

(2013) 02 RAJ CK 0120

Rajasthan High Court

Case No: Civil Miscellaneous Appeal No. 218 of 1997

Bhagwan Ram and
Others

APPELLANT

Vs

Deen Dayal and
Others

RESPONDENT

Date of Decision: Feb. 13, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 22
- Motor Vehicles Act, 1988 - Section 140, 163A, 173

Citation: (2013) 3 ACC 386 : (2013) 2 WLN 279

Hon'ble Judges: Arun Bhansali, J

Bench: Single Bench

Advocate: Arpit Bhoot, for the Appellant; Manoj Bohara, for the Respondent

Final Decision: Dismissed

Judgement

Arun Bhansali, J.

This appeal under Sec. 173 of the Motor Vehicles Act, 1988 ("the Act") has been filed by the owner and driver of the vehicle challenging judgment and award dt. 10.01.1997 passed by the Motor Accident Claims Tribunal, Nagaur-camp-Deedwana ("the Tribunal"). On behalf of the claimants a cross objection under Order XLI, Rule 22 CPC has been filed seeking enhancement of the compensation.

2. Brief facts of the case are that the respondents, who are father, mother and brother of Surendra filed a claim petition on 27.01.1994 before the Tribunal with the averments that on 20.09.1993 at about 10:00 AM on private road from Sikar to Deedwana one Bus No. RJV 2674 reached village Lalasari when Surendra, aged about five years, while going to school was hit by the said offending bus, which crushed him. As a result of which, Surendra died on the spot. Allegations were made that the bus was being driven rashly and negligently by the driver Om Prakash, so

also, the bus was driven on extreme right side of the road and Surendra who was going on correct side of the road was killed. Further averments were made about the family background of deceased Surendra and a compensation of Rs. 13,60,500/- was demanded.

3. The claim petition was resisted by the owner and driver by filing reply and the averments made in the claim petition were denied.

4. The Tribunal framed four issues. On behalf of claimants AW-1 Deen Dayal and AW-2 Murari Joshi were examined and on behalf of the respondents NAW Bhagwana Ram was examined. The claimants exhibited 18 documents including Final Report, FIR, Spot Map, Postmortem Report etc. The Tribunal after hearing the parties came to the conclusion that the accident occurred on account of rash and negligent driving by driver Om Prakash and considered the monthly future income of deceased Surendra at Rs. 2,000/- and adopted multiplier of six and after deducing 1/3rd amount for personal expenses awarded Rs. 96,000/-. For loss of consortium a sum of Rs. 5,000/- was awarded and Rs. 500/- was awarded as funeral expenses and in total a sum of Rs. 1,01,500/- was awarded.

5. Questioning the award impugned, learned counsel for the appellants submitted that the finding of rash and negligent driving by the Tribunal is ex facie incorrect. Both the witnesses produced by the claimants were not present at the site of accident and their evidence was based on hearsay and, therefore, the same was wholly inadmissible. It was further submitted that the documentary evidence also could not be taken into consideration as no one who had prepared the said documents were examined by the claimants and, therefore, the said documents remained without any proof. It was further submitted that it was a case of no evidence and the claimants were at best entitled to a claim under Sec. 140 of the Act and nothing more. The claim made by the respondents in the cross objection was also refuted. It was stated that the deceased was only five years old and there are so many uncertainties in life, therefore, the claim cannot be made by merely speculating on the future possibilities. Ultimately, it was prayed that the appeal be allowed and cross objection be dismissed.

6. On the other hand, learned counsel for the respondents supported the award on the findings recorded by the Tribunal on rash and negligent driving. It was submitted that though both the witnesses were not eye witness to the accident, still the documents, which were prepared by the Police at the spot of accident alongwith the photographs clearly proves the rash and negligent driving on part of the driver of the offending vehicle, inasmuch as, from the said documents it is apparent that the bus was being plied on right side of the road and the deceased child, who was going on foot on the correct left side was struck by the said offending vehicle, which clearly proves the rash and negligent driving. It was further submitted that the Tribunal has awarded quite a meager amount on account of death of a child and even going by the schedule provided under Sec. 163A of the Act, the claimants were

entitled to a larger sum. Ultimately, it was prayed that the appeal be dismissed and cross objection be allowed.

7. I have considered the rival submissions made at the Bar.

In this case, statement of Deen Dayal as AW-1, who is father of deceased Surendra was recorded, though he was not present at the site of accident, he has exhibited certified copies of Challan filed by the Police against the driver as Exhibit-1, First Information Report as Exhibit-2, Naksha Mauka as Exhibit-4, Halat Mauka as Exhibit-5, Postmortem Report as Exhibit-10 and also admitted in his cross-examination that he was not present at the spot.

8. On behalf of the appellants Bhagwan Ram, the owner of the bus was examined and who claimed in his statement that the deceased died on account of his own mistake and the driver did not commit any mistake. In cross-examination, he claimed that he was a passenger in the bus and was sitting on the last seat of the bus. However, on further cross-examination, he admitted that the accident occurred from the bus No.RJV 2674 and could not give any explanation as to why he did not get his statement recorded with the Police and also admitted that in the written statement he did not mention that he was eye witness to the accident. The statement of Bhagwan Ram regarding his presence at the spot of accident as passenger of the bus is apparently false. The said version was put forth by him only in the cross-examination, neither the said fact was mentioned in the reply to the claim petition nor the said fact was mentioned in his examination-in-chief. Further, he could not explain absence of his name from any of the Police documents which were prepared after the accident. In that view of the matter, the statement of Bhagwana Ram cannot be relied on.

9. The fact that any of the eye witness or the police personnel and authorities, who had prepared the documents-certified copies of challan Exhibit-1, First Information Report as Exhibit-2, Naksha Mauka as Exhibit-4, Halat Mauka as Exhibit-5, Postmortem Report as Exhibit-10 were not examined is of no consequence. The said documents being certified copies of public documents even in absence of such statements are admissible in evidence as held by this Court in the case of [Rajasthan State Road Transport Corporation and Another Vs. Devilal and Others](#), and [Shrwan Kumar Vs. Rajasthan State Road Transport Corporation and Others](#), It was held by this Court in the case of Shrwan Kumar as under:-

18. Public documents like the First Information Report and the report of the mechanical inspection of the bus can be taken into consideration and this point is no longer res integra so far as this Court is concerned. In [Rajasthan State Road Transport Corporation and Another Vs. Devilal and Others](#), it was observed that strictly speaking, provisions of Evidence Act are not applicable before the Tribunal; if a document is a certified copy of a public document it need not be proved by calling a witness or the person who prepared it.

10. A bare look at the Naksha Mauka Exhibit-4 reveals that on a 26 ft. wide road the body of deceased Surendra was lying at 6 ft. from the right side of the road and the offending bus was going from east to west and was standard at extreme right side of the road after the same was pushed back as the deceased had come under the front driver side wheel of the bus. The said document which was prepared by the Police speaks volumes about the state of affairs at the site i.e. the Bus was plying on right side from middle of the road and, therefore, invoking the principles of *res ipso loquitur* inference of negligence can be raised and, consequently, the Tribunal was wholly justified in coming to the conclusion that the driver of the vehicle was driving the vehicle rashly and negligently.

11. So far as the argument of learned counsel for the appellants that in absence of proof of negligence the claimants are entitled to only a claim under Sec. 140 of the Act only cannot be sustained in view of the fact that based on the certified copies of the documents a finding has been returned by the Tribunal and upheld hereinabove on the rash and negligent driving by the driver of the Bus.

12. So far as the cross objection filed by the respondents for enhancement of compensation is concerned, the deceased Surendra was aged about five years at the time of accident.

13. The Hon"ble Supreme Court in the case of [New India Assurance Co. Ltd. Vs. Satender and Others](#), while considering a case of death of a child in a accident observed as under:-

9. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.

10. In case of the death of an infant, there may have been on actual pecuniary benefit derived by his parents during the child's lifetime. But this will not necessarily bar the parents' claim and prospective loss will find a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of *Taff Vale Rly. vs. Jenkins*, and Lord Atkinson said thus:

...all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact-there must be a basis of fact from which the

inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them. (See *Lata Wadhwa vs. State of Bihar*.)

12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

14. As per the second schedule under Sec. 163A of the Act, which can be used as a good guide, the notional income for compensation to those who had no income prior to accident has been indicted at Rs. 1500/- per annum and upto the age of 15 years a multiplier of 15 has been indicated.

15. Based on the said schedule and after deducting 1/3rd amount towards personal expenses of the deceased the amount of compensation would come to Rs. 1,50,000/- (10,000/- P.A. x 15), which appears to be a just compensation in the facts and circumstances of the case as Hon"ble Supreme Court in the case of *Satender* (supra) had awarded a sum of Rs. 1,80,000/- for a boy who was aged nine years. The claimants would also be entitled to interest @ 7 1/2% per annum from the date of filing of claim petition on the enhanced compensation. The rest of the compensation under other heads does not require any interference. In the result, the appeal is dismissed and the cross objection filed by the respondents is allowed. The judgment and award passed by the Tribunal is modified to the extent that the claimants-respondents would be entitled to a sum of Rs. 1,50,000/- for the loss of income on account of death of Surendra instead of Rs. 96,000/- as awarded by the Tribunal. The claimants would be entitled to interest @ 7 1/2% per annum on the enhanced amount of compensation Rs. 54,000/- from 27.01.1994, the date of filing claim petition. No costs.