

(1991) 02 MP CK 0051
In the Madhya Pradesh High Court
Case No : M.A. No. 40 of 1982

Madhya Pradesh State Road Transport Corporation and
Another

APPELLANT

Vs

Bhay Singh

RESPONDENT

Date of Decision : 19-02-1991

Acts Referred:

Citation : (1992) ACJ 1151

Hon'ble Judges : A.G. Qureshi, J

Bench : Single Bench

Advocate : K.R. Dilliwal, for the Appellant; P.C. Nigam, for the Respondent

Final Decision : Dismissed

Judgement

A.G. Qureshi, J.—This appeal is directed against the award dated 3.11.1981 passed by the Member, Motor Accidents Claims Tribunal, Ujjain, Mr. L.J. Mandlik, in Claim Case No. 35 of 1979 awarding Rs. 22,500/- to the respondent as compensation for the permanent disability due to injury on his leg and pain and suffering.

2. The respondent had filed a claim petition before the lower court claiming Rs. 2,00,000/- as compensation on the allegation that on 7.8.1978 he was going in a bus bearing No. MPH 4714 of the appellant from village Patpala to Ujjain. He had also purchased a ticket in the bus. The bus was being driven by the non-applicant No. 2, Babukhan, rashly and negligently due to which, near village Pawasa on Ujjain Road, the bus collided against a tree and as a result of the collision, the rear wheel of the bus got burst. As a result of the aforesaid accident, the passengers travelling in the bus received injuries and the applicant also received serious injuries on different parts of his body. The applicant claimed to be 36 years of age and he was being continuously treated from the date of the accident till he filed the petition. According to him, for the purpose of providing money for the treatment, he had to sell all his agricultural land and incurred an expenditure of about Rs. 20,000/-. The applicant had one wife, one boy of 3

years and one daughter of 2 years, whom he has to maintain but because of his disability he is not able to do so. He, therefore, claimed a compensation of Rs. 2,00,000/- on different counts. The claim was resisted by the present appellants on the ground that the bus was not being driven rashly and negligently but it was a vis major because although the tyre of the bus was in good condition but all of a sudden it burst with the result that the accident occurred. There was no fault on the part of the driver of the bus and, therefore, the appellant being the owner of the bus is not vicariously responsible for giving any damages to the respondent. The quantum of damages and allegation made by the applicant for claiming those damages were also denied.

3. The learned Tribunal after raising issues on the aforesaid pleadings and recording the evidence, passed the impugned award awarding Rs. 22,500/- as compensation to the respondent-claimant. Hence this appeal.

4. The learned counsel for the appellant, Mr. Dilliwal, challenges the award of the Tribunal mainly on the ground that the accident was not caused due to any rash and negligent driving by the driver. Therefore, the learned Tribunal has erred in holding that the accident was due to the negligence of respondent No. 2, Babukhan.

5. Now before the lower court in view of the evidence it was undisputed that the accident took place due to the bursting of the tyre. Sultansing, PW 7, has admitted this fact in para 8 of his statement. Why the tyre got burst was to be explained by the non-applicant in the case. On this aspect the driver Babukhan does not give any explanation as to why it got burst, although he has been examined as DW 2. According to him, he was driving the bus from Harsodan to Synthetics Yarn Factory at a low speed. However, one of the reasons which may be responsible for the bursting of the tyre is manifestly on the record. It has been stated by the witnesses that the vehicle in question was having 80 to 90 passengers in it because everyone after the factory hours was in a hurry to reach Ujjain and that is why they boarded the bus. Allowing overloading in the passenger bus is not only contrary to the Motor Vehicles Act and the Rules but this also puts an extra load on the wheels which have been manufactured to bear the load to a particular extent. Normally even if the big passenger bus is designed to carry maximum 55 passengers and the tyres manufactured to bear that load, if the vehicle's driver or the owner or his employee gets the bus overloaded which resulted in the bursting of the tyre, then it itself shows the negligence on the part of the person driving the bus. The learned lower court has referred to some earlier decisions wherein the upkeep and maintenance of the vehicle has been held to be the primary responsibility of the owner of the vehicle and the burden is on him to prove that there was no defect in the bus when it was entrusted to the driver for operating; but in the instant case the fact of overloading the bus itself shows the negligence and the cause for bursting of the tyre. As such, the finding of the Tribunal does not require any interference on the point of negligence.

6. As regards the quantum, from the testimony of the applicant coupled with the statement of Dr. Agrawal who had examined and treated the applicant it is manifest that the applicant has been rendered partially disabled for the rest of his life. The doctor suspected that if the pus formation in the leg continues, then there may be even an occasion for the amputation of the leg. Even at the time of the statement of the medical expert, the pus was oozing out from the wound of the leg of the respondent. In the aforesaid circumstances, the Tribunal has rightly appreciated and relied on the testimony of the medical expert and the claimant. The amount of compensation awarded is just and reasonable and it can by no stretch of imagination be said to be on the higher side. In view of the aforesaid, I find no force in this appeal.

7. The appeal is accordingly dismissed with costs. Counsel's fee Rs. 150/-.