

(1989) 10 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.F.A. No. 284 of 1979

Indramal Mukhriya

APPELLANT

Vs

G.M., Madhya Pradesh State Road Trans. Corpn. and Others

RESPONDENT

Date of Decision : 24-10-1989

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1991) ACJ 605 : (1990) JLJ 560

Hon'ble Judges : Y.B. Suryavanshi, J; Faizanuddin, J

Bench : Division Bench

Advocate : K.L. Israni, for the Appellant; A.G. Dhande, for the Respondent

Judgement

Y.B. Suryavanshi, J.—The claimant appellant Indramal has preferred this appeal against the orders dated 29.8.1979 passed by Mr. R.C. Shrivastava, Motor Accidents Claims Tribunal, Bhopal, in M.A.C.C. No. 35 of 1977, dismissing the claimant's/appellant's claim for compensation u/s 110-A of the Motor Vehicles Act, for special and general damages, totalling Rs. 2,11,750/- in respect of injuries sustained in an accident which occurred on 3.1.1977. The learned Tribunal in the impugned order held that the accident was not caused due to the rash and negligent driving by the bus driver/respondent No. 2. The petition accordingly has been dismissed with costs.

2. It is common ground that on 3.1.1977 at about 9 a.m. a city bus belonging to respondent No. 1, M.P.S.R.T. Corpn., was driven by Kallu Khan, respondent No. 2 and the Lambretta scooter was driven by the cousin of the claimant, Rameshchand. At the time of the accident, the claimant was sitting on the pillion seat of the scooter. Due to the accident, injuries were sustained by the claimant, as well as the scooter driver Rameshchand. Both the injured were taken to the hospital.

3. (i) The claimant's case is that he is aged 20 years and was a student taking some training in the I.T. Centre, Govindpura, Bhopal and was simultaneously, for

his livelihood, doing some part-time tailoring and earned thereby Rs. 350/- per month. The claimant was on the pillion seat and the scooter was driven by his cousin Rameshchand. They cross-passed an overbridge called Bogda Pul. Near the Govindpura bus stop, a Roadways Sugam bus was "stationary" and the scooterist cross-passed the Sugam bus and took a turn at the junction where the road bifurcated for proceeding towards Govindpura. The claimant as also the scooterist, with their hands, signalled while taking the turn but the Roadways bus coming from the direction of Piplani was at a high speed and it dashed the scooter dragging it for a distance of about 20 to 25 yards. The scooter was also damaged. The road is about 40 ft. in width at the place of the incident which would not have occurred if the Roadways bus had been driven with due care and caution. The accident occurred because of the rash and negligent driving of the Roadways bus driven by respondent No. 2.

(ii) The claimant Indramal sustained injuries which included a compound fracture on left leg, compound fracture at the kneecap. He also sustained injuries on the head and on left eye. He was unconscious for 21 days and was admitted in Habibganj Hospital. Due to the serious injuries his future has become bleak and it has also caused disablement. His industrial training in tailoring was affected. He thus claimed Rs. 1,11,750/- as loss of income, Rs. 10,000/- as compensation for loss of studies, Rs. 10,000/- as special damages for bodily and physical suffering and for expenses to be incurred in engaging an attendant, Rs. 25,000/- for shortening of life, Rs. 5,000/- for medical expenses, Rs. 50,000/- for future treatment by way of plastic surgery and for visiting for that purpose Pune, Chandigarh etc. The total claim for damages was Rs. 2,11,750/-.

4. Both the respondents filed a joint written statement and denied the alleged manner in which the accident took place. It was averred that the said- bus was coming from B.H.E.L. Route No. 15 towards the bus stand; that there was one Sugam bus which the scooterist tried to overtake and further more the scooterist "suddenly emerged from behind the Sugam bus on the right side and crossed the road from left to right"; that the two buses were proceeding in opposite directions and the scooterist after overtaking the Sugam bus emerged on the road and in order to avoid a danger of being sandwiched between the two buses, turned towards the right side and tried to cross the road from left to right, but meanwhile, the Lambretta dashed with the bus, though in spite of respondent No. 2 having applied the brakes, which would be apparent from the brake marks of the tyres at the spot of accident but in the meantime accident took place; that the scooterist was going to leave the claimant at training centre for the class and they were in a hurry and therefore, driving the scooter with abnormal speed; that the accident occurred due to rash and negligent driving by the scooterist; and it was further denied that the Roadways bus was driven at a high speed or in any way rashly or negligently. It was denied that the claimant has been incapacitated or disabled from discharging his work due to alleged injuries. All the allegations in respect of injuries and the special and general damages said to be highly exaggerated have been denied, with a prayer that the claim petition is

liable to be dismissed with costs.

5. The claimant Indramal examined himself as AW 1 and his cousin scooter driver AW 2 Rameshchand, besides AW 3 Prem, the proprietor of the tailoring shop where the claimant rendered his part-time services. On the other side, respondent No. 2 Kallu Khan driver was examined.

6. The learned Tribunal came to the conclusion that the evidence adduced shows rashness and negligence not on the part of the bus driver, but on the part of scooterist. Upon those findings, the claim petition has been dismissed. However, merely for the purpose of finding on basis of the evidence adduced by the claimant and after considering the comparable case law, Tribunal also gave a finding that an award of Rs. 10,000/- would be just, but as the claim is being dismissed, there is no question of awarding any such damages. The petition has been dismissed with costs.

7. The learned counsel for the claimant appellant, Mr. Israni, read the evidence. Both the learned counsel heard.

8. The crucial question for consideration is: Whether the accident occurred because of rash and negligent driving of the Roadways bus? There is no manner of doubt that the bus and the scooter were involved in an accident. According to AW 1 Indramal, he was on the pillion seat and the scooter was being driven by his cousin AW 2 Rameshchand. They were proceeding towards Govindpura colony; when they were near the Govindpura bus stop, they saw a Sugam bus which was "stationary". In front of them, Sugam bus was facing towards the road for Industrial Training Institute which is in Govindpura. At an intersection, near the bus stop, there is another road which bifurcates towards Govindpura colony and where Employment Exchange is also located. AW 1 states that in order to proceed towards Govindpura colony, after overtaking the stationary Sugam bus, which was on the left side of the road, both AW 1 and AW 2 signalled with their hands for turning to the right. AW 1 turned the scooter towards the right, but the Roadways bus came from the direction of I.T.I., i.e., opposite direction. It was driven at a high speed. It dashed the scooter which was dragged. AW 1 fell unconscious. AW 2 also gives the same version as given by AW 1. On the other hand, according to NAW 1 Kallu Khan, driver (and such suggestions were made in the cross-examination of AWs also) the scooterist overtook the Sugam bus which was also proceeding ahead in the same direction and when he suddenly saw the Roadways bus coming from the opposite direction the scooterist turned towards the right side which is a road going towards Govindpura colony.

9. The learned counsel for the appellant, Mr. Israni, strenuously urged that from the available evidence, the learned Tribunal should have held that the bus driver respondent No. 2 was rash and negligent in driving the bus. The learned Tribunal has given cogent reasons for not relying on the evidence of AW 1 and AW 2 and the same reasons need not be repeated. Suffice it to state that AW 1 in Claim

Case No. 36 of 1977 which was filed by Rameshchand, AW 2, stated in his evidence that when his cousin brother while driving the scooter signalled and turned towards the right side, the bus had already come very close. AW 2 in one breath says that when he took a turn towards the right, the Roadways bus was far away, but in his claim petition his statement was "Jab main mudne wala tha tab samne se aane wali bus mere kareeb aa chuki thi". The scooterist apparently was foolhardy in overtaking the Sugam bus without keeping a lookout whether any vehicle was approaching from the other side. It makes no difference whether the Sugam bus was stationary or was in motion, because in either case, the scooterist who wanted to overtake a vehicle should have seen whether any vehicle is approaching from the opposite direction and he should have been cautious while taking the turn. It has come in evidence that the scooterist had already crossed over half of the width of the road on the right side, which shows that in spite of the bus stopped in the near vicinity, the scooterist rashly took a turn from left to right. Thus the claim of AW 1 and AW 2 that they had seen the Roadways bus from a very long distance of about 100 metres is negated by what they stated by way of contradictions in their earlier statements. The learned Tribunal has also taken into consideration that though the accident was at a public place, no independent witness was examined. AW 1 and AW 2 are cousins. No police officer was examined for site-plan, tyre marks etc. The Tribunal has also given reasons in concluding that the bus was not being driven at a high speed. On the other hand, the contradiction occurring in the vis-a-vis earlier statement of AW 2 in Claim Case No. 36 of 1977 indicated that he had gone with his cousin on scooter as a pillion rider because he was already late for attending the classes. Similarly, the learned Tribunal had noted that according to AW 1, his cousin brother had taken a turn towards Govindpura colony road from where he wanted to purchase some empty kerosene drums; but according to AW 2 (para 7) his purpose for going towards Govindpura colony was to pay annual subscription for a quarterly Journal. It was argued that the Roadways bus was turned towards the extreme left of the road. This seems to have been done because the scooterist suddenly emerged and went from left to right, the bonnets of the two buses on the road were too close to each other that if the Roadways bus driver had taken a turn to the right, it would have dashed the Sugam bus. The claim petition filed by the scooterist against the respondents has also been dismissed. The Tribunal had an advantage of seeing the witnesses and it has properly appreciated and had come to the conclusion that this accident occurred because of the rash and negligent driving of the scooter and not due to rash and negligent driving by the bus driver. We find no reason to interfere with this finding.

10. The learned counsel for the appellant urged that this is a case of "composite negligence" and not a case of "contributory negligence". "Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence but is a case of composite negligence". [Refer Rehana v. Abdul Majeed 1985 AC]

193 (MP)]. This is a case in which the act of the scooterist can be said to be contributory negligence simpliciter. The claimant was a pillion rider and certainly he could have brought a claim against the scooterist (driver); since the scooterist is not a defendant it is difficult to conceive how he can get a relief against the scooterist who is not a party in this petition. In view of the above finding we do not agree with the contention that it is a case of composite negligence wherein the bus driver and the scooterist both are liable jointly and severally as joint tortfeasors and relief be granted.

11. Lastly, it was urged that in the circumstances stated above and as the evidence shows, compensation be awarded to the claimant u/s 92-A of the Amendment Act No. 47 of 1982. The provisions relating to "no fault liability" came into force with effect from 1.10.1982. The idea behind the concept is that the society has created the dangers of modern auto vehicular menace. The amendment gives effect to the considerations of social justice involved in such cases. The concept of negligence or fault has been eliminated, so also the defence of contributory negligence and vicarious liability has been abrogated and a blanket statutory liability of the owner of vehicle or owners of vehicles has been created u/s 92-A. The amount of compensation fixed thereunder is Rs. 7,500/- in case of permanent disablement as defined u/s 92-C. Section 92-A creates an additional right or liability. Section 92-B (3) further provides for the adjustment of the compensation paid u/s 92-A. The liability imposed in the amended provision is absolute. Section 92-E gives the provision an overriding effect over any other provision of the Act or of any other law for the time being in force. The amended provision is a clear departure from the usual common law principle that a claimant should establish negligence on the part of owner or driver of a vehicle before claiming any compensation. To that extent the substantive law stands modified. The non-obstante clause used in the amended provision indicates that the provision should prevail despite anything to the contrary in any other provision. It was also argued that this provision is to be interpreted with the latest trend of social justice to benefit the "have nots" who are usually the injured or the claimants.

12. (a) Thus the general question which falls for consideration is: Whether Section 92-A of the Amendment Act No. 47 of 1982 is retrospective? So far as the present case is concerned, the accident occurred on 3.1.1977. The learned Tribunal dismissed the award on 29.8.1979 against which the claimant has preferred appeal. This amendment came into force on 1.10.1982. It is argued that the language of the Section does not expressly or by necessary implication say that the provision is retrospective. It is not a case where the legislative intent is clear and compulsive. Therefore, learned counsel Mr. Dhande urged that Section 92-A is prospective and it cannot be given effect to retrospectively. This submission is supported by a Division Bench decision of the Allahabad High Court reported in *Ram Mani Gupta v. Mohd. Ibrahim* 1985 ACJ 476 (Allahabad).

(b) A single Judge of the Rajasthan High Court in *Narendra Singh v. Oriental Fire*

and General Ins. Co. Ltd. 1987 ACJ 790 (Rajasthan), has held that the provision for payment of prompt and immediate compensation in respect of "no fault liability u/s 92-A is in the spirit of social welfare legislation and should be interpreted beneficially in favour of the claimant and in such a matter the technicalities of law should not be allowed to have any upper hand and to obliterate the beneficial and social justice orientations of the enactment.

(c) In *Yashoda Kumari v. Rajasthan State Road Trans. Corporation* 1984 ACJ 716 (Rajasthan), it has been held that the provision has no retrospective operation.

(d) However, in *Oriental Fire and General Ins. Co. Ltd. v. Shantabai S. Dhume* 1987 ACJ 198 (Bombay), the accident had occurred on 9.8.1982. The application was made on 21.7.1983 and meanwhile, the Act came into force on 1.10.1982. It was held that Section 92-A is "to be applied to all pending cases irrespective of the date on which the accident occurred, the fact that the amendment Act postulates that the Amendment Act would come into force on the dates notified in the gazette being of no consequence".

(e) Similarly, "the circumstances that Section 92-A is an entirely new provision in no manner negatives the view taken in *Smt. Dayawati and Another Vs. Inderjit and Others*, and *Ram Sarup Vs. Munshi and Others*, , followed.

(f) With respect we are unable to agree with the view expressed by the Division Bench of Allahabad High Court and the Rajasthan High Court in the above said decisions. We are inclined to accept the view expressed by the Bombay High Court in *Shantabai's case* 1987 ACJ 198 (Bombay), more so, for the reason that so far as pending cases are concerned, to draw a distinction between accidents which had occurred before 1.10.1982 or thereafter, is an artificial distinction. Suppose the man died or sustained injuries on 30.9.1982 and in another case such incident happened on 1.10.1982, it would be illogical and unreasonable and even discriminatory to hold that the benefits of the social welfare legislation could not be given in the former case. There is much substance in the submission that after all an appeal is continuation of a suit and therefore this beneficial provision has to be extended not only in a pending case but also in a pending appeal.

(g) The ratio in *Lakshmi Narayan Guin and Others Vs. Niranjana Modak*, and also in other cases *Ram Sarup Vs. Munshi and Others*, ; *Mula v. Godu* AIR 1971 SC 89 and in *Smt. Dayawati and Another Vs. Inderjit and Others*, , is "that if the new law speaks in language which expressly or by clear intendment takes in even pending matters, the court of trial as well as the court of appeal must have regard to the intention expressed and the court of appeal may give effect to such a law even after the judgment of the court of first instance."

(h) In a recent Division Bench decision reported in *Viladni v. Kerala State Road Trans. Corporation* 1988 ACJ 755 (Kerala), all the above authorities were considered and the view expressed in Bombay decision was followed and the Allahabad and Rajasthan decisions were dissented from.

(i) This court in MA No. 81 of 1983 decided on 7.8.1987 and in MA No. 217 of 1983 decided on 15.3.1988 (by Adhikari, J.) has taken the view that Section 92-A has retrospective effect. We are of the view that so far as pending cases are concerned, the provision as amended has to be given effect to.

13. In the result, this appeal partly succeeds. The appellant-claimant's claim based on allegations of negligence and consequential damages is dismissed. However, in view of Section 92-A of the Amendment Act No. 47 of 1982, claimant is awarded Rs. 7,500/- (Rs. seven thousand five hundred) only, which would be paid by the owner of the vehicle, viz., respondent No. 1 with interest from the date of the application, i.e., 13.5.1977 till the date of payment, at the rate of 12 per cent per annum. In the circumstances obtaining in this case, there would be no order as to costs.