

A RAJASTHAN STATE ROAD TRANSPORT CORPN.

v.

ALEXIS SONIER & ANR.

(Civil Appeal No.2967 OF 2012)

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OCTOBER 8, 2015

[RANJAN GOGOI AND R.K. AGRAWAL, JJ.]

Motor Vehicles Act, 1988: s.166 – Accident claim –
C *Claimant, American citizen met with an accident while he was*
in India due to rash and negligent driving of Corporation bus
– He suffered injuries and after treatment shifted to America
by air under medical supervision of doctors – Claim for
compensation – Commissioner appointed to visit America
D *to record the statements of 11 persons by order dated*
11.7.1990 – Evidence recorded by Commissioner – No
objection taken by Corporation regarding evidence recorded
by Commissioner of those persons also who were not named
in order dated 11.7.1990 – Tribunal awarded compensation
E *of Rs.1.25 crores including a sum on account of Special*
damages in respect of medical expenses in USA borne by
Medi-Cal – Corporation and claimant both appealed before
the High Court – Plea before High Court by Corporation that
evidence of the persons who were not named in the order
F *dated 11.7.1990 cannot be taken into consideration – High*
Court deleted the amount under the head Special damages
on the ground that there is no manner for the courts in India
to verify the fact as to whether or not the said amount will be
paid to the concerned Medi-Cal department by claimant –
G *Further, it held that statements of persons recorded by*
Commissioner cannot be ignored in view of fact that
Corporation did not raise objection earlier – Held: Tribunal
specifically recorded that counsel of Corporation was asked
H *as to whether he has any objection to take on record the*

statements of witnesses but he did not raise any objections and the statements of witnesses were taken on record – In this view of the matter, it is not now open for the Corporation to raise this plea now – There were evidence to the effect that the bus was driven rashly and negligently – Therefore, the question of accident being a result of contributory negligence would not arise – High Court rightly observed that it is difficult to keep a track as to whether the amount awarded under head ‘Special damages’ would be paid over to the Medi-Cal Department or not, and therefore, the High Court was justified in disallowing compensation under the said category – However, the claimant is entitled to claim Rs. 10 lakhs for keeping an attendant for the rest of his life – Plea – New plea.

Disposing of the appeals, the Court

HELD: 1. Though the Commissioner recorded evidence of persons viz., AW-10A to AW- 19 except AW-18 who were not named in the order dated 11.07.1990, yet, when the Commissioner filed the report along with the evidence so recorded, a specific question was put to the counsel of the Corporation as to whether he has any objection but he did not raise any objection. In this view of the matter, it is not now open for the Corporation to raise this plea. [Para 12] [575-B-C; G]

2. The site plan which was taken into consideration by the High Court, showed that the bus was driven at a sufficiently high speed and skid marks of the tyres of bus are about 32 ft. in length which were because of the speed of bus. The speed of the bus was quite high and at the relevant time it could not be stopped immediately. The High Court, therefore, correctly held that the bus was driven rashly and negligently and at a very fast speed. Therefore, the question of accident being a result of

A contributory negligence does not arise. So far as the question regarding the amount of damages/award in respect of Medi-Cal, which was deleted by the High Court is concerned, in the State of California, there is a Scheme under which persons who are not covered under any insurance scheme like claimant are extended medicare facilities for which no payment is to be made by such persons and only the amount received as reimbursement has to be handed over to the Medi-Cal Department. In the present case, the Medi-Cal Department has already incurred expenses for the treatment of the claimant. It will be very difficult to keep a track, as observed by the High Court, as to whether the amount awarded under this head would be paid over to the Medi-Cal Department or not, and therefore, the High Court was justified in modifying the award of the Tribunal by disallowing US\$125,348.01 under the category 'Special Damages' relating to the Medi-Cal. However, the claimant had claimed a sum of Rs. 10 lakhs for keeping an attendant for the entire life. This Court, in the case of *Sanjay Verma* has held that where any claim is made towards cost of attendant from the date of accident till he remains alive and it is also proved, then that claim is justified. The claimant is entitled for a sum of Rs. 10 lakhs plus interest at the rate of 6% per annum from the date of presentation of the claim petition till the date of actual payment towards expenses to be incurred for keeping an attendant for the rest of his life to look after him. Even though the claimant had not claimed any amount in US dollars in the claim petition and the entire claim was in the Indian currency, the amount awarded by the Tribunal in respect of some of the items under head 'Special Damages' has been given in terms of US dollars and the exchange rate has been applied at the rate of 14 per US dollar. This has been done on the

specific finding that the claimant himself had claimed A
exchange rate of Rs. 14 per US dollar. As in the present
case, claimant had claimed the amount only in Indian
rupees and there is no specific mention of US dollars,
there is no question of applying any exchange rate. The
Tribunal, while awarding compensation under the head B
'Special Damages' in terms of US dollars when converted
into Indian rupees, the amount comes much less than
the amount claimed by the claimant in the claim petition.
Therefore, there is no question of any further reduction C
in the said amount. The amount of Rs. 10 lakhs towards
the cost of helper/attendant is appropriate and does not
call for any further enhancement. [Paras 13 to 16] 576-B-
H; 577-A, E-H; 578-C-F]

Sanjay Verma v. Haryana Roadways 2014 (1) D
SCR 924: (2014) 3 SCC 210 – relied on.

*United India Insurance Co. Ltd. and Others. v.
Patricia Jean Mahajan and Others* 2002 (3) SCR
1176: (2002) 6 SCC 281 – referred to. E

Case Law Reference

2014 (1) SCR 924 relied on. Para 11

2002 (3) SCR 1176 referred to. Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. F
2967 of 2012

From the Judgment and Order dated 23.04.2010 of the
High Court of Judicature for Rajasthan at Jaipur in S.B. Civil
Miscellaneous Appeal No. 2629 of 2003 G

S. K. Bhattacharya, N. B. Paonam for the Appellant.

Pravin Satale, Rajiv Shankar Dvivedi for the
Respondents. H

A The Judgment of the Court was delivered by

R.K. AGARWAL, J. Civil Appeal No. 2967 of 2012

B 1. This appeal has been filed by the Rajasthan State Road
Transport Corporation (in short 'the Corporation')-the appellant
herein against the judgment and order dated 23.04.2010
passed by the High Court of Judicature for Rajasthan at Jaipur
Bench, Jaipur in S.B. Civil Misc. Appeal No. 2629 of 2003
wherein the appeal filed by the present appellant has been
C partly allowed and the sum of US\$125,348.01 awarded
by the Motor Accidents Claims Tribunal (in short 'the Tribunal')
under the category 'Special Damages' has been disallowed
and the remaining part of the award has been maintained.

D **Civil Appeal Nos. 9944-9946 of 2011**

E 2. The above appeals have been filed by Alexix Sonier
through next friend-Mrs. Dominique Sonier (his mother)-
against the aforementioned order passed by the High Court
wherein the appeal filed by the claimant for enhancement of
amount awarded by the Tribunal has been dismissed.

Brief facts:

F 3. Alexix Sonier-the claimant is an American citizen. On
08.01.1988, the claimant was participating in a 'Peace March'
along with the citizens of various other countries from
Ahmedabad, in the State of Gujarat to Rajghat, in New Delhi.
While participating in the aforesaid march along with a group
of other persons, between Jaipur and Delhi, near Chandwazi,
G a bus of the Corporation, bearing Registration No. RNP-897,
which was driven by one Banwari Lal Chowdhary rashly and
negligently, at a very high speed, came and struck the claimant
from behind. As a result of which, the claimant fell down on the
road and became unconscious and sustained injuries in the
H said accident. The claimant was taken to the Sawai Man Singh

Hospital, Jaipur where it was found that among other injuries he had also received head injury. Three surgical operations were performed on the claimant, however, he did not regain consciousness. On medical advice, the claimant was shifted to Vadilal Sarabhai Hospital, Ahmedabad, Gujarat and despite all possible efforts, the condition of the claimant did not improve. He was discharged from the hospital at Ahmedabad on 22.04.1988 and shifted by air, under medical supervision of the doctors, to the United States of America. The claimant, through his next friend-Mrs. Dominique Sonier-his mother, filed a claim petition through an authorized person viz., Surendra Nath Singh Javeria. Mrs. Dominique Sonier-mother of the claimant also joined the said claim petition through that authorized person. In the claim petition, after narrating the entire facts of the accident, injuries as also the treatment undergone, a total sum of Rs. 2,02,36,000/- as compensation was claimed along with interest at the rate of 18% per annum from the date of filing of the claim petition till the actual date of payment.

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4.The various heads under which the claimant had claimed damages/compensation are as follows:-

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(i) For treatment undertaken in India

Rs. 1,50,000/- less Rs. 16411.79 = Rs. 1,33,588.21

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(ii) Expenses to be paid to Dr. Chawala for his services + the amount spent in shifting the patient from Jaipur to Ahmedabad by air: Rs. 1,40,000/-

(iii) The amount spent for treatment in America = Rs. 13,00,000/-

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(iv) The amount proposed to be spent on keeping a nurse at home at the rate of Rs. 40,000/- per month. A sum of Rs. 4,00,000/- is claimed under this head.

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- A (v) Compensation for loss of earning Rs. 1,68,000/-
(vi) Compensation for loss of future earnings Rs. 1,25,00,000/-
- B (vii) Compensation for physical and mental suffering Rs. 25,00,000/-
(viii) Compensation for need of a helper Rs.25,00,000/-
(ix) Compensation for keeping an attendant Rs. 10,00,000/-
- C (x) Compensation for the loss of earning of his mother who will look after him Rs. 10,00,000/-

D Hence, a total sum of Rs. 2,02,36,000/- was claimed.

E 5. The Corporation, apart from raising the objections on technical grounds, denied the manner in which the accident occurred as stated in the claim petition. A specific stand was taken that the accident occurred on account of the negligence of the claimant himself and, at best, it was a case of contributory negligence as the claimant was trying to cross the road but midway he back tracked and met with an accident. It was further pleaded that the best medical facilities were available at Jaipur and there was no need to shift the claimant from Jaipur to Ahmedabad without having the full treatment at Jaipur itself.

F Also, there was no necessity for the claimant to proceed to United States of America without proper treatment and the Corporation was not liable for the condition of the claimant-Respondent No. 1 herein. Further, the expenses in the claim petition were very high and exaggerated so also the amount of compensation claimed.

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H 6. The Tribunal held the claim petition to be in accordance with law and properly presented. It, however, held that the

accident had occurred on account of negligence on the part of the driver of the Corporation. The Tribunal, on the basis of evidence on record, awarded damages as follows:-

	Dollar	Rupees	
"(a) Special Damages			
(i) Expenses incurred on treatment in India		50,000/-	B
(ii) Air Fare for Jaipur to Ahmedabad		4,000/-	
(iii) Air Fare to Ahmedabad to USA		1,00,000/-	
(iv) Medical Expenses in USA borne by Medi-Cal	125,348.01		
(v) Medical expenses in USA borne by parents	25,000.00		
(vi) Future expenses on Medical Treatment		4,00,000/-	
(vii) Loss of income by Claimant	408,000.00		C
(viii) Loss of income of attending mother	81,584.00		
(ix) Future expenses for management of attendant	60,000.00		
(x) Expenses on Two Commissions		1,61,954/-	
(b) General Damages			
(i) For pain, sufferance and mental agony		10,00,000/-	D
(ii) For loss of amenities and enjoyment of life		10,00,000/-	
Total	\$699,932.01	Rs. 27,15,954/-	
So Total damages in Rupees: (699932.01 x 14) + 2715954 = Rs. 1,25,15,002.14			
In round figure, it is Rs. 1,25,15,002/-"			

The Tribunal further awarded interest at the rate of 6 per cent per annum with effect from the date of presentation of the claim petition, that is, 07.07.1988, after deducting a sum of Rs. 25,000/- paid to the two Commissioners who were appointed for the recording of evidence and Rs. 1,16,411.69/- towards the expenses incurred and the amount paid by the Corporation for the treatment etc., in India to the claimant.

7. Being aggrieved by the Award dated 29.09.2003, the Corporation as also the claimant have filed appeals before the High Court. The High Court gave an opportunity to the parties to arrive at a mutual settlement regarding the claim but the Corporation declined to negotiate the matter. It may be mentioned here that on an application filed by the claimant

A before the Tribunal seeking appointment of a Commissioner to the United States of America to record the statements of 11 persons, the Tribunal, vide order dated 11.07.1990, allowed the said application to record the statements of 11 persons as mentioned in the order and also appointed a Commissioner
B for that purpose. It was contended by the appellant that AW-10A to AW-19 all of whom except AW-18 were not named in the order dated 11.07.1990. The Commissioner submitted his report and also the evidence of all the persons recorded by
C him before the Tribunal. No objection was taken by the Corporation regarding recording of evidence of persons not named in the order dated 11.07.1990. In fact, the Tribunal, in its order dated 24.06.1991, has specifically recorded that Mr. Manish Bhandari, learned counsel who appeared on behalf of
D the Corporation was asked as to whether he has any objection to take on record the statements of witnesses but he did not raise any objection and the statements of witnesses were taken on record.

E 8) Before the High Court, the Corporation took an objection that the evidence recorded by the Commissioner of the persons who were not named in the order dated 11.07.1990 cannot be taken into consideration. The Corporation also objected to the order of the Tribunal awarding damages under
F the head 'Special Damages' in respect of medical expenses incurred in United States of America borne by Medi-Cal amounting to US\$125,348.01 on the ground that witness AW-18 had admitted that in the State of California a medical programme is in force under which persons who were not
G covered under any insurance and/or unable to pay their medical expenses, all their medical expenses will be borne by the State. According to the Corporation, since the aforesaid amount has been awarded under the head of medical expenses borne by Medi-Cal, the claimant cannot be held entitled to receive the

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aforesaid amount of US\$125,348.01 and the same is liable to be reduced. It was further submitted before the High Court that the claimant has failed to prove the negligence on the part of the driver of the Corporation and the Tribunal has erred in applying and holding the Corporation liable. The High Court, on appreciation of evidence on record, upheld the findings of the Tribunal that the driver of the bus of the Corporation was negligent and driving the bus rashly and it is not a case of contributory negligence, however, the High Court deleted the amount of US\$125,348.01 under the head of special damages on the ground that there is no manner for the courts in India to verify the fact as to whether or not the aforesaid amount will be paid to the concerned Medi-Cal department by the claimant and apart from it, no statutory enactment of any such Scheme was produced before the Court in evidence of existence of such a Scheme for the Court to take cognizance of. Moreover, there is no averment in the claim petition regarding the amount spent by the Medi-Cal Programme and for reimbursing the aforesaid amount to the said department. The High Court further held that the statements of the persons recorded by the Commissioner, pursuant to the order dated 11.07.1990, cannot be ignored and have to be taken into consideration in view of the fact that the Corporation had raised no objection, as would be clear from the order dated 24.06.1991. The High Court, however, declined to enhance the amount of award by the Tribunal by stating that it cannot be said to be inadequate.

9. Heard the arguments advanced by learned counsel for the parties and perused the records. Since a common question of law and facts arise in these appeals, they are being disposed of by this common judgment.

10. Learned Counsel for the Corporation submitted that the High Court erred in law in upholding the order of the Tribunal

A awarding compensation to the claimant which is highly on the exaggerated side. He further submitted that the claimant had not claimed any damages in terms of US Dollars and claim was made only in Indian currency, therefore, the award of compensation by the Tribunal as upheld by the High Court in
B respect of certain claims in US Dollars was not justified in law. He further submitted that there was no question of applying the currency exchange rate of Rs. 14 per US Dollar as the claim itself has not been made in it. He further contended that
C the driver of the bus of the Corporation was not at fault and he was not driving the bus rashly or speedily and in fact, if at all, the accident was a result of contributory negligence, and therefore, the Corporation is not liable to pay any amount as damages or compensation.

D 11. Learned counsel for the claimant, on the other hand, submitted that the High Court was not justified in deleting the medical expenses in USA borne by Medi-Cal, as in the State of California, it is government policy that medical treatment is to be given by the State to such persons who are unable to
E afford and further such persons are not reimbursed by anybody else, however, if any reimbursement of any medical expense is received, it has to go to the State. He further submitted that the claimant was entitled to the amount given by the Tribunal under expenses borne by Medi-Cal. He further submitted that
F the claimant was also entitled for the amount to be spent for helper/attendant to be engaged as the claimant had suffered brain injury and have been confined to bed. According to him, as the expenses have been incurred and are to be incurred in
G US dollars, exchange rate which was prevalent at the time of the passing of the award by the Tribunal ought to be given. In support of this, he placed reliance on a decision of this Court in **Sanjay Verma vs. Haryana Roadways** (2014) 3 SCC 210.

H 12. With regard to the plea taken by the Corporation that

the statement of the persons recorded by the court appointed Commissioner, who were not named in the order dated 11.07.1990 cannot be taken on record is concerned, we find that though the Commissioner has recorded evidence of persons viz., AW-10A to AW-19 except AW-18 who were not named in the order dated 11.07.1990, yet, when the Commissioner filed the report along with the evidence so recorded, a specific question was put to the counsel of the Corporation as to whether he has any objection but he did not raise any objection as would be clear from the order dated 24.06.1991 passed by the Tribunal which for ready reference is reproduced below:

“On behalf of the applicant Shri Bhartiya and on behalf of R.S.R.T.C. Shri Manish Bhandari and Commissioner Shri Bhag Chand Jain are present. Today Shri Bhag Chand Jain, court commissioner presented an application annexing the statements which he recorded of 10 witnesses after visiting America. Shri Manish Bhandari was asked whether he has any objection to take on record the statement of witnesses Dr. E.Scott Conner, Dr. Thomas Z. Weber, Mr. Courtney Billups, Mr. Kent Furguson, Mr. Walter Joseph Babine, Mr. Jan Robert, Mrs. Nancy Brooks, Miss Maureen Mckenzie, Mrs Carole Kellogg and Mr. Ivan Sonier. Mr. Ivan Sonier which was recorded in his presence. He did not raise any objection. Therefore the aforesaid statements of witnesses are taken on record and exhibited as AW 10A and AW-19. The applicant concludes his depositions.”

In this view of the matter, it is not now open for the Corporation to raise this plea.

13. So far as the question as to whether the accident in question which occurred on 08.01.1988 was a result of

A contributory negligence or the driver of the bus of the Corporation was driving rashly and speedily is concerned, we find that the driver of the bus had denied that any accident in fact had taken place, however, the site plan (Exh. 52), which has been taken into consideration by the High Court, shows that the bus was driven at a sufficiently high speed and skid marks of the tyres of bus are about 32 ft. in length which were because of the speed of bus. The speed of the bus was quite high and at the relevant time it cannot be stopped immediately. The High Court has, therefore, correctly held that the bus was driven rashly and negligently and at a very fast speed. Therefore, the question of accident being a result of contributory negligence does not arise. So far as the question regarding the amount of damages/award in respect of Medi-Cal, which has been deleted by the High Court is concerned, we are of the considered opinion that in the State of California, there is a Scheme under which persons who are not covered under any insurance scheme like claimant are extended medicare facilities for which no payment is to be made by such persons and only the amount received as reimbursement has to be handed over to the Medi-Cal Department. In the present case, we find that the Medi-Cal Department has already incurred expenses for the treatment of the claimant. It will be very difficult to keep a track, as observed by the High Court, as to whether the amount awarded under this head would be paid over to the Medi-Cal Department or not, and therefore, in our considered view, the High Court was justified in modifying the award of the Tribunal by disallowing US\$125,348.01 under the category 'Special Damages' relating to the Medi-Cal.

G 14. However, we find that the claimant had claimed a sum of Rs. 10 lakhs for keeping an attendant for the entire life. Neither the Tribunal nor the High Court had given any amount under the said head. We find that this Court, in the case of H **Sanjay Verma (supra)**, has held that where any claim is made

towards cost of attendant from the date of accident till he A
remains alive and it is also proved, then that claim is justified.
In paragraph 22 of **Sanjay Verma (supra)** this court has held
as follows:

“22. In the claim petition filed before the Motor Accidents B
Claims Tribunal the claimant has prayed for an amount
of Rs 2,00,000 being the cost of attendant from the date
of accident till he remains alive. The claimant in his
deposition had stated that “he needs one person to be C
with him all the time”. The aforesaid statement of the
claimant is duly supported by the evidence of PW 1 who
has described the medical condition of the claimant in
detail. From the aforesaid materials, we are satisfied
that the claim made on this count is justified and the D
amount of Rs 2,00,000 claimed by the claimant under
the aforesaid head should be awarded in full. We order
accordingly.”

Following the principles laid down by this Court in **Sanjay E
Verma (Supra)** reproduced above, we accordingly hold that
the claimant is entitled for a sum of Rs. 10 lakhs plus interest
at the rate of 6 % per annum from the date of presentation of
the claim petition till the date of actual payment towards
expenses to be incurred for keeping an attendant for the rest
of his life to look after him. F

15. We further find that even though the claimant had not
claimed any amount in US dollars in the claim petition and the
entire claim was in the Indian currency, the amount awarded
by the Tribunal in respect of some of the items under head G
'Special Damages' has been given in terms of US dollars and
the exchange rate has been applied at the rate of 14 per US
dollar. This has been done on the specific finding that the
claimant himself had claimed exchange rate of Rs. 14 per US H
dollar. Even though this Court in the case of **United India**

A ***Insurance Co. Ltd. and Others. Vs. Patricia Jean Mahajan and Others*** (2002) 6 SCC 281 has held that there would be three relevant dates for the purpose, viz., the date on which the amount became payable, the date of the filing of the suit and the date of the judgment and it would be fairer to both the parties to take the latest of these dates, namely, the date of passing of the decree as the relevant date for applying the conversion rate. Yet, where the prayer for passing a decree is indicated in rupees, there would not be any dispute regarding what rate of conversion to be applied. As in the present case, we find from the claim petition that claimant had claimed the amount only in Indian rupees and there is no specific mention of US dollars, there is no question of applying any exchange rate. The Tribunal, while awarding compensation under the head 'Special Damages' in terms of US dollars when converted into Indian rupees, we find that the amount comes much less than the amount claimed by the claimant in the claim petition. Therefore, there is no question of any further reduction in the said amount.

E 16. We are also of the view that the amount awarded by the Tribunal as modified by the High Court and further modified by us by awarding a sum of Rs. 10 lakhs towards the cost of helper/attendant is appropriate and does not call for any further enhancement. In view of the aforementioned discussions, Civil Appeal No. 2967 of 2012 is dismissed. However, Civil Appeal Nos. 9944-9946 of 2011 are partly allowed. Interlocutory applications, if any, are disposed of accordingly. In the facts and circumstances of the case, the parties shall bear their own costs.

Devika Gujral

Appeals disposed of.

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