

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 4th January, 2012
Pronounced on: 9th January, 2012

+ **MAC. APP. 307/2010**

RAJASTHAN STATE ROAD
TRANSPORT CORPORATION & ORS. Appellants
Through: Ms. Ritu Bhardwaj, Adv.

Versus

KANHIYA LAL Respondent
Through: Mr. Ashok Anand, Adv.

+ **MAC. APP. 306/2010**

RAJASTHAN STATE ROAD
TRANSPORT CORPORATION & ORS. Appellants
Through: Ms. Ritu Bhardwaj, Adv.

Versus

GANGA DEVI Respondent
Through: Mr. Ashok Anand, Adv.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL
J U D G M E N T

G. P. MITTAL, J.

1. These two appeals arise out of a motor accident, which took place on 02.06.2000 when the Appellants, who are the husband and wife were travelling in Bus No.RJ-20 P 3280 from Jaipur to

Delhi. It is alleged that Bus No. RJ-20 P 3280 hit against a Dumper No.RJ 14GH 6557 from behind resulting in serious injuries to several passengers including the two appellants. The conductor of the Bus expired on account of the injuries sustained in the accident. A compensation of ₹ 7,52,510/- was awarded to Appellant Kanhiya Lal whereas a compensation of ₹ 3,23,800/- was awarded to his wife Smt. Ganga Devi.

2. The Appellant Rajasthan State Road Transport Corporation impugns the award dated 19.08.2009 passed in the two claim petitions on the ground that the accident was not caused on account of rashness and negligence on the part of the Appellant's driver Badrinath, rather it was the result of negligent driving of Dumper No.RJ 14GH 6557. It is averred that the compensation awarded is excessive and exorbitant.
3. In view of the averments this Court has to reappraise the evidence led by the Respondents on the negligence as well as on the quantum of compensation.

NEGLIGENCE: -

4. The Respondents in their respective petitions filed affidavits Ex. Pw-1/A and entered the witness box as PW-1. Both of them deposed that the accident was caused on account of rash and negligent driving of the Bus driver of Rajasthan State Road Transport Corporation. The testimonies of the two Respondents were not challenged by putting any question in cross-

examination. The Tribunal on the aspect of negligence held as under: -

“The rash and negligent driving on the part of the bus driver is established prima facie by registration of criminal case FIR Ex. PW1/5. Though the driver has appeared to dispose the rash and negligent driving allegations against him, he has not been able to prove it. The allegations in the FIR itself speak about the bus hitting the dumper from the back side as well as the passengers suffering injuries. There is no cross-examination by the driver on the rash and negligent driving by him deposed so by the petitioner. Under this circumstance, there is no other version of the accident which is worth considering the therefore, rash and negligent driving on the part of the respondent No.1 is established on record.”

5. The testimonies of the two Appellants in the absence of any cross-examination coupled with the registration of the FIR Ex. PW-1/5 against Badri Lal driver of Rajasthan State Road Transport Corporation was sufficient to conclude that there was culpable negligence on his part. Badri Lal was responsible for causing the accident. It may also be noticed that the Bus in question is owned by a public sector undertaking of the Govt. of State of Rajasthan. No action was taken either by driver Badri Lal or by Rajasthan State Transport Corporation against the driver and owner of the Dumper. If there had been any negligence on the part of the Dumper's driver the Appellant as well as driver Badri Lal would have taken criminal and civil

action against the driver and owner of the Dumper. Thus, the finding on negligence on the part of the driver is affirmed.

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COMPENSATION: -

6. At the time of the accident Respondent Kanhiya Lal was employed as a mason in CPWD and was posted at New Delhi. It has come on record that his age was 61 years in 2007 at the time of filing affidavit Ex. PW-1/A and recording statement in the Court. Thus, he was about 54 years on the date of accident. The Tribunal awarded a total compensation of ₹ 7,52,510/- along with interest @ 8% per annum. The various heads taken into account by the Tribunal to compute the compensation are extracted hereunder in a tabulated form: -

Sl. No.	Compensation Head	Amount (₹)
1.	On account of pain, shock and sufferings	30,000
2.	On account of medical bills	2,400
3.	On account of loss of earning capacity	86,400
4.	On account of loss of eye vision	2,00,000
5.	On account of travel expenses	5,000
	Total	3,23,800

7. The Respondent in addition to other injuries suffered very serious injuries on his right and left leg. As per the disability certificate dated 27.02.2004 placed on record of the Tribunal, the Respondent Kanhiya Lal suffered polytrauma with compound segmental fracture of both bones of right leg, compound fracture of both bones of left leg, fracture left acetabulum and fracture right ulna resulting in to 71% of disability in respect of both lower limbs.
8. In *General Manager, Kerala Road Transport Corporation, Trivandrum v. Susamma Thomas & Ors.*, 1994 AIR SCW 1356, the Supreme Court held as under: -

“the determination of the quantum must answer what contemporary society “would deem to be a fair sum such as would allow the wrongdoer to hold up his head among his neighbours and say with their approval that he has done the fair thing”. The amount awarded must not be niggardly since the “law values life and limb in a free society in generous scales”. At the same time, a misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation. The object of providing compensation is to place the claimant(s), to the extent possible, in almost the same financial position, as they were in before the accident and not to make a fortune out of misfortune that has befallen them.”

9. During the course of arguments I put a query to the learned counsel for the Appellant – asking him under what head did she think the compensation awarded was excessive. No specific

answer to the query was given. Therefore, I would be taking the compensation awarded under each head.

10. As stated earlier at the time of the accident, the Respondent was in government service employed as a mason in CPWD. By the time his testimony recorded in the Court, he had retired. The Appellant testified that he would have worked as a mason even after his retirement, which he was unable to do because of the injuries suffered by him. It was stated by the Medical Board consisting of Dr. Suraj Bhan, Professor and Head of Department, AIIMS and Dr. S. Rastogi, Professor of Orthopaedic that the patient was treated for debridement and ilizarov fixator application with bone grafting. There was non-union of fracture right ulna along with restricted and painful left hip and ankle movements. He was unable to squat or sit cross legged. He was unable to stand on left lower limb. The award of compensation of ₹ 40,000/- towards pain and suffering by the Tribunal under para 10(a), (if I may say so) was very conservative.
11. The Respondent was granted a compensation of ₹ 80,380/- on account of long medical treatment undertaken by him, which was proved by actual bills produced before the Tribunal. The same, therefore, cannot be faulted. A sum of ₹ 84,380/- and another sum of ₹ 15,750/- was granted on account of loss of 10 months leave and the leave taken on half pay. The record produced by the Appellant in the form of certificate, which was

issued by the Respondent's employer shows that he took a total 792 days of leaves. It is well settled that an injured has to be compensated for loss of leave taken by him to overcome the injuries and recoup ones health. Here the Respondent deposed that there was loss of 10 months leave at the time of retirement because no leave was left to his credit. The certificate shows that the 413 extra ordinary leaves (i.e. leave without pay) were taken by the Respondent apart from 105 leaves obtained on half pay. The Respondent was really entitled to a compensation of about ₹ 1,80,000/- against the compensation of ₹ 1,00,130/- awarded by the Tribunal under para 10(d) and (e). Similarly, the Tribunal awarded a sum of ₹ 2,52,000/- on account of loss of earning capacity by taking 50% disability, which had been certified as 71% in respect of both lower limbs. The Respondent was to work as a mason after his retirement. Loss of his earning was 100%. At the age of 60 years i.e. at the time of retirement the appropriate multiplier was '9' instead of '5' taken by the Tribunal. Thus, here again the compensation awarded was much lower than what was just and reasonable. The compensation of ₹ 30,000/- towards special diet, ₹ 50,000/- on account of transport and ₹ 2,00,000/- on account of loss of amenities/ disfigurement can neither be said to be excessive nor exorbitant. Since, there is neither any appeal nor any cross-objections by the Respondent my hands are tied and I cannot enhance the compensation. In any event the Appellant's plea

that the compensation awarded is exorbitant or excessive is unmerited.

12. The MAC. APP. No.307/2010 is accordingly dismissed with cost of ₹ 15,000/-, which shall be paid to Respondent within six weeks.

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13. The Appellant Ganga Devi apart from injuries on various parts of her body suffered traumatic optic neuropathy proved by a disability certificate dated 09.08.2004 issued by Dr. Rajendra Prasad Centre for Ophthalmic Sciences. She became visually handicapped to the extent of 30%. She testified that she used to work as labourer and earn ₹ 100/- to 120/- per day or ₹ 3,000/- per month. She deposed that she lost vision in her right eye and, therefore, was unable to do any domestic work due to which she had to employ attendant or servant to look after her.
14. The Tribunal awarded a total compensation of ₹ 3,23,800/- under various heads, which are extracted hereunder: -
15. In the case of *B. Kothandapani v. Tamil Nadu State Transport Corporation Ltd.*, (2011) 6 SCC 420, an overall compensation of ₹ 5,05,053.55 p. was awarded by the Tribunal in case of loss of 30% vision in the right eye and amputation of middle finger in the right hand. The compensation was reduced by ₹ 1,00,000/- by the High Court, which was restored to ₹

5,05,053/- by the Supreme Court. While awarding compensation of ₹ 86,400/- the Tribunal took the loss of earning capacity at ₹ 900/- per month i.e. 30% of ₹ 3,000/- and applied a multiplier of '8'. Respondent Ganga Devi's testimony that she had to engage an attendant to carry out domestic work and she was unable to do a work of labourer was not challenged in cross-examination. The sum of ₹ 86,400/- and the multiplier of '8' was on the lower side. An award of ₹ 30,000/- on account of pain and suffering and ₹ 2,00,000/- on account of loss of amenities and loss of partial vision in right eye cannot be said to be excessive or exorbitant. I do not find any ground to interfere in award of overall compensation of ₹ 3,23,800/-.

16. The appeal is devoid of any merit; the same is accordingly dismissed with cost of ₹ 15,000/-, which shall be paid to the Respondent within six weeks.

(G.P. MITTAL)
JUDGE

JANUARY 09, 2012
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