

(1987) 01 BOM CK 0073
In the Bombay High Court
Case No : F.A. No. 8 of 1976

Anandi Ravji Vatas

APPELLANT

Vs

Oriental Industries and Others

RESPONDENT

Date of Decision : 08-01-1987

Acts Referred:

Citation : (1988) ACJ 129

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : P.P. Abhale, for the Appellant;

Final Decision : Allowed

Judgement

Sharad Manohar, J.—This appeal arises out of the order passed by the Joint Civil Judge, Senior Division, Thane, dismissing the suit of the Plaintiff, the present Appellant, filed by her against Defendant Nos. 1 and 2, presently Respondent Nos. 1 and 2 for damages of Rs. 11,000/-.

2. The facts of the case are very simple and are more or less admitted. The Plaintiff who was a girl of about 14 years of age on 9.4.1970 was returning home with a bundle of fuel collected by her and was proceeding by the side of the Shukla Mansion on the Ghodbunder-Thane Road when the bus No. MHT 1648, which is a bus carrying passengers, belonging to the first Respondent M/s. Oriental Industries driven by its driver present Defendant No. 2 knocked her down and caused injuries to her on the leg and the mouth. The time of the accident was 4 p.m. on that day. There is some dispute as to whether the bus itself knocked down the Plaintiff girl or whether one of the parts of the bus, viz., the universal joint broke away and dashed the girl. The initial case of the Plaintiff was that the bus itself knocked down the girl because it was being driven by the driver at a very fast speed. The case of the Defendant driver, however, was that it was not the bus which knocked the Plaintiff down but that the universal joint of the bus all of a sudden stripped itself apart and hit the Plaintiff when she was

walking down the street. No negligence on the part of the Plaintiff is even remotely suggested by the Defendant but their case is that this is a case of inevitable accident because they could not have foreseen the eventuality, viz., that the particular part of the bus, viz., the universal joint would come unstuck in such odd manner. The contention, therefore, of the Defendant was that there was no negligence on the part of the driver or on the part of the owner of the bus, the first Defendant. The Plaintiffs contention was that because of the injury caused by virtue of the accident she suffered great loss. She received grievous injury on the leg and on the mouth resulting in knocking off three of her front teeth. While admitting that the girl was injured in that accident, the case of the Defendants was that, in the first place, the consequences of the accident were not something for which the Defendants could be held answerable because there was no negligence on their part as such, and, in the second place, that the damage was not sustained by the Plaintiff to the extent alleged by her.

3. The pleadings of the parties are to the above effect and on these basic issues were framed and the parties went to trial. On behalf of the Plaintiff, evidence was given by the girl herself who mentioned the circumstances in which she met with the accident resulting into grievous injuries to her. She also mentioned about the treatment that she was required to take in the hospital as an inpatient as also after the discharge from the hospital. Particularly, she gave evidence with regard to the loss of the three front teeth resulting into making her marriage a difficult job. She claimed a sum of Rs. 11,000/- by way of general and special damages.

She also examined her father but his evidence is of no relevance except on the question of the expenses incurred by him for the Plaintiffs treatment.

4. On behalf of the Defendants, the driver-Defendant No. 2 was examined who deposed to the fact that the accident was the result of the universal joint getting unstuck and its hitting the Plaintiff on the leg resulting in the consequent injury. According to him, he could not have had any control over such unpredictable behaviour on the part of the vehicle. Thus, the long and short of evidence was that this was a case of inevitable accident.

The learned trial Judge accepted this contention and hence, dismissed the Plaintiffs suit although he did hold that the Plaintiff had proved damages at least to the extent of Rs. 3,500/-.

5. As rightly argued by Mr. Abhale for the Appellant, to my mind, the view taken by the learned Judge is totally unsustainable. The learned Judge has confined his attention only to the question as to whether at the particular time of the accident it was within the means of the driver to avoid the impact or not. What the learned Judge has, however, lost sight of is the crucial question as to whether the driver or Defendant No. 1, the owner of the vehicle, had taken sufficient care to keep the vehicle in such running and roadworthy condition that such a situation resulting in breaking away of the universal joint would not arise. This is after all a case of *res ipsa loquitur*. Accidents of such character are not of common

occurrence. Moreover, such accidents do not take place if the vehicle is maintained in the top condition. When the owner of a vehicle or his driver plies the vehicle on the road, it is his bounden duty to ensure that each of its parts functions with full efficiency and that it is not likely to give way while in motion or at any time when the vehicle is on the road. Universal joints do not have a propensity of coming unstuck in such manner as it did in the instant case, arbitrarily as it were. Such eventuality must be held to be the result of want of initial care on the part of the persons plying or driving the vehicle. The negligence of the driver or of the player of the vehicle lies, in such a case, in not taking such initial care. The driver may be driving the vehicle at a moderate speed with full care and caution but if right in the beginning he has abstained from taking requisite care to keep the vehicle in top and roadworthy condition, it would not lie in his mouth to say that his driving, while the vehicle was being driven, was of immaculate character. The initial omission on his part to inspect the vehicle and to ensure its safe drive cannot be remedied by subsequent cautious and careful driving of the vehicle. He must prove that he had taken every measure to keep the vehicle in the top condition for a drive on the road and the fact that he had taken such a care is not a matter of legal assumption. In fact the doctrine of *res ipsa loquitur* spells that the assumption is the other way. The very fact that such a part came unstuck and hit a pedestrian by coming loose out of the vehicle would give rise to the presumption that the requisite initial care was not taken by the driver or the owner of the vehicle. Such a presumption may be rebuttable presumption; but for that purpose evidence will have to be led by the driver or by the owner that everything needful was done by them to ensure that when the vehicle was on the road it was in a fully roadworthy condition.

6. The point is that in the instant case, there is not one word as much as murmured by the driver, Defendant No. 2. All that he has stated is that the universal joint broke away and hit the Plaintiff. He has not stated one word to the effect that the vehicle was subjected to the rigorous periodical check, that within reasonable time before embarking upon the journey, all its joints and parts were tested by the owner or by the driver, that each of the parts was found to be in a perfectly fit condition and in its right place and that the subsequent breaking away of the universal joint could not be attributed to the initial weak or faulty condition or to its dangerous or misplaced positioning of the motor part in question. The onus of proving this is heavily upon the Defendants. Nothing is done by either Defendant No. 1 or 2 to discharge this part of the onus and all that the court is called upon to do is to infer that since the driver had not exceeded the speed limit while the vehicle was being driven on the road, it must be assumed that the driver was not in any way negligent vis-a-vis the vehicle.

7. To my mind, this approach is basically faulty. If any authorities are necessary for this proposition, they are to be found in the two judgments cited by Mr. Abhale for the Appellant. In *Lakshmiammal v. State of Tamilnadu* AIR 1975 Madras 157, the facts were that the foot brake of the vehicle suddenly failed due

to oil leakage from the front left wheel cylinder. The defence was that such a failure of brakes could not have been anticipated by the driver. While rejecting this plea, the Madras High Court held as follows:

The fact of sudden failure of the brake is not by itself sufficient to hold that the accident was not due to negligence. The fact that the driver of the bus could not have anticipated such failure of the brake also does not alter the position. In all cases of such latent defects the Defendant can get over the liability only if it is further shown that latent defect was not discoverable in spite of reasonable care.

As is correctly shown by its head-note, it was further held in that case as follows:

In this case there was no evidence that periodical checking of the brake system had been done. But even that is not sufficient. It ought to be further shown that considering the age of the vehicle and other circumstances whether reasonable care did not require removal of the pipe carrying brake fluid at suitable intervals so that even the hidden parts of the pipe could be inspected.

The principle laid by the authority applies on all fours to the facts of the present case. Substitute the reference to the foot brake by reference to the universal joint and, it will be seen, the facts of that case and the facts of present case become identical.

The second authority is the judgment of a learned single Judge of the Andhra Pradesh High Court by Madhava Reddy, J., as he then was. In that case a flange of the vehicle got blown off from the vehicle and hit a person standing at a distance of 20 feet. It was held in that case that the implication was that the vehicle was not properly maintained and that there was rash and negligent driving rendering the owner of the vehicle liable vicariously for the compensation. The judgment itself could not be placed before me by Mr. Abhale but the ratio of the case is to be found from AIR 1981 NOC 34 . (See Andhra Pradesh State Road Transport Corporation Vs. P. Sridhar Rao,).

8. Differing from the view taken by the learned Judge, therefore, I must hold that on the evidence given by the Defendant No. 2 himself, the negligence on the part of the Defendant Nos. 1 and 2 must be held proved. I make it clear that so far as this case is concerned, the liability of Defendant No. 1 is not, strictly speaking, only vicarious liability. If the accident was the result purely of the rash and negligent driving, say by excessive speed, on the part of Defendant No. 2 it could be said that the liability of Defendant No. 1 was only vicarious liability, the main liability being that of the Defendant No. 2 driver. But in the instant case, upkeep, maintenance and the attention to roadworthy condition of the vehicle were all matters regarding which the owner of the vehicle, Defendant No. 1, could itself have applied its mind. If even that part of the work was totally left to Defendant No. 2, it would be a case of vicarious liability on the part of Defendant No. 1; but if it was not the duty of the driver, Defendant No. 2, to take the initial care of the vehicle to put it in the completely roadworthy condition, the duty in that behalf rested purely on Defendant No. 1. The company could have attended

to the same through other employees. The care required by law was imperative. Failure to take that care itself constitutes negligence.

9. Question then arises as regards the quantum of the liability. The learned Judge has held that the Plaintiff has proved the damages to the extent of Rs. 3,500/- only. I am unable to agree with the learned Judge even on this point. This is a case where a young girl on the threshold of youth has had her face disfigured. Her future and her matrimonial chances are definitely jeopardised to a very large extent. In addition to that she had severe pain and suffering and the fact that she was required to be admitted in the hospital as an inpatient and that after discharge from the hospital she was treated as outpatient has not been seriously disputed. In all these circumstances, it must be held that the total claim of Rs. 11,000/- made by the Plaintiff is very much of a reasonable claim. In fact if even larger claim was made, the court would be required to seriously consider whether even that larger claim should not have been granted to the Plaintiff. If at all, the Plaintiff had estimated the general damages on the conservative side, I see no reason why a decree for a sum of Rs. 11,000/- inclusive of the special and general damages should not have been granted in favour of the Plaintiff.

10. The appeal is, therefore, allowed. The decree passed by the lower court is set aside and the Plaintiffs suit is decreed with costs throughout. The Defendant shall pay to the Plaintiff a sum of Rs. 11,000/- with interest at 12% per annum from the date of filing of the application for leave to sue in forma pauperis till the date of the realisation.

Respondent No. 3 is the insurance company and has been impleaded as such. In the place of the original insurance company, the National Insurance Company has been substituted during the pendency of the appeal because the assets and liabilities of the original New Zealand Insurance Co. Ltd. have been taken over by the National Insurance Co. Respondent No. 3 is, therefore, directed to pay the above decreed amount to the Appellant herein or to deposit the same in this Court immediately and in any event within two months from the date of this decree.

The Respondents, shall pay the costs of the Appellant in the trial court as well as in this Court. Liberty to Mr. Abhale to move this Court for appropriate directions to the insurance company as regards the deposit of the amount in this Court.