
(1985) 02 MP CK 0010
In the Madhya Pradesh High Court

Jamila Begum and Others

APPELLANT

Vs

The Raipur Transport Co. Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 25-02-1985

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2

Citation : (1985) 2 ACC 24 : (1986) ACJ 837

Hon'ble Judges : S. Awasthy, J;C.P. Sen, J

Bench : Division Bench

Judgement

S. Awagthy, J.—This appeal has been preferred by the unsuccessful claimants in Claim Case No. 2 of 1976 before the Motor Accidents Claims Tribunal, Rajnandgaon decided on 16-1-1978. The evidence has been recorded in Claim Case No. 4/76 and the main award with reasoning is also passed in that case. Out of the accident by bus No. CPS 8937 belonging to the non-applicant No. 1 on 23-11-1975 on Khairagarh Rajnandgaon road, Claim Cases Nos. 2, 3, 4 and 7 of 1976 were filed.

2. The appellants had claimed compensation amounting to Rs. 1,00,000/-. The bus CPS 8937, was insured with respondent No. 2. Mohammad Ismail and two others died in the said accident. The appellant No. 1 is ths widow, appellants 2 and 4 are the daughters and Kamal, appellant No. 3 was the son of late Mohammad Ismail. Mohammad Ibrahim is the father of late Mohd. Ismail. During the pendency of the appeal, the appellant No. 3 Kamal died on 31-5-1980. Late Kamal was aged 7 years. An application (IA No. 2721/80) was filed on 11-8-1980 alleging that the uncles, grandfather, Mohammad Ibrahim and aunt of late Kamal are his legal representatives. The application was allowed on 27-11-1980 and appellants 3(a) to (e) have been impleaded in this appeal.

3. Late Mohammad Ismail Qureshi was aged about 30 years and was serving in Government Polytechnic Institute Durg drawing a salary of Rs. 418/- per month including dearness allowance. The appellants were his dependants. The deceased late Mohammad Ismail Qureshi boarded the ill- fated bus for coming to Rajnand

gaon from Khairagarh.

4. The learned Presiding Judge of the Motor Accidents Claims Tribunal, Rajnandgaon dismissed the claim holding that the said accident did not take place due to any rash or negligent act on the part of the driver or the non-applicant no. 1. It was further held that the accident took place due to the bursting of the tyre of the right front wheel when the vehicle was being driven at the speed of 60 kms. per hour. It was held that the accident was inevitable, hence no liability of the non-applicants respondents.

5. It is stated by the claimants that Ramkrishna Patil was driving the said bus and Noor Mohammad was its conductor at the time of the accident. Due to the speed of the bus, after bursting of the tyre, the driver lost control and it went about 100 yards ahead and collided with the Kahue tree at about 4.30 p.m. near village Dalli about 141/2 kms. away from Khairagarh towards Rajnandagaon. The driver of the bus was who also amongst the deceased persons. It is also stated that the tyre of the front right wheel of the vehicle was an old, worn out one which burst due to the bad road and high speed. The vehicle could not be controlled by the driver thereafter. The negligence of the company was in not fixing a new tyre or such a tyre which should have been used on such road coupled with the speed with which the vehicle was driven.

6. The non-applicant no. 1 had denied the allegations of the applicants-appellants and stated that the speed was not above 60 kms. per hour. The speed was moderate and such that the bus was within the control of the driver. It was also denied that the tree with which the bus collided was about 10 yards away from the place of bursting of the tyre. It was also denied that the tyre was old and worn out. It was stated that the bursting of the tyre was only by an accident for which the non-applicant no. 1 could not be held liable. The bus was being driven cautiously with moderate speed. The driver tried his best to save the lives of all the passengers and in doing so, he lost his own life. It has also been pleaded that there were stone quarries in the vicinity of the road. The bullock-carts and trucks carrying the stones occasionally dropped some stones on the road which could be the cause of bursting of the tyre. Thus, the accident was claimed to be inevitable.

7. The case of the non-applicant no. 2 is that of denial except that the bus was insured with the non-applicant no. 2. It was stated that the liability, if any, is statutory covered under the insurance policy.

8. The learned Judge of the Motor Accidents Claims Tribunal accepted the defence of the non-applicant no. 1 and dismissed the claim.

9. The learned Counsel appearing for the claimants appellants relied on the case of Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, and urged that in order to succeed in a defence that the accident was due to the bursting of the tyre which is said to be inevitable, the non-applicant no. 1 will have to prove that necessary precautions were taken and the tyre was in a road-

worthy condition. The bursting of tyre occurred inspite of reasonable care and caution taken by the non-applicant no. 1. Such a plea must be raised to demonstrate that the defect was latent and not discoverable by the use of reasonable care. The burden of proving that the accident was due to inevitable circumstances is on the owner of the bus and it is for them to prove that they had taken all reasonable care and that despite such care the defect remained hidden. It was further submitted that the non-applicant no, 1 failed to discharge such burden: hence liable to pay the compensation. It was also urged that the principle of Res Ipsa Loquitur would apply to the present case and the entire burden to show the condition of the tyre under the given circumstances was on the respondent no. 1 which it failed to discharge.

10. The non-applicant no. 1, in reply, argued that the case relied by the applicants is not helpful to them as the cause of accident was known to them which was the busting of the tyre and it has proved by evidence on record that the tyre was road-worthy. The speed of 60 kms. per hour is not excessive. The owner had taken all necessary precautions. It was a new bus having good tyres. The principle of Res Ipsa Loquitur is not applicable to the present case under the given circumstances.

11. The learned Presiding Judge of the Claims Tribunal relied on the register (Ex. 1 N.A 1) produced by non-applicant no. 1 which is a Daily Report Register maintained by Rajnandgaon branch of the non-applicant company from 10-10-1974 onwards till the date of accident. In this register, it is alleged that the complaints lodged by the driver of a bus is recorded if there is any defect in the said bus. Necessary repairs were done after receipt of such report. Since there was no report entered in the register on 23-11-1975 concerning the ill-fated bus, the learned Presiding Judge of the Claim Tribunal held that late Ramkrishna Patil driver had no complaint regarding the tyre being unserviceable. Hence, the statement of Ramakant Pande (AW 1) regard- 10. ing the alleged grumbling of driver Ramakrishna Patil about the tyre being unserviceable cannot be believed. He had further held that the bus was always checked prior to its being put on the road. Hence, the defect, if any, could have been noticed and mended. Further, the non-applicant no. 1 produced a "Tyre-register" (Ex. 1 N.A. 4) in which the issue of tyres to different buses was entered. According to non-applicant no. 1, a tyre in a bus is changed after its use for 5-6 months. New tyres were always put in the front wheels and old ones were put in the rear wheels.

12. Mohammad Shafi (1 NAW 2) has stated that the tyre in the front wheel was in good condition and it would have run for 3-4 months more had it not bursted. On page 8 of the said register, entries dated 22-7-1975 and 29-8-1975 show that 4 new tyres, two tyres on the aforesaid each date, were issued for the ill-fated bus. According to the learned Judge, the tyre which burst was used only for 3 months; hence, it was not an old, rotten or un serviceable tyre. He relied on the statement of Mohammad Shafi (1 NAW 2) who was the allotted driver of the ill-

fated bus and disbelieved the statements of Martandsingh (AW 12), Ramakant Pande (AW 1) and Guruvachansingh (AW 9) who were the passengers of the ill-fated bus and who had stated that the tyre was in a rotten condition. He believed the entry in the tyre-register, and also believed the statement of the Commissioner who had stated that about two furlongs away from the place of the accident towards Rajnandgaon, on both sides of the road, there were stone quarries. The aforesaid facts were held to be sufficient for reaching a finding that the accident was inevitable. We do not agree with the said finding.

13. In the written statement, in para 8, the non-applicant no. 1 has stated:

x x x x In this pleading, no particulars regarding the condition of tyre of the right front of wheel are specifically mentioned. The claimants were not in a position to know that the non-applicant no. 1 would lead evidence to the effect that tyre was replaced in the month of July and was in a serviceable condition. All the details regarding the registers maintained by the non-applicant company and also regarding the fixing of a new tyre with number, make and other details known to the non-applicant no. 1 should have found place in his pleading. In para 15 of the written statement, the non-applicant no. 1 has mentioned:

x x x x 14. The absence of specific pleading raises a doubt if the alleged registers were regularly being maintained. No reliance can be placed on such registers as no foundation was laid in the pleading. It was argued by the learned Counsel for the appellants that such an entry could easily be interpolated or a new register could be prepared showing some such entries therein. It was stated that the reason for not pleading these facts was apparently because at the time of the filing of the written statement, such material was not available with the non-applicant no. 1. Even the number of the tyre which is alleged to have bursted was not mentioned in the pleadings. The tyre which was produced in the court at the time of evidence could not be said to be the same as it was not confronted to Shri Guruvachansingh, Dongergarh (AW 9) who had made the enquiry of the accident after receiving the report,

15. We rely on the statement of Guruvachansingh (AW 9) who is an independent witness and who had conducted the enquiry of the said accident. He stated in para 1 of his deposition:

x x x x There had been no cross-examination of the said witness regarding the above statement nor the Presiding Judge of the Claims Tribunal has discussed this evidence in his award.

16. Sajjan Singh Seghal (AW 11) was a passenger in the bus along with Martandsingh (AW 12). He has stated that the speed of the bus was about 70 to 80 kilometres per hour (that is his estimate). After tyre bursted, the bus went about 100 yards and collided with the tree. He saw after the accident that it was an old and rotten tyre. Martandsingh (AW 12) had pointed out to him that the tyre was rotten and old. Then he himself saw the tyre. Martand Singh (AW 12) has also corroborated him in all these particulars.

17. Ramakant Pande (AW 1), an advocate, has also supported the above-said two witnesses regarding the speed of the bus at the time of the accident and the condition of the tyre. He has further stated that the driver of the said bus had spoken to him that the tyre of the front wheel was bad, yet he had been deputed to drive the said vehicle on that day.

18. Looking to the condition of the tyre and the type of the road on which the ill-fated vehicle was plied, the speed even at 60 kilometres per hour was excessive. The non-applicant no. 1 cannot escape the liability by merely stating that the tyre was not very old or rotten. If the non-applicant no. 1 was relying on a particular plea, he should have taken all precautions to plead all necessary particulars and led such evidence which would have conclusively proved its case. We hold that the non-applicant no. 1 has failed to discharge its burden and the accident itself demonstrates the negligence on the part of the non-applicant no. 1.

19. We, therefore, differ from the finding recorded by the learned Presiding Judge of the Claims Tribunal and hold the non-applicant no. 1 negligent for not putting a serviceable tyre on the right front wheel of the bus No. CPS 8937.

20. Under the Motor Vehicles Act, the amount of compensation is to be what appears to the Tribunal to be just. The word "just" has a wider ambit than the words used in Sections 1A and 2 of the Fatal Accidents Act. The Tribunal under this Act has, therefore, only to consider what appears to it to be just compensation on the facts and circumstances of the case before it and need not strictly follow and apply the basis of the assessment of compensation indicated in the various decisions under the Fatal Accidents Act or under the English Law as held in Smt. Gulab Devi Sohaney Vs. Govt. of Madhya Pradesh and Another, The Tribunal may in deciding the just compensation bear in mind and apply general principle or principles laid down in such decisions, as far as they may be applicable and in so far as they may be applicable or promote the interest of justice on the facts and circumstances of each case. The compensation amount should be so assessed as to make Provision for the legal representatives to receive or earn such pecuniary benefits as they should have obtained from the deceased if he had lived his normal life.

21. On the question of quantum of compensation, precedence may be relied upon to a limited extent but each case has to be decided on its own particular facts and circumstances and there can be no hard fast rule for determining the quantum of compensation which may be awarded See, Kasturilal Gopaldas and Another Vs. Prabhakar Martand Patki and Another, .

22. In calculating the pecuniary loss to the claimants what will be taken into consideration will be whether there was the prospect of a predominantly happy life and the compensation which is to be awarded is to be a reasonable figure to be paid by way of damages for the loss of a measure of prospective happiness Please see, Smt. Kamla Devi and Others Vs. Kishanchand and Another, The loss

for which the damages are awarded is pecuniary loss which will be sustained in the future.

23. But it is fallacious to assume that all human life is continuously an enjoyable thing so that shortening of it calls for compensation to be paid to the deceased's estate on a quantitative basis. The ups and down of life, its pains and sorrows as well as its joys and pleasures all that makes up "life's fitful fever" have to be taken into consideration in the estimate. The principle to be applied is that the Tribunal must be satisfied that the circumstances of the individual life were calculated to lead, on balance, to a positive measure of happiness, of which victims have been deprived by the negligence of the opposite party Please see, *Benham v. Gambling* (1941)1 All ER 7

24. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give the "datum or basic" figure which will generally be turned into a lump-sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, the widow might have re-married and thus ceased to be dependant and other like matters of speculation and doubt. The basis of the action is the pecuniary loss suffered by the dependants in consequence of the deceased's death.

25. Smt. Jamila Begum, the widow of late Mohammad Ismail Qureshi aged about 24 years has been examined as AW 3. According to her, late Mohammad Ismail Qureshi was contributing Rs. 300/- per month towards the household expenses and used to give Rs. 20/- to Rs. 25/- per month to his father, appellant no. 5. There was no other source of income to the family. She expected that her husband would have lived up to the age of 60 years to 70 years had he not died in the accident. She had spent about Rs. 3,000/- in the last rites of her husband. She admits that she is receiving Rs. 150/- per month as family pension from the Government of Madhya Pradesh and had received Rs. 10,000/- from the family benefit fund and Rs. 2,500/- from some other fund.

26. Shri M.S. Jan (AW 4) is the Accountant of Government Polytechnic, Durg. He proved that Mohammad Ismail Qureshi was an Instructor in the Workshop. He was drawing a salary of Rs. 436.25 per month. The state ment regarding his pay is Ex. R. 4. He further stated that the widow of Mohammad Ismail Qureshi was getting Rs. 145/- per month as pension from the Government which she would get for 7 years from the date of his death and thereafter, Rs. 87/- per month till her death or re-marriage whichever is earlier. There was no chance of any promotion to Mohammad Ismail 21. Qureshi but he was entitled to Rs. 10/. per month as increment every year till he reached the maximum of the time-scale. After deducting Rs. 115/- from his salary towards provident fund loan, family benefit fund and ADA, he has actually paid Rs. 321.25 per month. He was paying Rs. 40/-towards house rent as well. On 12-12-1975 she was paid Rs. 10,000/-

from family benefit fund and Rs. 2,568/- as ex-gratia payment.

27. Mohammad Ibrahim Qureshi has been examined as AW 6. He deposed that he was being helped by late Mohammad Ismail Qureshi financially. He used to get Rs. 25/- to Rs. 30/- per month from him. There was 8 longevity in his family and his father died at the age of 90 years and his eldest brother at the age of 80 years. His another brother aged about 80 years is still alive.

28. The learned Presiding Judge of the Tribunal has held that the net amount of dependency per month is Rs. 325/- per month. From the deposition of Shri M.S. Jan (AW 5), it is clear that late Mohammad Ismail was receiving Rs. 321.25 per month towards his salary after deduction of Rs. 115/- as stated above. He was paying Rs. 40/- towards house-rent. The learned Tribunal has assessed the personal expenses of Mohammad Ismail Qureshi at Rs. 75/- per month. He was paying Rs. 25/- to Rs. 30/- per month to his father also. Thus, the dependency was not more than Rs. 300/- per month. The annual dependency comes to Rs. 36,000/- only. This amount is to be divided in 5 units, that is, one unit to each child and two units to the widow. Thus, the value of each unit would be Rs. 60/- per month.

29. Nagima Begum was aged 10 years at the time of the death of her father. She would, therefore, be expected to depend on her father till she reaches the age of 18 years. Reshma would be entitled to help for 13 years more. They, therefore, are entitled to Rs. 3,760/- and Rs. 9,360/- respectively. Claimant Kamal lived only for 4 1/2 years after the death of his father. He would, therefore, be entitled to Rs. 3,200/-. But because of lump-sum payment, they shall be entitled to Rs. 1,500/-, Rs. 9,000/- and Rs. 3,000/- respectively.

30. We have held earlier that the dependency of Jamila Begum was to the extent of Rs. 120/- per month. It is expected that late Mohammad Ismail Qureshi would have lived up to the age of 65 years i.e. for 35 years more and the age of the appellant Jamila Begum would have been at that time 59 years. Multiplying the yearly dependency by 35, it would come to Rs. 50,400/-. Out of this amount, she had already received a pension for 7 years at the rate of Rs. 145/- per month, amounting to Rs. 12,180/-. She would be getting a pension of Rs. 87/- per month for the remaining period of her life i.e. for 28 years which will come to Rs. 29,232/-. Apart from this, she has already received Rs. 2,568/- by way of ex-gratia payment. All these amounts are to be deducted from the payment which she would be entitled to receive. After deducting the said amounts, Rs. 8,988/- only is payable to her. Because of lump-sum payment, she would be entitled to Rs. 8,000/- only.

31. So far as the claim of Mohammad Ibrahim is concerned, he was getting about Rs. 25/- per month from late Mohammad Ismail Qureshi as financial help. That comes to about Rs. 300/- per annum. We tentatively fix the span of his life till 70 years of age. He was 60 years of age when Mohammad Ismail Qureshi died. Thus, he would be entitled to Rs. 3,000/- as compensation.

32. Thus, we hold that claimant Jamila Begum would be entitled to Rs. 8,000/-, Nagima Begum to Rs. 5,500/-, Reshma to Rs. 9,000/-, Kamal's mother Jamila Begum, for his claim to Rs. 3,000/- and Mohammad Ibrahim Qureshi to Rs. 3,000/-.

33. The learned Presiding Judge of the Tribunal was in error in deducting the amount of Rs. 10,000/- which was paid as family benefit fund towards which late Mohammad Ismail Qureshi was contributing. The amount of death-cum-retirement gratuity was also not deductible; nor any amount to be received from Insurance of provident fund could be deducted. All these deductions are not permissible under law. If any authority is needed the Full Bench decision of this Court in *Kashmiran Mathur and Ors. v. Sardaf Rajendrasingh and Ore.* 1982 MPLJ 803 may be referred.

34. The appeal is allowed. We order that the respondents shall pay the aforesaid amounts to the claimants as indicated above with interest at the rate of 6 per cent per annum from the date of this order till realisation of the amount. The costs of this appeal and that of the lower court shall be payable by the respondents in proportion to the amounts awarded by us in this appeal. Counsel's fee as per schedule, if certified.