

(1986) 10 PAT CK 0010
In the Patna High Court

Dinanath Jha and Another

APPELLANT

Vs

Vijay Kumar Mahaseth and Another

RESPONDENT

Date of Decision : 27-10-1986

Acts Referred:

Motor Vehicles Act, 1988 — Section 110

Citation : (1987) 1 ACC 379

Hon'ble Judges : S. Shamsul Hasan, J

Bench : Single Bench

Judgement

S. Shamsul Hasan, J.—Both these appeals arise out of the same judgment and Award of the court below and that being so, they have been heard together and are disposed of by this common judgment.

2. The appellants in these two appeals, namely, M.A. 56 and M.A. 57 of 1982, are the parents of two boys, namely, Amarnath Jha and Gulab Sah, respectively, who were admittedly run over by an oil-tanker bearing No. BRG 3727 and consequently died on 7-9-1977 at 8-30 P.M. on a road running north to south near Madhubani Railway Station. Respondent No. 1 is the owner of the oil-tanker and Respondent No. 2 is the insurance company which had sold insurance policy covering such an accident. A claim case for Rs. 25,000/- as compensation to the parents of each of the deceased was filed u/s 110 of the Motor Vehicles Act. It may be appropriate to state here that the fact that the sons of the appellants died on being run over by the oil-tanker is not denied.

3. The short question that has become contentious is whether the death was caused by the negligence of the driver of the tanker or was due to an accident caused by an act of irresponsibility of the deceased boys themselves.

4. There are two versions of the occurrence. The version put forward by the appellants was that the two victims were coming from the opposite direction when they were dashed by the tanker which was travelling at some speed and they came under its wheel to meet their hoary fate. The version of the

Respondents is that the tanker was being driven at a speed of 15 Kilometres per hour which was under the circumstance not an act of rashness when the two victims were travelling on the flank of the road from the opposite direction on a cycle ridden in at random, dashed against a chowki on the road, came under the rear wheel of the tanker unnoticed by the driver and were thus crushed to death. The Respondents claim that there was no rashness on the part of the driver at all.

5. At the outset, I would like to examine the question of negligence on the basis of the evidence of the Respondents themselves and the manner in which the accident is said to have taken place. It will be interesting to examine the evidence of Khalasi Rayindra Sah (OPW5) and the driver Chandradeo Singh (OPW7) of the Oil-tanker in question. According to the evidence of the Khalasi, the tanker was being driven towards north on the left flank and the victims boys were going on a cycle from towards south on the opposite flank of the road near Bhagirath Hotel where a chowki was placed. The width of the road, according to this witness and as corroborated by the witnesses for the applicants-appellants, was 20-21 feet and the breadth of the tanker was 8 feet. Thus, the result of the linear calculation would be that the boys were 12 feet away from the tanker, meaning thereby that if the boys fell near Bhagirath hotel after being hit by the chowki, they would slide on the road for 12 feet to come under the rear wheel of the tanker, and that too unseen by the driver (OPW7). Another aspect is that even if it was possible for the victim boys to come sliding under the wheels of the tanker and if the tanker was being driven at the speed of 10 to 15 kilometers an hour, there was sufficient opportunity for the tanker-driver to stop the tanker before the victim boys would have been actually run over. On the contrary, according to OPW5, the tanker travelled 10 to 15 steps before it stopped which means considerable distance. The driver (OPW7) has stated incredibly that he saw the accident for the first time through his rear view mirror when he should have really felt the bump immediately after his tanker ran-over the two human bodies which would have also caused a lot of hue and cry by the pedestrians on the road. Thus on a careful consideration of the evidence of OPWs 5 and 6, it is patent that the accident could have been prevented had the driver been careful and had not acted in the manner as admittedly he did, the two persons had come under the wheels of the tanker having fallen 12 feet away and the driver did not notice their so coming under the wheels, it clearly indicates that the driver was not only negligent but completely rash also while driving through the crowded street which fact is not disputed, the place of occurrence being opposite the railway station. Driving of the vehicle at a speed of 10 to 15 kilometres per hour can be said to be too fast on such a busy road and this fact is amply demonstrated by the fact that the tanker could not be stopped till it had covered a distance of 10 to 15 steps after the fateful accident.

6. Coming to the evidence of the witnesses for the claimants, they are all members of the public and have deposed consistently to the version of the claimants of the accident and have said that the victim boys were going on the cycle when they were hit by the tanker and they came under its wheel. This

manner of accident appears to be more plausible and possible than the one stated by the opposite party-Respondents, though even that version shows the rashness and negligence of the driver. The witnesses for the claimants are quite right in their statement that the tanker was being driven on the middle of the road and the boys, who might have been a little towards the south, were dashed by the vehicle which could not stop and went on to crush the victims by its wheel. These witnesses have consistently stated that the tanker was being driven fast. Surprisingly, the element of speed set out by these witnesses has been disbelieved by the lower court merely on the ground that they did not give the exact speed at which the tanker was travelling Surely, a passerby can assess the speed of a vehicle by visual appraisal but he cannot be disbelieved merely because he could not give the exact speed. No passerby ever carries a speedometer which would have to be cordless to assess the exact speed of a vehicle. This was hardly a justified ground for disbelieving the version given by the witnesses for the claimants. I have, therefore, no hesitation in holding that in either view of the matter, which ever manner of the accident is accepted as a real version, though I feel that the appellants' version is the correct version and more reasonable, the driver of the tanker was acting rashly and negligently and thus the appellants are entitled to compensation as claimed by them.

7. Since the appeal was argued by the parties only on the question of negligence on the part of the driver and no other matter was argued for consideration, the amount claimed by the appellants would have to be awarded.

8. In the result, both the appeals are allowed, and the judgment and award of the tribunal are hereby set aside. It is directed that the payment of amount of the claim be made forthwith by Respondent No. 2. The Respondents will also be liable to pay interest on the amount claimed from the date of filing of the claim at the rate of 6 per cent per annum. The appeals are allowed with costs. Hearing fee Rs. 500/- against each of the parties in each case.