
(1998) 07 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.A. No. 25 of 1991

Gayatri Bai and Another

APPELLANT

Vs

Ahmadji and Others

RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (2000) ACJ 1323

Hon'ble Judges : A.K. Mathur, C.J;B.A. Khan, J

Bench : Division Bench

Advocate : S. Patwa, for the Appellant; G.K. Nema, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, C.J.—This is an appeal directed against the award dated 25.8.1990 passed by Motor Accidents Claims Tribunal, Rajgarh in Case No. 21 of 1985.

2. Brief facts giving rise to this appeal are that a claim petition was filed by Gayatri Bai (widow of deceased), minor daughter Lata Kumari and father Girdharilal of the deceased Pradeep Kumar who died on 9.5.1985 at Jirapur bus stand. Respondent Ahmadji was the owner of the bus No. MPU 5057 and respondent No. 2 Afjal and respondent No. 3 Govind were driver and cleaner respectively of the bus. The bus was being plied between Jirapur and Shujalpur. Deceased Pradeep Kumar was working as a conductor of the bus. On 9.5.85, the bus was standing at bus stand Jirapur and the driver and the cleaner had raised the chassis of the bus over a jack for the purpose of changing the spring. Deceased Pradeep Kumar was sitting by the side. On account of rash and negligent act of the driver and the cleaner, the jack slipped and consequently the deceased got pressed between the mudguard and the wheels of the bus and ultimately succumbed to the injury on the spot. The bus was insured with New India Assurance Co. Ltd.

3. It is alleged that the age of the deceased was 24 years at the time of

occurrence of the accident and he would have lived up to 60 years and he was earning Rs. 750 per month. Therefore, a claim petition for Rs. 3,99,000 was preferred by the claimants. The respondents admitted the accident but they denied that the act of the respondents was rash or negligent. It was further alleged that the deceased was earning wages of Rs. 300 per month. The insurance company also contested the claim and denied its liability. On the basis of pleadings of the parties, about six issues were framed by the Tribunal. The claimants examined Gayatri Bai, PW 1, Girdharilal, PW 2, Bherulal, PW 3, Banarsilal, PW 4, Ibtalal, PW 5, S.K. Joshi, PW 6 and Dr. K.K. Gidwani, PW 7. The witnesses were not cross-examined by the respondents except Dr. Gidwani and no evidence was led by any of the non-claimants. It is also alleged that in the criminal case which was registered against the respondents driver and cleaner u/s 304A of the Indian Penal Code, they pleaded guilty and they were fined Rs. 200 each.

4. The learned Tribunal came to the conclusion that the deceased died in this accident and that the act of the respondents was rash and negligent. The Tribunal further found that the deceased was earning Rs. 750 per month as per evidence of Gayatri Bai, Girdharilal, Bherulal and S.K. Joshi. The Tribunal also found that the deceased's wife Gayatri Bai was 24 years old, and his daughter was aged 13 months. It held that out of Rs. 750, the deceased might be spending at least Rs. 350 on himself and Rs. 400 per month on his family. Therefore, the yearly dependency was worked out at Rs. 4,800. The Tribunal further held that as per the testimony of Dr. Gidwani, PW 7, the age of the deceased was 28 years and, therefore, multiplier of 16 was applied and total compensation was worked out at Rs. 4,800 x 16 = Rs. 76,800 and also the interest at the rate of 12 per cent per annum from the date of the petition, i.e., 5.10.1985.

5. The Tribunal further observed that though the act of the driver and the cleaner was rash and negligent but the bus was not operating at the time of occurrence and it was standing; therefore, the words "use of the motor vehicle" are very important and have to be interpreted whether this will include a stationary vehicle or not. The Tribunal after referring some of the decisions in the cases of Bengal-Bihar Construction Company v. State of M.P. 1982 W N SN 354; Sewaram v. Nanne Khan 1987 ACJ 354 (MP) and Manoj Kumar Mundi v. Hari Gopal Rao Devasthale 1978 ACJ 92 (MP), came to the conclusion that in the present case, the vehicle was parked and it was not being used and, therefore, it cannot be said that the vehicle was in use and as such, it dismissed the claim petition. Hence, the present appeal has been filed.

6. We have heard learned counsel for the parties and perused the record. It is true that at the relevant time, the vehicle was parked and it was not in use. The question is whether the expression "use of the motor vehicle" should only be confined to mean the vehicle moving or it includes the vehicle standing also. A similar question came up for consideration before their Lordships of Supreme

Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , wherein their Lordships have given an extended meaning to the expression "use of the motor vehicle" appearing in Section S2-A of the Motor Vehicles Act, 1939 with regard to "no fault liability" and the same expression is pan materia in Section S5 of the Act of 1939. Hence, the interpretation given by their Lordships of Supreme Court u/s S2-A of the Act of 1939 will apply mutatis mutandis for Section S5 also.

In the above case, their Lordships, after referring to various decisions observed that this expression "arising out of use of motor vehicle" appears in various statutes, therefore, it has to be interpreted in the context in which it is used.

Their Lordships observed that this is a social legislation and this expression should be given a wider meaning so as to be in consonance with the beneficial object underlying the enactment. In this case, the accident took place between a truck and petrol tanker and the tanker turned turtle. Four and half hours after the accident, tanker exploded and caught fire resulting in injuries to and death of several persons assembled near it. The argument was that when the tanker was not in use and it was lying on the site and it caught fire resulting in injuries to and death of persons assembled near it, that may not be an accident arising out of the use of a motor vehicle as the motor vehicle was not operating and it was stationary and it may not fall within the definition of motor vehicle. As such, it was argued with regard to "no fault liability" that since the vehicle was not in use, therefore, the claimants are not entitled to be compensated. In that context, their Lordships observed as under:

...This construction of the expression "arising out of the use of a motor vehicle" in Section S2-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

The claim of the claimants with regard to "no fault liability" was allowed.

7. Similarly, the words "caused by or arising out of the use of the vehicle" appear in Section S5 (1) (b) (ii) of 1939 Act which reads as under:

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

In the present context also, the said expression should be given same extended meaning as observed by their Lordships in the aforesaid decision and if the said expression is given extended meaning, then though the accident in question may not have happened on account of motion of the vehicle but during the course of repair of the vehicle, it will include in the meaning of accident arising out of the use of the vehicle and the claimant cannot be denied the compensation. The Tribunal has given a very narrow meaning to the expression "arising out of the use of the motor vehicle". In view of the decision of the Hon''ble Supreme Court aforementioned that this expression should be given extended meaning because

of the social object behind the enactment, the view taken by the learned Tribunal does not appear to be correct.

8. Our attention was also invited to other decisions of some High Courts. In the case of *Pushpa Rani Chopra v. Anokha Singh* 1975 ACJ 396 (Delhi), truck was stationary and it was alleged that its axle had broken down and the truck was parked with its left front wheel on the kacha road and the rear of the truck covered about nine feet of one side of the road. The deceased was riding a motor cycle with his daughter at the pillion seat and his son on the front. It was a dark night and there was no street light on the road. The motor cycle of the deceased dashed against the rear of the stationary truck and got under the truck with the result the deceased along with the two children died on the spot. A claim petition was filed and it was submitted that the truck in question was not in use. Their Lordships, after considering all aspects of the case, came to the conclusion that the words "use of motor vehicle" occurring in Chapter VIII under the heading "Insurance of Motor Vehicles Against Third Party Risks" have a wider meaning and held that even the stationary vehicle will also be included in the expression "arising out of the use of the vehicle". It was observed that the expression is, therefore, employed in a wide sense and is practically synonymous with bringing out a motor vehicle in a public place, and using the public place for the motor vehicle irrespective of the fact whether it was stationary or not.

9. In the case of *Mangilal Kale v. M.P. State Road Trans. Corporation* 1988 ACJ 460 (MP), which is a case from Madhya Pradesh, the vehicle was stationary and the deceased was getting his luggage put on the top of the bus. When he was climbing up the ladder affixed to the bus to check his luggage, the ladder gave way and he fell down and died. Similar contention was raised that the vehicle was stationary and accident cannot be said to have happened arising out of use of the motor vehicle. This court while relying on the earlier decision in the case of *New India Assurance Co. Ltd. v. Phoolwati* 1986 ACJ 106 (MP), held that the word "use" is to be read in its context and setting and indeed, it is a part of the phrase "arising out of use" of which would not exclude cases of stationary vehicles. The very fact that the vehicle was on the road would bring it within the mischief of the expression "arising out of use of. Putting a vehicle on the road for running it would indeed be using the vehicle; a vehicle parked will not be in motion, but it will still be "used".

Similarly, this court in the case of *Oriental Fire and General Insurance Co., Indore Vs. Gangabai and Others*, , in which a tanker was parked partly in a workshop and partly on the public road for undertaking repairs and due to welding repair work being done near the diesel tank, it caught fire and burst causing fatal burn injuries to a passer-by. Question arose whether the vehicle was in a fit condition being capable of mechanical propulsion and welding work was incidental to the use of the vehicle-accident occurred in a public place as the vehicle was parked partly on the road and, therefore, the incumbent would be entitled to the compensation. This court while invoking the definition in Section 2 (18) of the

Act of 1939, held that there can be no hesitation in holding that the accident took place because of the use of the vehicle and granted compensation to the victim.

10. After survey of the principles laid down in the aforesaid decisions of Apex Court as well as of this court, we are of the opinion that the expression appearing in Section 55, i.e., "caused by or arising out of the use of the vehicle" should be given an extended meaning so as to cover all third party risks in such fatal accidents. It will advance the cause of justice. Therefore, the view taken by the Tribunal is not correct.

11. So far as the amount of compensation is concerned, the Tribunal has already found that the claimants are entitled to the compensation in the sum of Rs. 76,800 with interest at the rate of 12 per cent per annum from the date of the claim petition. This amount of compensation has been correctly worked out by the Tribunal by taking the dependency of the family of the deceased to the extent of Rs. 4,800 per annum and the Tribunal has applied the multiplier of 16 which in our opinion is just and proper.

12. As a result, we allow the appeal and set aside the impugned award dated 25.8.90 and decree the claim of Rs. 76,800 with interest at 12 per cent per annum from the date of filing of the claim petition.