Rajasthan High Court
Rajasthan State Road Transport ... vs Mangal Singh on 1 June, 2003
Equivalent citations: 2003 (3) WLC 273, 2003 (3) WLN 31
Author: N Mathur
Bench: N Mathur, K Acharya
JUDGMENT N.N. Mathur, J.

1. Since instant special appeal arises out of a very old claim of the year 1987, we propose to dispose it, at the admission stage itself.

2. Adumbrated in brief the facts are that the claimant Mangal Singh was travelling in the bus belonging to the appellant Rajasthan State Road Transport Corporation, Jaipur (hereinafter referred to as "the Corporation") from Chittorgarh to Fatehnagar. He sat near the window seat. On the way a truck coming from the opposite side passed too closely by the side of the bus causing injury to the right hand of the claimant. The claimant was operated upon and his right upper arm, just below the shoulder joint was amputed resulting in 80% permanent disability. At the relevant time the claimant was earning Rs. 1500/- per month, as an employee of a private company namely M/s. Rajfed Oil Mill, Fatehnagar. He claimed compensation in the sum of Rs. 1,69,500/-. The claim was resisted by the appellant Corporation. In the opinion of the Tribunal, claimant himself was negligent in keeping out his elbow and, therefore, was not entitled to damages. In view of the finding, the Tribunal disallowed the claim.

3. In appeal the learned Single Judge on appreciation of evidence in depth and detail and through discussion of the relevant case law held that the injury sustained by the claimant was due to composite negligence of the driver of the bus as well as truck driver. The learned Single Judge was of the view that it was the duty of the driver to ensure sufficient space between the bus and the other object, so that he does not cause injury to any of the passenger of the bus. The learned Judge also held that as the accident in question was due to composite negligence of the driver of the Corporation's bus as well as the truck driver and, therefore, for the negligence of joint tort feasor the claimant was entitled for compensation from both or either of them. Considering the fact that the claimant earned permanent disability to the extent of 80% at the age of 35 years, the learned Judge set aside the judgment of the Tribunal and allowed the claim in the sum of Rs. 1,69,500/-.

4. It is contended by Mr. Anil Bachhawat learned counsel for the appellant that the learned Single Judge failed to consider that there is no pleading in specific words about the rash and negligent driving by the driver of the bus in the application. The learned counsel has placed reliance on the two decisions of the Apex Court i.e. Nagar Palika, Jind v. Jagat Singh, and Smt. Sawarni v. Smt. Inder Kaur and Ors., . It is held therein that the appellate Court was not right in setting aside the finding of the trial Court merely on the ground of mutation entry in favour of the defendant. In our view, both the cases referred by the learned counsel are absolutely out of context. An application for claiming damages under the Motor Vehicles Act is not a plaint governed by the Civil Procedure Code. There is a form prescribed under the Rajasthan Motor Vehicle Rules for making an application for compensation which does not require averments to be made in so many words. In an application for compensation under the Motor Vehicles Act the question of rashness and negligence

is a matter of inference to be drawn from the circumstances leading to accident, the manner in which the accident occurred and other relevant facts. We must keep in mind the principle of res ipsa locutor in a given situation, it is for the Tribunal to draw its inference regarding rashness and negligence from the material on record. We may usefully refer to a decision of Orissa High Court in Bhuban Chandra Dutta Gupta v. General Manager, Orissa State Road Transport Corporation and Ors., 1985 ACJ 228. Even if the Code of Civil Procedure is applicable, it is well established law that if a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it, if it is satisfactorily proved by evidence. Reference be made to Bhagwati Prasad v. Chandra Maul .

5. The learned Single Judge rightly reversed the finding of the Tribunal as the basic facts of the case clearly establish that it is a case of negligence on the part of both the drivers. They owed a duty to take reasonable, care to anticipate the commonplace factors and to go to the left side to the such an extent that other vehicle passed from a reasonable safe distance. The Bombay High Court in Maharashtra State Road Tansport Corporation and Ors. v. Ramchandra Ganpatrao Chincholkar and Ors. has taken the said view after referring to the following passages from Charles-worth on negligence which may also usefully be noticed:

The rule of road is that when two vehicles are approaching each other from opposite directions, each must go on the left or near side of the road for the purpose of allowing the other to pass. Failure to observe this rule is prima facie evidence of negligence.

6. As regard the quantum of compensation on going through the evidence we are of the view that the learned Single Judge has rightly allowed the claim of compensation in the amount of Rs. 1,69,500/-. The claimant at the relevant time was earning a sum of Rs. 1500/- per month. He lost one hand at the age of 35 years. He has claimed a sum of Rs. 1,25,000 towards damages, Rs. 20,000/- for treatment, a sum of Rs. 4,500/- has been claimed for loss of earning for a period of three months. This, is how the amount to Rs. 1,69,500/- has been calculated. Looking to the age of the claimant, the nature of injury suffered by him, we are of the view that the amount allowed by the learned Single Judge is quite fair and reasonable. We may mention that in doing so the learned Single Judge has taken guidance from the number of precedents of this Court, other courts and the Apex Court. Thus, no interference is called for with the impugned order.

7. It is submitted by the learned counsel for the appellant that no direction has been given with respect to the adjustment of Rs. 7,500/- paid by the appellant against the no fault liability. We are of the view, that no such direction is required to be given, as a matter of course, the amount paid is bound to be deducted.

8. Consequently, we find no merit in this special appeal and the same is dismissed.