

(1988) 03 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.F.A. No. 258 of 1977

Gothelal Chourasia and Another	Vs	APPELLANT
Gajjan Singh and Others		RESPONDENT

Date of Decision : 15-03-1988

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D, 92A

Citation : (1988) ACJ 1120

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : R.R. Jaiswal, for the Appellant; P.C. Nayak, for the Respondent

Final Decision : Allowed

Judgement

B.M. Lal, J.—This appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), is filed by the claimants against the order dated 31.3.1977 whereby the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal") dismissed the claim petition.

2. In short, the case of the Appellants is that Laxmi Bai, the daughter of the Appellants, died in a motor accident on 4.9.1975 early morning at about 3.30 a.m.

3. It is alleged that Laxmi Bai was aged about 7 years and on the fateful day she was going to her vegetable shop at Katangi Motor Stand when the truck bearing registration No. MPI 3665 driven by Respondent No. 2; Vikram, rashly and negligently, dashed against her as a result of which she died. Therefore, claim petition for Rs. 50,000/- was filed.

4. The Respondents denied the liability and stated that the alleged accident took place on account of the contributory negligence and carelessness of the deceased child. Therefore, they are not liable to pay any compensation.

5. The learned Tribunal sustaining the contentions of the Respondents dismissed

the claim petition against which this present appeal is filed.

6. The statements of Khsamadhar (AW 1), Mattulal (AW 3) and Gothelal (AW 2) unequivocally establish that the truck was driven rashly and negligently at the relevant time. Khsamadhar states that the speed was between 50 to 60 kmph and horn was not blown. Similarly Mattulal (AW 3) states that no horn was blown; so is the statement of Gothelal (AW 2). In this regard it will suffice to say that a duty casts upon the driver of a motor vehicle while driving the vehicle on a highway that he must drive the vehicle with reasonable care strictly observing the traffic regulations and rules of the road. He is also expected to keep a good look-out on all the directions of the road, on sides and on stretch of road in front of him. As such in all possible manner he has to take care of the pedestrian and his duty becomes higher when the pedestrians are children of tender age, because the behavior of children is uncertain on the approach of a motor vehicle. This being so, where the cause of accident is not known the doctrine of *res ipsa loquitur* comes into play. No doubt this doctrine is not a rule of law but to extend justice in cases where the cause of the accident is not known and where reasonable care has been taken by the driver of the vehicle, is also unknown, then in such cases, applying this doctrine, i.e., the thing speaks for itself, reasonable award is expected to be passed. Thus the burden of proof shifts upon the owner and driver of the vehicle to explain the cause of the accident.

7. In the instant case as has come on record that the vehicle was driven rashly and negligently and no horn was blown, therefore, the claimant has proved that the accident occurred due to rashness of the vehicle which normally leads to the presumption that the vehicle was not under the control of the driver and for the negligence on the part of the driver the accident occurred. As such, where the accident speaks for itself, applying this principle the liability could be fastened on the driver who is guilty of negligent driving particularly when the infant deceased was on the road.

8. This being so, in the opinion of this Court, the learned Tribunal has committed an error in- reaching the conclusion that the Respondents are not liable for the alleged accident.

9. Now the question remains to be decided about the quantum of compensation. The deceased Laxmi Bai was aged about seven years who was not an earning member. In such cases though it is difficult to evaluate her future earning capacity, and therefore, it is for the court to assess the compensation reasonably. u/s 92-A of the Act minimum is prescribed Rs. 15,000/- as interim ex gratia (Sic.) compensation. Therefore, there is no difficulty in passing an award for the minimum amount, i.e., Rs. 15,000/- in absence of any cogent evidence led by the claimants about the claim for compensation.

10. For the reasons stated above the impugned order is set aside. The claimants' claim petition is allowed to the extent of Rs. 15,000/- with costs. This amount shall also carry interest at the rate of 6 per cent per annum from the date of

presentation of the claim petition. Counsel's fee Rs. 750/- , if certified.