribunal, Bundi in Claim Case No. 1/82, whereby no responsibility for payment of claim was fixed against owner Mohan Singh, driver Surendra Singh and Oriental Fire and General Insurance Company regarding the Matadoor bearing No. RRR 9039.

2. It will suffice to state for the purposes of this appeal that deceased Ram Kishan was carrying a bag of vegetables in Matadoor No. RRR 9093 and was sitting on the seat of the driver. One more person who also sitting between the deceased and the driver on the same seat. The deceased was coming from Chhatarganj to Kota. When the Metadoor reached near Ghoda Pachad Nadi (river), a truck RSR 4647 came from the opposite side, which is said to be driven rashly and

negligently and resulted in accident as the truck brushed the Matadoor while passing at that place. The deceased was thrown out of the Matadoor and died. The Tribunal has awarded amount of Rs. 1,50,000/- as compensation to the claimants. As per the award, the United Insurance Company with which the truck was insured, was made liable for payment to the extent of Rs. 50,000/-, but since the Oriental Fire and General Insurance Company with which the Matadoor was insured, was not made liable for compensation. Therefore, the balance of the amount of compensation was to be paid by the owner and driver of the truck.

3. The contention of Shri K.K. Mehrish learned Counsel appearing for the owner and drivers of the truck involved in the accident, is that the accident resulted from the composite negligence of both the vehicles and the Tribunal has seriously erred in absolving the driver of the Matadoor from the responsibility of negligence in driving his vehicle which resulted in accident. It is stated by the learned Counsel that the truck and Matadoor brushed each other on the side of the driver, as a result of which the deceased who was sitting near the door of the Matadoor on the seat of the driver, felt down as the door of the vehicle was not closed and his legs were hanging out. It is stated that in the claim petition it has been vaguely mentioned that the deceased was sitting in the Matadoor. It is pointed out that there was no fixed income of the deceased and the Tribunal has excessively assessed the income of the deceased to be Rs. 8000/- per year and the dependency has been fixed at Rs. 6000/- per year deducting only 1/4th amount of account of his personal expenses. It is submitted that this Court has already in string of decisions, hold that reasonable deductions on account of personal expenses should be 1/3rd unless there are special reasons to change this figure. It is, therefore, submitted that the owner, driver and Insurance Company of the Matadoor are also equally liable for payment of compensation amount awarded by the Tribunal.

4. Shri S.C. Srivastava even though had no right to address this Court on the point of composite negligence, still he was allowed to do so with a view to assist the court to reach proper conclusion in accordance with law to do justice to the parties. His contention is that the Matadoor was standing when the accident took place, therefore, the driver of the Matadoor cannot be held to be liable to have

contributed anything in committing of the accident.

5. Shri S K. Jain, learned Counsel for the claimants-respondents has supported the contentions of Mr. Mehrish so far as the responsibility of the driver of the Matadoor is concerned, but has stated that the Tribunal has awarded appropriate compensation, which calls for no interference.

6. I have heard all the learned Counsel and have also gone through the award and evidence of the witnesses. NAW/1 Ram Singh, driver of the truck has stated that his vehicle was pulled little towards the right side from the middle of the road as the right tyre of the front wheel suddenly burst. He has stated that he was driving his vehicle at the speed of 30-40 Kms. per hour and it was drizzling at that time. The deceased was sitting near the door, which was open and fell down on the road on account of brushing of the two vehicles with each other. He has stated that he applied breaks as soon as the tyre burst and the Matadoor which was coming in speed and brushed with the driver side of the truck that he was driving. NAW/2 Surendra Singh, driver of the Matadoor has stated in his statement that he had stopped his vehicle on the extreme left side of the road as the engine had become exclusively hot. He denies that the deceased was travelling in his Matadoor. He states that the tyre of the truck burst after the accident. He further states that no one died on account of this accident. He also denied that the deceased was sitting with his legs out on the seat of the driver and his legs were hanging out from the door of the Matadoor. However, in my opinion no realianscs can be placed on the statement of this witness as in the F.I.R. Ex. 5 lodged by him it has been stated that the deceased was sitting in the Matadoor at the time of accident. In his statement under Section 161 Cr.P.C. also he has admitted this fact. He has also admitted that the deceased died on account of this accident. Learned Tribunal has given a finding that both the vehicles were coming at excessive speed, which shows that the Matadoor was not standing on the extreme left side of the road as stated by NAW/2 Surendra Singh. When the vehicles collided with each other or brushed with each other while coming from the opposite direction, usually the accident is result of composite negligence of both the vehicles.

7. Learned Counsel for the appellants has placed reliance in this respect on the case of General Manager, R.S.R.T.C., Bangalore v. Krishanan and Ors. 1981 ACJ 273 in which two buses were coming from the opposite direction and brushed each other it was held that the accident was on account of composite negligence of the drivers of both the vehicles. Same view was taken in the case of V. Rajeshwara Rao and Ors. v. Kama Audemrra and Ors. 1977 ACJ 462. I, therefore, hold that the accident was result of composite negligence on account of which the deceased lost his life.'

8. Coming to the earning of the deceased, AW/2 Nagannathi has stated that he used to sell milk and from this he give her about Rs. 100/- or 200/- per month and also earned to pay for his expenses of Biri etc. It is also stated that he used to work on Adholi (partnership) basis in the agricultural lands of others. Apart from this the deceased had also 5 bighas land of his own, which was also tilled by him. Therefore, the trial court estimated the income of the deceased to be Rs. 8000/- and after deducting 1/4th for his personal expenses, held Rs. 6000/- per year as the amount of dependency. From the evidence on record it is clear that his income was not fixed and fluctuating from time to time. This Court in various cases has been taking the view that it will be appropriate to deduct 1/3rd from the income of the deceased towards the expenses on his ownself and keep 2/3rd of the income as the amount of dependency for the claimants. Keeping the evidence in view, I place the yearly income of the deceased at Rs. 7000/- after deducting 1/3rd from the income towards his personal expenses, the 2/3rd of the income can be rounded at Rs. 4600/- per year. The claimants shall there fore, be entitled to receive the amount of Rs. 4600 x 25= 1,15,000/- as compensation on account of the claim filed by them. The contention of Shri S.K. Jain is that the Tribunal has erred in awarding interest @ 6% pa. only, which should have been awarded at 12% p.a. from the date of claim petition.

9. The usual rate at which the interest is awarded is 12% p.a. as has been recently held by the Apex Court in Jagbir Smgh v. G.M. Punjab Roadways. It is made clear that the claimants shall also be entitled to receive interest at the rate of 12% p.a. on the compensation amount from the date of filing of the claim petition before the Tribunal i.e. 16-10-1982. If any amount has been deposited in the Tribunal or paid

to the claimants, the interest shall be paid from the date of claim till the payment or deposit of the amount is made. It is also made clear that each of the Insurance Company shall be liable to pay the amount of Rs. 50,009/- each in accordance with their liabilities in the policy.

10. For the payment of remaining 15,000/- the liability of owners and drivers of both the vehicles shall be joint and therefore, the claimants shall be at liberty to recover this amount from any or all of the above persons then the person from whom the entire amount has been recovered can take steps to recover half of the amount from the owner and driver of the o their vehicle. They shall also be liable to pay interest from the date of filing of the claim petition at the rate of 12% p.a. on the above amount.

11. In the result, the appeals are disposed of as indicated above.

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