

Mohini Devi and ors. Vs. Rajendra Kumar and ors.

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Court : Rajasthan

Decided On : May-28-2002

Reported in : 2003(3)WLN408

Judge : H.R. Panwar, J.

Appeal No. : S.B. Civil Misc. Appeal No. 419 of 1999

Appellant : Mohini Devi and ors.

Respondent : Rajendra Kumar and ors.

Disposition : Appeal allowed

Judgement :

H.R. Panwar, J.

1. This appeal is directed against the judgment and award dated 17.3.1999 passed by the Motor Accident Claims Tribunal, Jaisalmer, (hereinafter referred to as 'the Tribunal') whereby the Tribunal dismissed the claim petition filed by appellant claimants (for short 'the claimants') under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. Briefly stated facts to the extent they are relevant and necessary for decision of this appeal are that on 16.5.1997 at about 7.00 P.M. deceased Gordhanram was travelling in Jeep No. RJ-19 C 7127 from Nokha to Bheekhampur. The said jeep

was driven by respondent No. 1 Rajendra Kumar, owned by respondent No. 2 Ramesh Chandra and was insured with respondent No. 3 the New India Assurance Company Ltd. (for short 'the Insurance Company'). Due to rash and negligent driving of the jeep by its driver respondent No. 1 Rajendra Kumar, the said jeep turned turtle and Gordhanram occupant of jeep fell down and was dragged by the jeep for 10 feet. Gordhanram succumbed to the injuries instantaneously. The claimants mother and brothers of the deceased filed a claim petition for compensation. At the relevant time of the accident, deceased Gordhanram was 22 years of age and was labourer. Before the Tribunal the claimants produced AW-1 Mohini Devi mother of the deceased, AW-2 Babu Ram and AW-3 Gulam Khan, both eye witnesses of the occurrence, AW-4 Bheekha Ram brother of the deceased and AW-5 Dr. Rajendra Kumar who conducted autopsy of the deceased and prepared post-mortem report Exhibit-7. In rebuttal, DW-1 Rajendra Kumar driver of the jeep and PW-2 Suresh Chandra Pathak employee of the Insurance Company were examined.

3. I have heard learned counsel for the parties. Perused the judgment and award impugned as also record of the Tribunal.

4. It is contended by learned counsel for the appellants that the Tribunal fell in error in deciding issue No. 1 by which the driver of the said jeep was not held negligent.

5. Learned counsel for the Insurance Company supported the judgment impugned.

6. In claim petition, the claimants pleaded that deceased Gordhanram was occupant of the jeep which was plying from Nokha to Bheekhampur. The said jeep was driven at great speed, rashly and negligently by its driver respondent No. 1 Rajendra Kumar and on curve of the road, due to fast speed the said jeep suddenly turned turtle and the occupant of the jeep fell down on the road and sustained injuries. Gordhanram succumbed to the injuries instantaneously. Owner and driver of the jeep filed written statement wherein it was admitted that the deceased was occupant of the said jeep and fell down from the jeep as he was dozing (Japki Lena). Thus, it was established that at the relevant time of the accident, the deceased was occupant of the said jeep and he fell down from the

jeep and died on the spot.

7. AW-2 Babu Ram is an eye witness of the occurrence. He stated that the said accident took place at about 10 Km away from Nokha on the road Nokha to Bheekhampur and the said jeep was driven by respondent No. 1 Rajendra Kumar. The occurrence took place at about 7.00 P.M. He was coming from Bheekhampur and got down near the place of the accident and was going to his 'Dhani'. He further stated that on curve of the road the said jeep turned turtle and Gordhanram fell down from the said jeep and died on the spot. He further stated that he lodged report of this accident with police Exhibit-6, his statement was recorded by police under Section 161, Cr PC. Exhibit-10 and site map and inspection note in Exhibit-14.

8. AW-3 Gulam Khan is another eye witness of the occurrence. He stated on oath before the Tribunal that when the jeep met with the accident on Bheekhampur road, he was proceeding on that road and when he was near the curve, he saw the happening of the accident. This witness has not been relied upon by the Tribunal only on the ground that he was not cited as a witness by the police in the criminal case filed against the driver of the jeep.

9. AW-3 Gulam Khan is direct witness of the occurrence who has seen happening of the accident. Merely because this witness happened to admit that he was not cited as a witness in criminal case by police could not be conclusive of the fact that he was not a witness of the accident. This witness categorically stated on oath before the Tribunal that when the jeep met the accident at that time he was coming from Bheekhampur Road and he saw the accident while he was coming downwards of the slope. So far as non recording of his statement by the police is concerned, he stated that when he was asked by the police he narrated the incident which he deposed before the Tribunal. He said that when he reached to the site at that time he found that Gordhan Ram was struggling for life. This witness could not exactly see how the accident took place because he was at a little distance and more so, happening of the accident is within knowledge of the driver of the jeep or the occupant of the vehicle. But the fact remains that the deceased was occupant of the jeep and without there being any negligence on the

part of the driver, jeep would not have turned turtle. A speedy jeep suddenly turned turtle speaks its own story of the negligence of the driver. The Tribunal relied on the statement of DW-1 Rajendra Kumar driver of the said jeep. Even from the perusal of the statement of DW-1 Rajendra Kumar, it is established that the deceased Gordhan Ram was occupant of the jeep which was driven by DW-1. Without there being any negligence of the part of the driver the jeep would not have turned turtle. The site map Exhibit-14 shows that the deceased was dragged on the left side of the road for a distance of about 10 feet after the said accident. This corroborates the testimony of AW-2 Babu Ram and AW-3 Gulam Khan. AW-2 Babu Ram is the author of first information report Exhibit-6 and AW-3 Gulam Khan is witness of accident as also witness of site map Exhibit-14. He is an independent witness and his presence cannot be doubted. The Tribunal has relied upon the testimony of DW-1 the driver of the jeep who is an interested person. As against the testimony of the driver of the jeep independent witnesses produced by the claimants are to be preferred. Even according to the statement of DW-1 the deceased being occupant of the jeep fell down from the jeep, which cannot be possible without there being any negligence on the part of the driver of the jeep. The said jeep was driven at a great speed and in that situation the accident took place. Merely because the police had not examined AW-3 as a witness in the criminal case, his testimony cannot be disbelieved, more particularly when the statement of this witness finds corroboration with the statement of AW-2 Babu Ram, FIR Exhibit-6, Site Map and Inspection Note Exhibit-14 and medical evidence of AW-5 Dr. Rajendra Kumar Goydani, who stated that the injuries mentioned in post mortem report Exhibit-7 could be caused by vehicular accident. AW-3 Gulam Khan has no axe to grind by speaking against the driver of the jeep as he is not related to even the deceased and the claimants and, therefore, he is absolutely an independent and disinterested person.

10. In this view of the matter, I am of the considered opinion, that the Tribunal fell in error in disbelieving the claimant's witnesses while deciding issue of negligence. Hence, the finding on issue No. 1 cannot be sustained and is set aside and accordingly, I hold that the said accident resulted due to rash and negligent driving of the jeep by its driver respondent Rajendra Kumar resulting in the death of Gordhan Ram.

11. While deciding the issue of quantum, the Tribunal held that the deceased used to earn Rs. 1500/- per month and after deducting expenses on his personal living, he used to contribute Rs. 1000/- towards family and, as such, annual contribution was Rs. 12,000/-. This amount was multiplied by a multiplier of 18 years purchase factor. Thus, loss of income was computed to Rs. 2,16,000/-. In the instant case, the claimant Mohini Devi, mother of the deceased is aged 45 years and claimants No. 2 and 3 are brothers of the deceased is aged 22 and 16 years respectively. The Tribunal has applied multiplier of 18 years purchase factor. This multiplier appears to be on higher side. The Hon'ble Supreme Court in General Manager Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. 1994 (2) SCC, has held that choice of multiplier is determined by the age of deceased (or of the claimant whichever is higher. Thus, in the instant case the age of the claimant is higher than the deceased and, therefore, the method of selection of multiplier is to be made on the basis of age of the claimant, Second schedule of Section 163-A of the Act provides the multiplier of 15 for the death of a person in the age group of above 40 years but not exceeding 45 years. Second schedule can be taken as a guide for the purpose of selection of multiplier. Thus, in my considered opinion, in the present case, the annual dependency needs to be multiplied by 15 years purchase factor. Thus, compensation works out to Rs. $12,000 \times 15 = 1,80,000/-$. The Tribunal further awarded a sum of Rs. 50,000/- for mental agony suffered by the claimants, which appears to be unreasonable. It is settled law that compensation for the mental agony suffered by the claimants on the death of their kith and kin can not be awarded. However, the claimants are entitled for a sum of Rs. 15,000/- for loss of love and affection and for Rs. 2,000/- for funeral expenses. Thus, total compensation works out to Rs. 1,97,000/- to which the claimants are entitled. The Tribunal while deciding issue No. 3 held that the Insurance Company failed to prove the issue No. 3. The burden to prove this issue was on the Insurance Company, who failed to prove it and accordingly that issue was decided against the Insurance Company. The finding on issue No. 3 is just and proper and accordingly it is affirmed.

12. No other point was pressed.

13. In view of the aforesaid discussion, this appeal succeeds and is allowed. The claim petition filed by the claimants under Section 166 of the Act is allowed to the extent that the claimants are entitled for compensation of Rs. 1,97,000/-. The respondents are jointly and severally liable for the compensation. This amount of compensation shall carry interest @ 9% per annum from the date of application till realisation. Out of total compensation claimant No. 1 Smt. Mohini Devi shall be paid a sum of Rs. 1,50,000/- and interest thereon and other claimants No. 2 and 3 namely Bheekha Ram and Pappu Ram be paid Rs. 23,500/- each. Respondent Insurance Company to pay above amount to the claimants by depositing it in the Tribunal. Once deposit of such amount is made, the same shall be disbursed to the claimants in aforesaid proportion in view of the principles laid down by Hon'ble Supreme Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas, (supra). No order as to costs.