

# RAJASTHAN HIGH COURT

Union of India

Vs.

Hiraram

Civil Misc. Appeal No. 337 of 1999

(Dr. B.S. Chauhan, J.)

13.09.2002

## JUDGEMENT

**Dr. B.S. Chauhan, J.**

1. This Misc. Appeal has been preferred against the impugned award of the Motor Accident Claims Tribunal (hereinafter called as the Tribunal) Merta dated 10-12-98 by which a sum of Rs. 1,50,000/- along with interest @ 12% P.A. has been awarded to the claimants due to death of Jagdish.
2. The facts and circumstances giving rise to this appeal are that on 6-11-95, Jeep No. RJS 8647 collided with Bikaner-Jaipur Intercity 2467 (U) and 18 persons including the Driver thereof died in the accident. The dependents and other claimants filed 18 separate claim petitions before the Tribunal. However, as there had been the same facts and same issues involved, the learned Tribunal decided all the claims by a common award.
3. Sri Ravi Bhansali, learned counsel appearing for the appellant has submitted that it is settled legal proposition that where there is sole and exclusive negligence on the part of Railways in accident cases, the jurisdiction of the Motor Accidents Claims Tribunal is barred and in such eventuality, the proper forum would be Railway Claims Tribunal. Thus, in view thereof the award under appeal itself is nullity for want of jurisdiction. On the other hand, Sri Mehta and Sri Paras Ram, learned counsel appearing for the respondents have contended that it may merely be a statement of law but in the instant case, there was negligence on the part of the Driver of the Jeep as well, which met with the accident with the Railways and this evidence has been led by the appellant itself, therefore, it was not a case where it was a sole and exclusive negligence on the part of the railways as the accident occurred because of unmanned

level crossing.

4. In *Union of India v. United India Insurance Co. Ltd.* <sup>1</sup> the Hon'ble Supreme Court has considered the issue and held as under (para 45) :-

"Further ..... claims where it is alleged that the driver/owner of the motor vehicle is solely responsible for the accident, claims on the basis of the composite negligence of the driver of the motor vehicle as well as driver or owner of any other vehicle or of any other outside agency would be maintainable before the Tribunal but in the latter type of case, if it is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of the other parties/agencies, then on that finding, the claim would go out of Section 110(1) of the Act because the case would then become one of exclusive negligence of Railways. Again if the accident had arisen only on account of the negligence of persons other than the driver/owner of the motor vehicle, the claim would not be maintainable before the Tribunal."

5. The aforesaid judgment was approved by the Hon'ble Supreme Court in *G.M.N.F. Railway, Malegaon, Guwahati v. Jitendra Shah*, <sup>2</sup> However, in the said case the Hon'ble Supreme Court refused to interfere with the impugned award therein on the ground that Court should not interfere merely on the ground that a different appropriate forum ought to have been approached.

6. In the instant case, Sri Mehta, learned counsel for the respondents had drawn attention of the Court towards the pleadings wherein it has been submitted on behalf of the Railway Driver that the Jeep Driver was negligent; he had not been careful to check before crossing unmanned level crossing as to whether the Train was approaching; his conduct was in violation of the provisions of Section 161 of the Railway Act, which mandatorily require in such an eventuality that such person should take safety precautions and must watch whether the railway was approaching. It has further been averred therein that the train was with normal speed and Jeep Driver tried to cross the level crossing without taking any precaution whatsoever; he did not read or observe the warning given on the Board installed at that place; rather he was driving the Jeep recklessly with a high speed and he entered the Phatak and met with the accident.

7. It is settled proposition of law that admission is the best evidence unless the party who has admitted it proves it to have been admitted under a wrong presumption or it could not have been otherwise factually correct. In *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi*,<sup>3</sup> the Hon'ble Apex Court observed as under (para 11) :-

"An admission is the best evidence that an opposing party can rely upon and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous."

8. The same view had been reiterated in *K. S. Srinivasan v. Union of India*,<sup>4</sup> *Basant Singh v. Janki Singh*,<sup>5</sup> *Prem Ex- Serviceman Co-operative Tenant Farming Society Ltd. v. State of Haryana*,<sup>6</sup> and *Avadh Kishore Dass v. Ram Gopal*,<sup>7</sup>

9. In *Nagubai Ammal v. B. Shama Rao*, AIR 1956 Supreme Court 593, the Apex Court had taken the same view holding that the statements admitting the factual position must be given full effect and while deciding the same, the Hon'ble Supreme Court placed reliance on the decision in *Slatterie v. Pooley*,<sup>8</sup> wherein the Court had observed that "what a party must admit to be true, may reasonably presume to be so."

10. In view of the above, it stands well-established that it had been the appellants' case that there was a contributory negligence on the part of the Jeep Driver. Thus, it is not a case where it can be held even by any stretch of imagination that there was sole and exclusive negligence on the part of the Railways. Therefore, the judgments of the Hon'ble Supreme Court referred to above have no application on the facts and circumstances of this case. Moreso, the learned Tribunal framed the issue as to whether there was negligence on the part of the Railways and the appellant did not make any effort to get the issue framed as to whether there was sole and exclusive negligence on the part of the Railways. The appellant led evidence otherwise that there was contributory negligence on the part of the Jeep Driver.

11. Thus, in view of the above, I am not inclined to accept the submission made by Sri Bhansali that the award impugned is nullity for want of jurisdiction.

12. So far as quantum of compensation is concerned, it has exactly been calculated as

per the Schedule annexed to the Motor Vehicles Act, 1988. Thus, no interference is warranted. However, in the facts and circumstances of the case, the rate of interest is reduced from 12% P.A. to 9% P.A.

13. With the aforesaid modification of the award, the appeal stands disposed of. Order accordingly.

#### Cases Referred.

1. (1997) 8 SCC 683
2. (2000) 9 SCC 58
3. AIR 1960 SC 100
4. AIR 1958 SC 419
5. AIR 1967 SC 341
6. AIR 1974 SC 1121
7. AIR 1979 SC 861
8. (1840) 6 M and W 664