

(1997) 07 MP CK 0071
In the Madhya Pradesh High Court
Case No : M.A. No. 472 of 1995

Kartikram Kushaliram Dhimar and Another	APPELLANT
Vs	
Chandragopal Ramlal Verma and Others	RESPONDENT

Date of Decision : 07-07-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (1998) 1 MPLJ 220

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : Awadh Tripathi, for the Appellant; H.B. Agrawal, for respondent No. 1, Ajit Singh, for respondent No. 2, H.S. Ruprah and A. Ruprah, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This is an appeal u/s 173 of the Motor Vehicles Act, 1988 (for short "the Act") against the award dated 16-1-1995, passed in Claim Case No. 54/90 by Vth Additional Motor Accidents Claims Tribunal, Raipur.

Brief facts giving rise to this appeal are thus : Appellants are the parents who along with Nirmalabai the widow of the deceased Ishwari Prasad the son of the appellants, filed an application u/s 110-A of the Motor Vehicles Act, 1939 (for short Act of 1939") to claim compensation of Rs. 2,37,500.00 for the death of Ishwari Prasad caused in motor accident occurred on 27-12-1987 by the use of tractor No. MKS 9373 and its trolley driven by respondent No. 1 owned by respondent No. 2 and insured with respondent No. 3. At the relevant time, the deceased was sitting on the tractor, while other co-agricultural labourers were sitting in trolley. At about 2.30 a.m. when tractor was near Dhaneli on Gharsiwa Raipur Road, the tractor turned turtle because of the breakage of the connecting rod of tractor-trolley. The respondent No. 1 remained ex parte before the

Tribunal. The respondents Nos. 2 and 3 contested the claim. The respondent No. 2 in his reply submitted that Nirmalabai has remarried, therefore, she has ceased to be a legal representative of the deceased. Therefore, her name be deleted. As to entitlement of parents it was submitted that parents are not the dependents, are not entitled to compensation. Rash and negligent act on the part of the tractor driver was denied and the plea of inevitable accident due to mechanical breakdown, that is breakage of connecting rod was raised. The respondent No. 3 in its reply besides denying the claim and stating that the accident was not caused due to any rash and negligent act of the driver, the accident was inevitable due to latent mechanical defect, contended that the deceased himself was negligent and responsible for his death as he was sitting on the mudguard. In any case, the respondent No. 3 cannot be made liable to pay compensation as in terms of the policy which was insured for Agricultural and Forestry purpose and not for carrying passenger.

On objection of the respondents that Nirmalabai has remarried with one Santram on 23-12-1988 her name was deleted from the array of applicants.

The Tribunal after appreciation of evidence adduced held that the claimants have failed to establish the negligence on the part of the tractor driver as the witnesses examined by the appellants who were sitting in the trolley did not state the manner in which the accident occurred as they were drowsy when the tractor turtled, they woke up and saw the deceased lying. The speed of the tractor-trolley could not have been more than 20-25 Kms. per hour. Considering the statement of witnesses that at the place of accident road is wide, it cannot be presumed that the tractor was not in control of the driver. The deceased was sitting on the mudguard against the terms of the policy Ex.D.I, hence, the insurance company would not be liable to pay compensation.

having heard Shri Awadh Tripathi, learned counsel for the appellants, Shri H. B. Agrawal, learned counsel for the respondent No. 1 and Shri H. S. Ruprah and Smt. Amrit Ruprah, learned counsel for respondent No. 3, we are of the opinion that this appeal deserves to be allowed.

The death of Ishwari caused in motor accident by the use of tractor-trolley is not disputed. The defence of the owner and insurer is that the accident was inevitable due to mechanical breakdown, that is breakage of the connecting hooks coupling the trolley with the tractor, as a result of which though the trolley remained standstill but the tractor turned turtle. It is well settled that in order to succeed in defence that the accident was due to a mechanical defect, the owner of a vehicle has to prove that he had taken all necessary precautions to keep the motor vehicle in a road-worthy condition and that the defect occurred in spite of all reasonable care and caution taken by the owner. In order to sustain a plea that the accident was due to a mechanical defect the owner must raise the plea that the defect was latent not recoverable by use of reasonable care. If he succeeds in establishing the plea the owner would not be liable if the accident is due to latent defect which despite a reasonable care remained hidden. See Minu

B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, , and Division Bench decision of this court in State of M. P. v. Asha Devi and Ors. 1988 MPLJ 346 : 1988 MPLJ 485 and Babi and Ors. v. Sona Khan and Ors. 1996 MPLJ 988.

In the present case, no evidence has been led by the owner and the insurer that connecting rod or its tie rod was not weak which was checked before the tractor-trolley was put on road for transporting paddy. No mechanical expert was also examined that the connecting rod and its tie rod was in good and road worthy condition and was able to carry the load in the trolley. In the circumstances, when the accident is admitted and the defence taken by the owner of the vehicle that it was due to mechanical breakdown due to latent defect has not been established, even if the witnesses examined who were travelling in the trolley could not see the manner and the circumstance in which the accident occurred to remove hardship to claimants the principle of *res ipsa loquitur* could be safely applied, which is a rule of evidence departing from the rule that it is for the claimants to prove negligence, but in such cases considerable hardship is caused to claimants as the true cause of the accident is not known to them but is solely within the knowledge of the person who caused it. The claimants can prove the accident but cannot prove how it happened to establish negligence. This hardship is to be avoided by applying the said principle of *res ipsa loquitur*. The general purport of the words *res ipsa loquitur* is that the accident "speaks for itself or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the claimants to prove the accident and nothing more. The present case is like that where the accident speaks for itself. When this principle is applied the burden shifts upon the owner and driver to establish that the accident was not caused due to their negligence which in the case has not been discharged. The presumption of negligence is not rebutted by the mere fact that there was mechanical breakdown but the burden was further on them to prove that there was no want of reasonable care and the vehicle was kept in order. See *Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another*, and the decisions of this Court in *Santoshchandra and Others Vs. Smt. Gyansundarbai and Others*, .

The contention that the deceased was negligent as he was sitting on the mudguard of the tractor cannot be accepted. True, a driver when driving a tractor shall not carry any person to be carried on the tractor. But, in this case the respondent No. 1 permitted and carried the deceased on the tractor. The accident was not caused due to any act of the deceased who was carried on the tractor but due to breakage of hooks of connecting rod as the defence is. Carrying the deceased on the tractor may be a breach of the traffic regulations but would not absolve the driver, owner and insurer of their liability for tortious act. This Court in a case where the bus was overloaded but the accident occurred due to negligent driving of the bus, held that it may be a penal offence for the breach but that would not absolve the insurance company to claim exoneration from the liability to indemnify the owner for the claim of third party. See *New*

India Insurance Co. Ltd. v. Smt. Pravina Singh and Ors., M. A. No. 444/95 decided on 25-9-1996. In M.P. State Road Transport Corporation v. Rajendra Prasad Gupta, M. A. No. 728/94 decided on 23-9-1996, where the motor cyclist was driving the motor-cycle in breach of section 128 of the Act corresponding to section 85 of the Act of 1939 as he was carrying on more than one person in addition to himself, this Court held that for that the motor-cyclist may be liable to be prosecuted but that will not disentitle him to claim compensation if rash and negligent act of the offending vehicle is established. In the circumstances, we hold that the accident was caused due to negligent act of driver and owner who are liable to pay compensation.

Re. Entitlement of compensation to parents : The parents only have come up in appeal to claim compensation though the widow who has remarried was also entitled to compensation till the date of her remarriage as is the view of this Court in Smt. Anju Mukhi and Anr. v. Satish Kumar Bhatia and Ors., M. A. No. 484 of 1992 decided on 13-12-1996 (since reported in Anju Mukhi and Another Vs. Satish Kumar Bhatia and Another, . However the appellants are the parents who are the legal representatives of the deceased u/s 110-A(1) of the Act of 1939, would be entitled to compensation and the compensation cannot be denied to them merely on the basis that they were not dependent. See : Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, . This Court following the aforesaid decision of Supreme Court has held that parents as legal representatives of the deceased son can maintain application u/s HO-A(1) of the Act of 1939 corresponding to section 166(1) of the Act. Dependency is not necessary. However, the compensation certainly will have to be determined by applying the settled principles and method for determining the compensation for the damage or loss suffered for the death of their son caused in motor accident due to negligence of the tort-feasor. Besides, the compensation cannot be denied to parents who are not dependent, as they had an expectation that they will be supported by their son in their old age. See : Ram Singh Banzara and Another Vs. Amritlal Devangan and Others, , S. Apparao and Anr. v. Rajeshwar Rao and Anr., M. A. No. 464 of 1995 decided on 8-5-1997.

A Division Bench of Madras High Court in C. Vijay Laxmi and Anr. v. N. Siva Bagiyani and Anr. 1997 (1) TAC 716 following the decision of Supreme Court in Gujarat State Road Transport Corporation (supra) has held that the parents though are not dependents of their deceased daughter, as legal representatives, are entitled to get compensation.

Re. compensation : The deceased with his wife was living jointly with his parents and was contributing to the family kitty by his earnings. The deceased was an agricultural labourer and was earning Rs. 25/- per day. He was hale and hearty. Therefore, even if the minimum wages of an unskilled labour is taken into account as his monthly earning that would not be less than Rs. 750/- per month. He left behind his widow and parents. In the circumstances, giving deduction of one third on the personal living expenses of the deceased the contribution would

come to Rs. 500.00 per month, yearly Rs. 6,000.00. Looking to the age of the parents who were not above 45 and the age of the deceased it would be appropriate to select the multiplier of 14 the amount would work out to Rs. 84,000.00. The accident occurred on 27-12-1987 while he died in the hospital on 30-12-1987. Therefore, during this period he suffered pain and sufferings. For that it would be appropriate to award Rs. 5,000.00 as estate of the deceased. The appellants would also be entitled to Rs. 2,000.00 for funeral expenses. Thus, the appellants would be entitled in all Rs. 91,000.00 with interest thereon at the rate of 12% per annum from the date of application till payment.

Re. Liability of the insurance company : It is not in dispute that the tractor was hired for agricultural purpose and the deceased and other labourers were engaged for loading and unloading the paddy. The tractor was coming back with the labourers after unloading paddy. Ex.D.I is the policy which specifies limitations as to use :

"Limitation as to use : For Agricultural and Forestry Purpose. The policy does not cover -

1. Use for racing pace making reliability or speed testing.

Use for the carriage of passengers for hire and reward.

Use whilst drawing a trailer (illegible) permitted by law.

From the evidence it is apparent that the case does not fall in any of the exceptions as contained in limitation as to use so as to exonerate the insurer of the tractor and trolley.

The contention that the deceased and other workers were travelling in the tractor-trolley for hire or reward and, therefore, the insurance company is not liable to pay compensation has also no merit. "Tractor" is defined in section 2(3) of the Act of 1939 corresponding to section 2(44) of the Act, means a motor vehicle which is not in itself constructed to carry and load (other than equipment used for the purpose of propulsion) but excludes a road-trolley. "Trailer" is defined in section 2(32) in Act of 1939 corresponding to section 2(46) of the Act means any vehicle, other than a semi-trailer and a side-car drawn or intended to be drawn by a motor vehicle. At the relevant time, the tractor was carrying agricultural labourers in trolley drawn by tractor which was not prohibited by law. Learned counsel could not point out from the policy that carrying agricultural labourers in trolley was prohibited by any of the terms of the policy and the risk was not covered. Hence, we are of the view that respondent No. 3 cannot escape its liability to pay compensation or to indemnify the owner.

Therefore, we direct the respondent No. 3 to deposit the amount of compensation as awarded by us with accrued interest at the rate of 12% per annum within a period of two months from the date of supply of certified copy failing which the amount shall carry interest at the rate of 15% per annum. On deposit the amount shall be disbursed keeping in mind the guidelines laid down

by the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Lilaben Udesing Gohel, Shyamala Shashidharan Nayyar and Others, Pramilaaben Narendra Bhai Patel and Others, Ramabhai Shankarbhai Chavda, Lilaben and Others, Kantaben Anil Kumar Patel and Others, Motor Vahan Durghatna Sanghathan, Nadiad and Others and Shardaben Chandubhai Patel and Others Vs. Oriental Insurance Company Ltd. and Others, Hemraj Loduram Rajpur and Another, Nandubhai Ambalal Thakkar and Others, Ganibhai Ambabhai Vora and Another, Kaji Gulam Nabi Sheikh and Others, Gujarat State Road Transport Corpn. and Others, State of Gujarat and Others and Bachusha Dadusha and Others, .

In the result the appeal is allowed with costs. The award of the Tribunal is set aside. The appellants will be entitled to compensation as directed hereinabove.