

(1977) 09 OHC CK 0019
In the Orissa High Court
Case No : Misc. Appeal No. 7 of 1976

Jagabandhu Naik and Another	Vs	APPELLANT
Managing Director, Orissa State Road Transport Corporation		RESPONDENT

Date of Decision : 23-09-1977

Acts Referred:

Citation : (1977) ACJ 541

Hon'ble Judges : B.K. Ray, J

Bench : Single Bench

Advocate : P. Roy and S.N. Mohanty, for the Appellant;

Final Decision : Allowed

Judgement

B.K. Ray, J.—This is an appeal by the claimants in a claim case under the Motor Vehicles Act against the judgment of the Tribunal dismissing the claim petition on the ground that they have failed to prove negligence on the part of the driver of the motor vehicle which dashed against their son who was riding a cycle and caused his death.

2. The short facts as made out in the claim petition may briefly be stated thus: On 1.12.73 at about 9.30 a.m. Hrusikesh Naik aged about 18 years was going on the Cuttack-Paradeep road near Biribati High School. It was at that time he was knocked down by a bus bearing registration No. ORU 2050. As a result of this accident, Hrusikesh was seriously injured and was removed to the S.C.B. Medical College Hospital where he succumbed to his injuries on 31.7.74. Thereafter, his parents who are the present Appellants preferred the claim claiming compensation of Rs. 50,000/- against the Orissa State Road Transport Corporation (Respondent) which is the owner of the bus.

3. The contention of the Respondent in the court below was that the bus in question was being driven at a very slow speed and the accident occurred not on account of the negligence on the part of the driver of the bus, but on account of the fact that Hrusikesh who was riding the cycle at the relevant time in front of

the bus suddenly turned to his right and dashed against the bus.

4. In support of the claim, the Appellants examined as many as five witnesses and the Respondent only one, viz., the driver of the bus, before the Tribunal. The Tribunal, after scrutiny of the evidence, held that there was no negligence on the part of the driver of the bus and the accident was entirely due to the negligence on the part of Hrusikesh. Upon this finding the Tribunal held that the Appellants were not entitled to any compensation. But while dismissing the claim the Tribunal quantified the compensation that would be payable to the claimants at Rs. 5,000/-.

It is against this decision of the Tribunal that the present appeal has been filed.

driver must exercise due skill to avoid the consequences of such negligence. When children or young men are seen going on foot or on cycles either by the side of the road or on the road itself, it is always expected of a driver driving the motor vehicle to take extra care and caution to keep his vehicle in such a control that he is in a position to stop the same immediately to avoid any kind of accident as younger people do not have the power of understanding and road sense which is ordinarily expected of a grownup individual. In this background if the evidence that has been led by the parties in the present case is analysed, I do not think that the conclusion reached by the Tribunal can be sustained. At the risk of repetition I may say that the cyclist at the relevant time was at a distance of 16 feet from the bus in question. P.W. 1, one of the witnesses examined for the claimants, claims to have seen the accident while reaping paddy in a nearby field. He gives a vivid description of the accident. According to him, the cycle and cyclist fell down as a result of the dash from behind given by the bus and the cyclist was pushed forward being dragged to a certain distance without being run over. This witness, of course, while deposing, has said that the width of the road at the place of accident was 100 feet. This is obviously not correct. Being a villager the Tribunal has rightly said that he has no idea about distance. Even accepting this remark, still then it cannot be said that he was not an eye-witness to the occurrence. His evidence that he saw the accident from a certain distance may not be exactly correct, but there being nothing against him, he must be deemed to be a disinterested person deposing about the occurrence that happened in his presence. The next witness to the occurrence is P.W. 3. He claims to be the schoolmate of the deceased. According to his evidence, at the relevant time he was coming from Cuttack side on a bicycle in the same direction in which the deceased was moving on his cycle. This witness deposes that the accident happened at a distance of 100 1 Shakuntla Shridhar Shetty Vs. State of Maharashtra metres from him. Reading the evidence of this witness it is found that the bus and the cyclist were going in the same direction when he saw them. The Tribunal has rejected the evidence of this witness by saying that it is not possible for this witness to observe the impact from a distance of 100 metres. I must say that when the witness has said that he saw the accident from a distance of 100 metres he has only given a rough idea about the distance. Being

a school boy it is not expected of him to give the exact distance between the place where he saw and the place where the accident took place. This witness has categorically stated that the left end of the bumper of the bus hit against the cycle of the deceased while the left side body of the bus hit against the head of the deceased. He also said that at the time of the accident the door of the bus was open and the deceased's head also struck against the door. Coming to the evidence of P.W. 4. it appears that he was going on a bicycle when the deceased was in front of him. He, of course, has not said as to how the impact took place, but he deposed that he saw the deceased and his cycle falling at different places. This witness has not been believed by the Tribunal on the ground that he is a stranger to the deceased and his family and according to his evidence, he never disclosed the fact of his witnessing the accident to any body else before he deposed about it in court. To my mind this is a valid ground on which this witness has been disbelieved. The next witness is P.W. 5 who claims to be a friend of the deceased. He deposed that he was proceeding on the left side of the road alongwith the deceased, but when one bus passed them he went ahead and the accident occurred behind him. Obviously, therefore, this witness cannot exactly say how the impact took place. Barring P.W. 4 all the other three witnesses have consistently deposed that the bus was being driven rashly and negligently at a terrific speed at the relevant time and Hrusikesh was on the left side of the road on his cycle. All of them have further said that the deceased after the accident with his cycle was dragged up to a certain distance by the bus which was involved in the accident. P.W. 3 has further said that the deceased's head struck against the left side body as well as the open door of the bus. The medical report shows that there were no external injuries on the deceased. This influenced the Tribunal to a great extent in disbelieving the eye witnesses to the occurrence. According to the Tribunal, if really the deceased had been dragged upto a certain distance after being dashed from behind, and if really the deceased's head struck the left side body of the bus and its door, one would normally expect some external injury at least on the head. On account of the absence of external injury the Tribunal has rejected the oral testimony of the aforesaid witnesses saying that they have not come forward with a true story. According to me, the Tribunal is not correct in discarding the oral testimony of all the three witnesses merely because there were no external injuries either on the body or on the head of the deceased. True, the witnesses to the occurrence have said that the deceased was dragged up to a certain distance after the accident. It is common knowledge that when an accident suddenly happens one does not know in what position the victim is really placed immediately after the accident. So far as the witnesses are concerned, they are definite that the dash was from behind and at the time of accident the bus was moving at a terrific speed. They also consistently deposed that the deceased was dragged upto a certain distance after the accident from the place where the bus struck him first But one really does not know in what position the head of the deceased was in the process of dragging. Admittedly, the deceased was on a cycle. It is just possible that in the process of dragging the head did not come in contact with any hard substance with that much of force

which would cause an external injury. Absence of external injury, therefore, cannot inevitably lead to the conclusion that the witnesses have not seen the accident. As against the evidence of these witnesses, on the side of the Respondent the driver of the bus was examined as O.P.W. 1. O.P.W. 1 admits that he saw the cyclist from a distance, and according to this witness, it is on account of the fact that the cyclist immediately turned towards the right the accident occurred. O.P.W. 1 says that the bus was being driven at a very low speed at that time. So far as this witness is concerned, he being the author of the accident it is not expected that he would come forward with a story which would throw the blame on him. When three witnesses to the occurrence as mentioned above have said that the bus was being driven at the relevant time at a terrific speed, the evidence of O.P.W. 1 cannot be accepted when he says that he was driving the vehicle at a very low speed. Further, if really the bus was at a very low speed, O.P.W. 1 could have easily stopped the bus immediately after he found the cyclist turning towards the right. This witness further says that the cyclist dashed against the bus and he saw the cyclist suddenly turning towards the right side of the road from a distance of 16 feet. Still then this witness wants the court to believe that the bus could not have been stopped by applying brake from a distance of 16 feet. This shows that O.P.W. 1 is not coming forward with a true story that the vehicle at the relevant time was being driven at a low speed and was fully within his control. In view of the position of law indicated above, in disagreement with the conclusion of the Tribunal, I hold that the responsibility for the accident in question was with O.P.W. 1. The claimants, therefore, are entitled to compensation against the owner of the bus and their claim has been wrongly rejected by the Tribunal.

6. Coming to the question of quantification of damages the Tribunal says on consideration of relevant facts and circumstances and the qualification of the deceased who had not passed Matriculation by the time he met with death and had failed once in the Matriculation examination that the deceased would have contributed at the rate of Rs. 50/- per month to his parents and that also for a period of five years. On this basis damage has been quantified at Rs. 5,000/-. Mr. P. Roy, learned Counsel for the claimant-Appellants, vehemently challenges this finding. He contends that] in ordinary course even a day labourer at present earns Rs. 5/- a day. Therefore, the Tribunal is not right in saying that the maximum monthly contribution, the deceased could have made was only Rs. 50/- per month. Even giving full weight to the argument of Mr. Roy that even a day labourer earns at the rate of Rs. 5/- per day, his monthly income comes to Rs. 150/-. With that income he is to maintain himself and his family. Therefore, there is nothing unreasonable in what is said by the Tribunal that the contribution of the deceased for his parents would have been at the rate of Rs. 50/-. The next contention of Roy is that there is no justification for the Tribunal to say that the deceased would have contributed for a period of five years only. This contention is well founded. The normal span of life for a man in these cases has been taken to be 65 years. The father of the deceased who has been examined in this case

has given his age to be 50 at the time of his deposition. So, he is expected to live for another fifteen years more. There is no evidence about the age of the mother of the deceased, as she has not been examined in the case. Mr. Roy points out to me a recital in the claim petition where the age of the mother has been given to be 35. This, I must say is not evidence. Therefore, in the absence of any evidence I am inclined to take the view that the deceased would have contributed at the rate of Rs. 50/- per month to his parents for about fifteen years more. The total contribution thus comes to Rs. 9,000/-. Therefore, the loss sustained by the claimant Appellants in the present case is assessed at Rs. 9,000/-. There is no material evidence worth the name to support the contention of Mr. Roy that the claimants were spending at the rate of Rs. 50/- a day for the treatment of the deceased during the period he was hospitalised.

7. In the result, therefore, I allow this appeal, set aside the impugned order, allow the claim petition and direct the Respondent to pay Rs. 9,000/- (nine thousand) to the appellants for the loss sustained by them on account of the death of their son in the accident in question with interest at the rate of 6 percent per annum from the date of application till the date of payment. Parties are to bear their own costs throughout.