

RAJASTHAN HIGH COURT

Rajasthan State Road Transport Corpn.

Vs.

Nand Kishore

Civil Misc. Appeal No.388 of 1994

(H.R. Panwar, J.)

29.05.2001

ORDER

H.R. Panwar, J.

1. This appeal is directed against the Judgment and Award dated 11th Feb., 1994 passed by the learned Motor Accident Claims Tribunal, Bail in M.A.C.T. Case No.80/92 whereby an award of Rs. 63,000/- along with interest from the date of application was passed in favor of the respondent claimants Nos.1 to 6 (hereinafter referred for short "Claimants") and against the Rajasthan State Road Transport Corporation (hereinafter referred to as "the Corporation") and its driver respondent No.7.

2. Aggrieved by the aforesaid judgment and award impugned the Corporation filed this Misc. Appeal before this Court.

3. Briefly stated the facts which are necessary to dispose of this appeal are thus that the claimants filed a claims petition, claiming compensation under various heads in all for a sum of Rs. 3,36,600/- under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred for short "the Act").

4. It is contended by the learned counsel for the appellant that Tribunal fell in error in holding that the driver of the offending bus was negligent in causing accident. He contended that no eye-witness of occurrence has been produced by the claimants and, therefore, according to him claimants failed to prove issue of negligence.

5. I have scrutinized and evaluated the evidence on record. The claimants placed on

record the First Information Report Exs.5 and 6. Undisputedly the crime report Ex.5 of the said accident was lodged promptly with the concerned police station with brief narration as to how accident had taken place. Ex.9 is prepared by the Station House Officer (SHO), Police Station, Sadari, who investigated the crime case registered in respect of the accident. Though, Exs.5, 6 and 9 were tendered in evidence by the claimants without there being any objection raised against the marking/exhibiting documents from the other side, F.I.R., Site-map and Site Inspection Memo were prepared by the police officer while investigating into the offence disclosed in F.I.R. The Police Officer is a public servant and the Site inspection Map and Site Inspection Memo are records made in discharge of his Official duties, and entries in such record are relevant facts under Section 35 of the Indian Evidence Act and as such those documents are public documents as these are prepared by public servant while discharging his official duties and as such admissible in evidence.

6. It has been observed in *Zeenath Tej v. Prince of Wales Medical College, Patna*, ¹ at p.48, para 7, as follows :-

"There is a presumption that every person whether in his private or official character does his duty and unless the contrary is proved, it is presumed that all things are rightly and regularly done. This presumption applies with greater force to official acts."

7. According to Section 74, Evidence Act, documents forming acts or records of the acts of public officers are public documents. Section 77 of the Evidence Act provides that the contents of public documents may be proved by producing their certified copies. In *Madamanchi Ramappa v. Muthaluru Bojjappa*, ² it has been observed by the Hon'ble Supreme Court that if a document is certified copy of public document. It need not be proved by calling a witness.

8. Thus, it is well settled that strict provisions of Evidence Act are not to be insisted by the Tribunal on limited Jurisdiction. The Tribunals while dealing the cases for compensation arising out of Motor Vehicle accident are to follow such summary procedure as it thought fit and the certified copy of the F.I.R., Inspection Map and Site Inspection Memo, Panch Nama, Injury Report or the Post Mortem Report, as the case may be, and, other relevant documents prepared by the police or the doctor while discharging official duty are admissible in evidence without there being a formal

proof.

9. In *Union of India v. T.R. Verma*,³ Hon'ble Supreme Court held:

"The Evidence Act has no application to enquiries conducted by tribunals, even though they may be Judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law."

10. Thus, strict rules of Evidence Act are not to be insisted on by the Tribunal on being limited jurisdiction. A similar view has also been taken by the Kerala High Court in *Phillipose Cherian v. T.A. Edward Lobo* ⁴

11. Moreso, no objection was raised at the time of marking exhibit of those documents by the respondents and as such reliance on these documents can safely be placed. Document Ex-9 clearly shows that the offending bus was plying off the road that too by 5-7 ft. away from the metal portion of the road and hit the deceased. Not only this, offending bus went in kachha and covered the distance of 61 ft after having hit the deceased. This itself goes to show that the respondent-bus driver was grossly negligent in driving the bus. In the facts and circumstances of this case, maxim res ipsa loquitur is fully attracted which means accident speaks for itself for accident tells its own story. There are cases in which accident speaks itself, therefore, in such cases it is sufficient for the claimants to prove the accident and nothing more.

12. Maxim res ipsa loquitur-whenever it is so improbable with such accident whenever have happened. In the instant case, there can be no dispute that offending bus would not have gone to the kacchi patri which is about 5-6 ft. away from the main road and could not have travelled for such a long distance off the road and hit the deceased without there being any negligence on the part of the driver.

12A. Crime report Ex.6 of this accident was lodged by one Shri Sunder Lal Bohra at Police Station, Sadari on the basis of which formal First Information Report No.43/92 dated 22nd May, 1992 (Ex.5) was recorded and police proceeded to investigate the matter. During the course of investigation Farad Surat Hal Lash, Panch Nama Ex.8, Site Map and Site Inspection Memo Ex.9, Seizure Memo Ex.10, and M.T.O. Report

Ex.11 were prepared. Police laid challan against the respondent No.7 - the driver of the bus vide Ex.4 for the offence under Sections 279, 304-A, I.P.C. before the Competent Court having jurisdiction to try the case.

13. Case as set up by the claimants is that on 27-5-92 at about 8.00 p.m. while Chandra Gopal who was Manager at Charitable Trust viz. Mukhti-Dham was returning to his residence situated at Sadari after duty hours from Mukhti Dham to Sadari, while he was walking by the side of metal portion of the road at that time a bus number RNP 1126 owned by the Corporation came from opposite direction which was driven rashly and negligently by its driver respondent No.7, dashed against Chandra Gopal. Due to this accident Chandra Gopal received injuries and ultimately succumbed to injuries instantaneously.

14. In view of the aforesaid discussions, I find no substance in the contention raised by the learned counsel for the appellant.

15. It was averred that at the relevant time deceased was 62 years of age and used to earn Rs. 2685/- per month i.e. Rs. 1500/- as salary from his employer Mukhti Dham Trust and Rs. 1185/- per month as pension. It was further averred that due to death of Chandra Gopal resulting from this accident, the claimants suffered damages in all for a sum of Rs. 3,36,600/-. A joint written statement was filed by the Corporation and its driver where in the factum of accident was admitted. However, they denied the negligency of its driver.

16. On the pleading of the parties learned Tribunal framed issues and tried the case. A.W.1 Nand Kishore and A.W.2 Basant Mal were examined by the claimants and on behalf of the Corporation D.W.1 Sumermal, the driver of the bus was examined.

17. Learned Tribunal while deciding issue of negligency came to the conclusion that the aforesaid accident took place due to rash and negligent driving of the bus by its driver respondent No.7. Learned tribunal while deciding the issue of quantum of compensation, computed quantum of compensation for a sum of Rs. 63,000/- in all and accordingly passed the impugned award.

18. I have heard learned counsel for the parties and perused the record.

19. The case as set up by the claimants is that the deceased was walking in kachha by

the side of metal road and far away from metal portion of road. Undisputedly the bus was plying from Sadari to Mundawar, Pratapgarh i.e. from East to west and the deceased was proceeding towards Sadari west to east in kachha and far away from road. Soon after the accident the investigating officer prepared site map and site Inspection memo Ex-9. From Ex.9 it is more than clear that bus went off the road and hit the deceased resulting thereby that Chandra Gopal was crushed under the wheels of the bus and succumbed to injuries instantaneously. Within 35 minutes of the accident, a crime report Ex-6 was promptly lodged with the police station Sadari by Sunderlal wherein it was clearly mentioned that Chandra Gopal the manager of Mukhti Dham Trust was returning to his house to Sadari after completing his duty at Mukhti Dham, he was walking on Kachhi Patri which is off the road. When he reached near to the garage of Daya Ram Suthar Mistri at that time bus owned by the Corporation hit him and he succumbed to injuries instantaneous, that shows that a prompt report of this accident was lodged with the police station and on the very day police inspected the site of accident where the bus was found off the road and dead body of deceased was also found near to the bus. Not only this the bus travelled about 61 ft on kachhi patri where the dead body of deceased was lying. This shows that the deceased was far away from metal portion of the road and walking on the kacchi patri by the side of road, in spite of that bus went in kachha and hit the deceased. Ex.9 shows that the bus went in kachha and was plying 5-7-ft. away from the road in kachha. This itself is sufficient to construe that the driver of offending bus was rash and negligent in driving the bus. In the instant case maxim res ipsa locutor is fully attracted in the facts and circumstances of the case.

20. Driver of offending bus D.W.1 was examined. He stated that there was a dust storm and it was raining while he was driving the bus on its correct side of road, a truck came from opposite direction and he gave side to the truck at that relevant time suddenly a person came from the bushes and hit by the bus. This witness cannot be said to be trustworthy in as much as he is interested witness and testimony of this witness run contrary to the site inspection memo and site map Ex.9. In the Inspection report place where accident took place, there are no bushes either side of the road therefore the plea taken by this witness appears to be incorrect and the learned trial Court has also rightly not relied on the testimony of this witness.

21. In view of the material on record. In my considered opinion, the finding arrived at on issue No.1 by the learned Tribunal is just and proper and calls for no interference.

Thus finding of issue No.1 is hereby affirmed.

22. It was next contended by the learned counsel for the appellant that quantum of compensation as awarded by the Tribunal is on higher side. Since the age of deceased was 62 years. The claimants pleaded in their claims petition that the deceased was employed as a Manager by the Trust Mukhti Dham and they were dependents on the income of deceased. From the testimony of AW 1 it has been established that the deceased was working as a Manager of Trust Mukhti Dham. Not only this, in F.I.R. Exs.6 and 5 also the author of F.I.R. has clearly mentioned that at the relevant time deceased Chandra Gopal was Manager of Mukhti Dham and after completion of his duty he was returning to his home situated at Sadari and at that time the said accident took place. Claimants have placed on record the salary certificate Ex.4 issued by Shah Mangi Lal Dhanrajji Badmiya Charitable Trust (Mukhti Dham) Sadari wherein salary of deceased was shown as Rs. 1500/- per month and a certificate Ex.3 issued by UCO. Bank shows that he was getting pension @ Rs. 1185/- per month. From the evidence of claimants it is fully established that the monthly income of the deceased was Rs. 2685/- per month therefore it cannot be said that he was not contributing to the claimants. It is settled law that quantum of compensation is interfered only when the amount of compensation is inadequate or too excessive. Obviously, meagre sum of Rupees 63,000/- awarded by the Tribunal, cannot to said to be too excessive and thus calls for no interference. No other point was passed into service.

23. In view of the aforesaid discussions, I find no merit in this appeal and accordingly it is hereby dismissed with no order as costs.

Appeal dismissed.

Cases Referred.

1. AIR 1971 Pat43
2. AIR 1963 SC 1633
3. AIR 1957 SC 882
4. 1991 Ace CJ 534