
(1989) 01 BOM CK 0001
In the Bombay High Court
Case No : F.A. No. 202 of 1983

Devram

APPELLANT

Vs

Divisional Constroller, Maharashtra State Road Trans. Corpn.

RESPONDENT

Date of Decision : 31-01-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1990) 2 ACC 51 : (1990) ACJ 622

Hon'ble Judges : P.V. Nirgurdkar, J;B.N. Deshmukh, J

Bench : Division Bench

Advocate : A.H. Joshi, for the Appellant; S.S. Choudhari and A.S. Phengle, for the Respondent

Final Decision : Allowed

Judgement

P.V. Nirgudkar, J.—This appeal is directed against the dismissal of application for compensation by Ex Officio Member of the Motor Accidents Claims Tribunal, Nanded.

2. The application was made to the District Judge, Nanded, who is an Ex Officio Member of the Motor Accidents Claims Tribunal, Nanded u/s 110-A of the Motor Vehicles Act by minor Devram through his natural father Dayaram for compensation of Rs. 1,00,000/- for permanent disability and disfiguration of right leg below knee. However, that application against the Divisional Controller, Maharashtra State Road Transport Corporation, Nanded came to be rejected on the ground that the accident took place because of the negligence of the applicant himself and not of the S.T. driver. Aggrieved by this decision and disappointed by this order, injured Devram has come to this court in appeal.

3. It would be useful to take a brief resume of facts before going to the crux of the matter. These facts are not doubted and indeed cannot be disputed. The S.T. bus of which Puran Singh was driver on that fateful day of 13th February, 1979 left Habib Talkies at about 10.00 a.m. and reached Civil Hospital stop. Taking

usual halt there, the bus took turn near Shivaji Statue and proceeded towards Parbhat Talkies. It was on that way the accident took place. The right leg of the boy came underneath the right rear wheel of the S.T. bus and it got so badly injured that in the operation it was to be amputated. These are the facts which can be safely taken as admitted or otherwise proved by the evidence on record.

4. As has been indicated above, it is not open to any doubt that the right leg of the boy Devram has been amputated below the knee and the medical certificate produced in that connection has been admitted by the Corporation and relied upon by the lower court. So, this point would not detain us any longer.

5. Proceeding further, the crux of the matter is whether the accident was the result of the rash or negligent driving of the S.T. driver Puran Singh or whether it is rash or negligent act of the applicant Devram himself as held by the lower court. This is really the heart of the problem and meat of the matter. Before proceeding to have a look at the evidence, the panchanama of the scene of offence placed on record at Exh. 29 gives us a graphic picture. The road where the accident took place is 43 feet 6 inches in width and from the edge of the road where the accident took place left front wheel of the bus is 21 feet away. This clearly shows that the bus was not going along left side of the road. Even the driver of the bus has conceded that bus was in the centre of the road at the time when the accident took place. So, taking into consideration the situation of the road, it is obvious and plain that the driver did not keep his right side, i.e., left side of the road and he moved towards the wrong side. It is for him to explain under what circumstances he went to the wrong side.

6. Another feature which is not less significant to note is that it was office time as it was about 11 a.m. Admittedly, the road was crowded one at that time. It was the duty of the driver Puran Singh to keep proper look out on the road as well as to keep S.T. bus in such circumstances under proper control. Puran Singh is not a very young driver. He is middle-aged man presumed to have got sufficient experience. Such drivers are expected to know that boys of tender age do not act and behave in perfect manner on the road while walking or while riding a bicycle. They have lack of understanding and maturity and their maturity and understanding cannot be equated with that of adults. So, primarily Puran Singh is guilty of negligence for the accident caused and it is for him to show as to how the accident has been caused.

7. In this case, the only defence taken is that Devram dashed against the rear wheel and so Devram is negligent. That is not sufficient for the opponent or Puran Singh to absolve both of them from civil liability. They might have been acquitted of criminal liability but their acquittal in criminal case would not be of any help to them to strengthen their case in civil liability. As has been indicated above, Puran Singh has not observed rules of the road. By going on the wrong side of the road he has taken minor Devram by surprise. He has not explained under what circumstances he was required to go on the wrong wide of the road or in the middle of the road. He has also not stated whether he had given

sufficient warning to the injured that he was going to that side of the road or he was going to the centre of the road. We have carefully analysed and examined the evidence of Devram and Puran Singh and we are inclined to accept the evidence of Devram in preference to that of driver Puran Singh not because Devram is an injured person, not because he is disabled person and not because he has attracted our sympathy but because of merits. There is nothing in his cross-examination to discredit his version or to find anything to blame his testimony. That is not the case with Puran Singh. The learned Judge has stated a word of compliment about Head Constable Sheikh Amin (Exh. 27). In the first instance, may it be stated that when a permission by the learned Advocate for the applicant was asked to cross-examine this constable, it was refused. It might be correctly refused. We do not want to enter into that controversy. However, the learned Judge has stated that the constable has given a clean chit to the driver Puran Singh. But that does not appear to be so from his evidence. Sheikh Amin says that, on account of rush, the boy was frightened and he dashed against the bus from the front side. He has also stated that the boy was coming from the opposite direction. There is nothing in the evidence of Sheikh Amin that the boy was going fast on bicycle, that the boy was going along middle side of the road or the bus was going on left side of the road and that the driver of the bus Puran Singh was taking proper care and caution. Even then we fail to understand how the lower court observed that the evidence of this constable Sheikh Amin deserves a pat.

8. In conclusion, in our judgment, we find on ultimate analysis that the accident took place as a result of rash and negligent driving of S.T. driver Puran Singh and so the opponent Corporation is liable to pay the compensation.

9. The next question that arises for consideration is what would be the quantum. The learned trial Judge has pointed out one decision in which Rs. 70,000/- has been awarded as compensation of which Rs. 25,000/- for pain and suffering and Rs. 45,000/- for future pecuniary loss. Here, Devram is permanently disfigured and has been amputated below his right knee. It is doubtful whether he would be in a position to work even as waiter in hotel in future with the help of crutches. He would have to live only on the sympathy of others. Crippled life is considered more humiliating than death. In our opinion, therefore, Rs. 25,000/- should be awarded for pain and suffering and Rs. 50,000/- for future pecuniary loss. Thus, in all Rs. 75,000/- should be awarded to the applicant by way of compensation with future interest at the rate of 12 per cent per annum from the date of application.

10. Hence the order. Appeal is allowed. The order of dismissal passed by the lower court is set aside. The opponent Divisional Controller, Maharashtra State Road Trans. Corporation, Nanded to pay Rs. 75,000/- with interest at the rate of 12 per cent per annum from the date of application till realisation of the amount and also the cost of the application of this court as well as of the lower court to the applicant.