

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 279 / 2002

1. Chhagan Singh s/o Jeet Singh,
2. Smt Sajjan Kanwar w/o Chhagan Singh

Both r/o village Bhesara, Police Station Sankara, District Jaisalmer.

----Appellant-claimants

Versus



1. Pitu Ram s/o Dula Ram, by caste Jat, r/o village Sirsa, Police Station Govindgarh, District Jaipur; Driver RSEB, New Power House Office, AEN, TLD-I, SD-II, Jodhpur.

2. Rajasthan Rajya Vidhyut Mandal, Jaipur through
A. Chairman, Rajasthan Rajya Vidhyut Mandal, Jaipur.

B. Asstt. Engineer (SD-I), Rajasthan Rajya Vidhyut Mandal, Bhilwara.

C. Asstt. Engineer, Rajasthan Rajya Vidhyut Mandal, New Power House, Jodhpur.

3. United India Insurance Company Ltd, Divisional Office, Jodhpur.

----Respondent-non-petitioners

For Appellant(s) : Mr M.S. Soni for Mr Rajesh Panwar

For Respondent(s) : Mr Deepak Parihar on behalf of respondent No.2

HON'BLE DR. JUSTICE VIRENDRA KUMAR MATHUR

Judgment

Date of pronouncement: (07)/03/2018

This Civil Misc. Appeal under sec.173 of the Motor Vehicles Act, 1988 has been preferred against judgment dated 21.04.2001 passed by the Motor Accident Claims Tribunal, Jodhpur {herein after 'the Tribunal'} in MACT Case No.271/1996, whereby the Tribunal dismissed the claim petition filed by the appellants.

Briefly stated, the appellant-claimants filed a claim petition before the Tribunal claiming compensation of Rs.18,20,000/- on account of death of their son Sumer Singh in an accident, which took place on 18.08.1995. It was stated that while Sumer Singh was coming from Ratanada towards Circuit House on his Hero Puch bike bearing No.RJ22-M-3121 at about 11:30-12:00PM on 18.08.1995, at the relevant time a Troller of RSEB bearing No.RJB 3026 was stationary on the road, without there being any indicator or signal of light. The Troller was standing towards Circuit House and other trucks with dazzling lights were coming from Circuit House side. Due to non-signal or indicator of light on the Troller, Sumer Singh dashed with his bike into the Troller from behind, resulting thereby that he succumbed to the injuries instantaneously. It was also stated that the deceased Sumer Singh was 23 years of age and he used to earn Rs.2500/- per month by driving taxi-jeep and he was a skilled driver.

Notices of claim petition were served on respondents. After service, the respondents filed their respective written statement. On the basis of pleadings of the parties, the Tribunal framed issues and tried the case.

Issue No.1 related to rashness & negligence of non-petitioner No.1 was decided against appellant-claimants and in favour of respondent-non-petitioner No.1. Issues No.2 and 3 were decided in favour of appellant-claimants. While deciding issue No.4, the Tribunal assessed compensation at Rs.96,500/- but since the issue No.1 was decided against the appellant-claimants, the Tribunal dismissed the claim petition. Being aggrieved and dis-satisfied



with the judgment dated 21.04.2001 passed by the Tribunal, the appellant-claimants have preferred this appeal.

It was contended that the learned Tribunal has committed illegality while deciding issue No.1 in the manner it has decided. The findings of the Tribunal was based on conjectures and surmises while from the material placed on record, it was fully established that ill-fated accident took place solely on account of rash & negligent act of respondent No.1. It was contended that AW1 Chhagan Singh stated in his statement that the Troller was standing without indicator and back-light and he also deposed that this fact was told to him by Narpat Singh and Surendra Singh.

AW2 Narpat Singh clearly stated that the Troller was without indicator and he also went to Police Station to lodge report but the report was already lodged by DW1. He informed about the accident to AW1 Chhagan Singh. The Tribunal has seriously erred in not appreciating statements of witnesses in right perspective and it deserves to be held that the ill-fated accident took place solely on account of rash and negligent act of respondent No.1.

It was also contended that though Police gave Final Report in negative but the appellants filed a Protest Petition, their Protest Petition was allowed and the Magistrate ordered for taking cognizance of the offence under sec.279, 304A IPC against Driver of the Troller, respondent No.1. All prosecution witnesses clearly stated that the Troller was standing without indicator or light. The Tribunal has placed much reliance on statement of DW1.

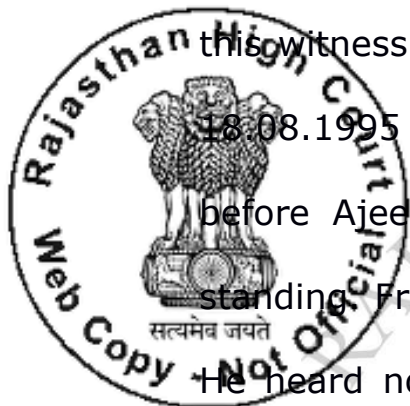
In this backdrop of allegations raised by the appellants, perused entire evidence and record of the Tribunal.

PW1 Chhagan Singh in his statement deposed that on 18.08.1995 Sumer Singh was going from Bhatiya Circle to Laxmi Nagar in the night at about 11:30-12:00PM. When he reached near Ajeet Bhawan, at that time a Troller No. No.RJB 3026 was standing without indicator and back light. He also stated that this was told to him by Narpat Singh and Surendra Singh. In this way,

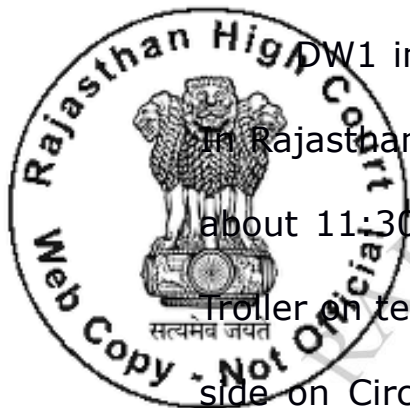
this witness is not eye-witness. AW2 Narpat Singh stated that on 18.08.1995 in the night at about 11:30-12:00PM they were sitting before Ajeet Bhawan. At that time on road side a Troller was standing. From Bhatiya circle a vicky came towards Circuit House. He heard noise of accident. When they rushed to the site, they

found that the scooty was broken and one person was lying on the road. When they saw face of the person lying on the road then they recognized that he was Sumer Singh. When they run to inform Police Station, Udaimandir, they were told that the Police has already received information.

In their statements, they stated that the accident occurred due to fact that there was no indicator or back light on the Troller and also due to lights coming from trucks running on opposite side. In the cross-examination, AW2 stated that they were sitting at the gate of Ajeet Bhawan and the accident took place at the corner of Ajeet Bhawan, which is 200-250 feet away. Near the Troller 4-5 persons were sitting and they never talked to those persons nor any one of those 4-5 persons sitting near the Troller was ever examined by claimants. Other person Surendra Singh was not examined. There was no other eye-witness.



On perusal of site place of the accident (Exs.2 & 3), the road is 48 feet wide and at the road side, RSEB Troller was standing, which was 83.5 feet long and 11.5 feet wide. This vehicle was having 34 tyres and it was standing 3 feet away from road side. The Hero Puch bike No.RJ22-M-3121 was lying on the road near side of rear tyres and right handle of the bike was found broken.



DW1 in his statement deposed that he was working as J.En. in Rajasthan State Electricity Board. In the night of 19.08.1995 at about 11:30-12:00PM he received information from Driver of the Troller on telephone who told that the Troller was standing on road side on Circuit House road and one vehicle collided on the back side. On this information, he reached to the spot and registered FIR with Udaimandir Police Station and inspected the site along with Police and took the deceased person to MGH mortuary. On inspecting the site, the Troller was found standing at road side and indicators lights were also blinking on the Troller. Site plan was prepared before him by Police.

Learned Tribunal while deciding issue No.1 has rightly appreciated the evidence placed on record and came to the conclusion that the accident took place due to rash and negligent driving of deceased person himself and decided the issue No.1 against the appellant-claimants. There is no error and ground for interference in the judgment under appeal. The appeal has no merit and the same is dismissed.

(VIRENDRA KUMAR MATHUR)J.