

(1984) 11 BOM CK 0053
In the Bombay High Court
Case No : First Appeal No. 73 of 1983

Maharashtra State Road Transport Corporation	APPELLANT
Vs	
Babalal Daud Mulani and Others	RESPONDENT

Date of Decision : 06-11-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A(I), 110B

Citation : (1985) 1 ACC 362 : (1985) 1 BomCR 701

Hon'ble Judges : V.V. Vaze, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : S.A. Hegde, for the Appellant; Dilip B. Bhonsale, for respondent Nos. 1 and 2 and B.P. Apte, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Dharmadhikari, J.—This is an appeal filed by the Maharashtra State Road Transport Corporation against the Award made by the Motor Accidents Claims Tribunal, Sangli, in Motor Accidents Claim No. 33 of 1980, awarding an amount of Rs. 36,000/- with future interest at the rate of 9 percent per annum from the date of application till realisation of the amount, vide order dated 20th September, 1982.

2. It is an admitted position that an accident took place on 5th April, 1980 at about 5-30 p.m. on the Sangli-Indapur road. It was the case of the claimants that on the evening of 5th April, 1980 one Moula Babalal Mulani and Rambhau Dhondiram Shinde were returning to their village Mangrul from Tasgaon on a motor-cycle. Deceased Moula was driving motor-cycle and Shinde was sitting on the pillion seat. At about 5-15 p.m. when they were negotiating a sharp curve, they were dashed by a S.T. bus coming from the opposite side. The head of Moula was smashed and he died on the spot. For the death of Moula, his parents filed Motor Accidents Claim No. 33 of 1980, claiming a compensation of Rs 1,00,000/-. For the injuries received by Rambhau Shinde, Motor Accidents Claim No. 34 of 1980 was filed. However, we are not concerned with the said claim as

no appeal has been filed against the Award passed in the said Motor Accidents Claim. According to the claimants, the accidents took place because of the rash and negligent driving of the bus driver. These allegations were denied by the Maharashtra State Road Transport Corporation as well as the driver of the bus. According to the driver, Moula Babalal Mulani was not holding a driving license at the time of the accident. He was driving the motor-cycle at a very high speed and in a rash and negligent manner and by the wrong side of the road. He was also not conversant with driving of the motor-cycle. Therefore, he could not control the motor cycle on the curve and dashed against the S.T. bus. In order to avoid the accident, the driver of the bus took his bus towards the left side and on the katcha road, but the carrier on the rear side of the motor-cycle dashed against the bumper of the bus and the deceased Moula was killed because of this accident. Thus, according to the opponents, the accident took place because of the rash and negligent driving of Moula.

3. In support of their respective cases, the parties relied upon the oral and documentary evidence. So far as the claimants are concerned, they examined Dr. Aarwade to prove the injuries caused to Shinde. Rambhau Shinde was examined as an eye-witness since he was sitting on the pillion seat of the motor-cycle. Witness No. 3 is the wife of the deceased Moula. On the other hand, the opponents examined Shankar Govind Gore, the driver of the bus, and the conductor Uttam Mahadik. The Police Officer was also examined to prove the panchnama.

4. After appreciation all the evidence on record and after inspecting the spot, the learned Member of the Tribunal came to the conclusion that both i.e. the deceased Moula, driver of the motor-cycle, as well as the bus driver were equally responsible for the accident. This responsibility was apportioned by the learned Member as 50:50. The learned Member, on the basis of the evidence adduced before him, came to the conclusion that the deceased might be spending at least an amount of Rs. 300/- per month for the family. Taking a multiplier of 25 and making certain deductions, the learned Member arrived at the figure of Rs. 67,500/- as the total compensation payable to the dependants of the deceased. To this he added Rs. 4,500/- towards shock and loss of company and affection and on the basis of the contributory negligence he reduced this amount by 50% and ultimately awarded Rs. 36,000/- as fair and just compensation to the dependants of the deceased. As already observed, it is this Award which is challenged in the present first appeal.

5. Shri Hegde, the learned Counsel appearing for the appellants, the Maharashtra State Road Transport Corporation, contended before us that the learned Member of the Tribunal committed an error in holding that the bus driver was responsible for the accident. According to Shri Hegde, the motor-cycle was being driven by the deceased Moula, who had no driving license. He was not conversant with the driving of the motor-cycle and in any case, there is no evidence on record to show this. The motor-cycle was being driven on the left side of the road at a

speed which could not be more than 30 kilometres per hour and therefore the learned Member should have held that it was the driver of the motor-cycle who was rash and negligent in driving the motor-cycle and he alone was responsible for the accident. In the alternative, it is contended by Shri Hegde that in any case the apportionment of the contributory negligence should have been 75 : 25 viz. that it should have been held that the degree of negligence on the part of the motor-cycle driver was 75%. He then contended that in any case, the quantum of compensation awarded is disproportional high. The learned Member should have fixed the compensation after taking into consideration the interest it will earn if the amount is invested prudently and that should have been the basis for fixing the compensation. In support of this contention, Shri Hegde has placed strong reliance upon the decision in Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others, , as also Smt. Sushila Devi and Others Vs. Ibrahim and Another, , Balubhai Hirji Gajjar and Others Vs. Suresh Kumar Nathuram and Others, , Fletchar v. Autocar and Transporters Ltd 1969 A.C.J. 99 and Maillet v. Mc Monagle 1969 A.C.J. 312.

6. On the other hand, it is contended by Shri Apte, learned Counsel appearing for respondent No. 3, that the finding recorded by the learned Member that Moula was not holding any driving license is in itself wrong. According to Shri Apte, in any case, the learned Member has rightly come to the conclusion that the deceased used to drive a motor-cycle for a long time. He was the owner of a motor-cycle and, therefore, only because the driving license is not forthcoming, an inference cannot be drawn that the deceased Moula was not holding a driving license or did not know how to drive a motor-cycle. According to Shri Apte, the apportionment of negligence by the learned Member in itself is on the higher side and therefore, no interference is called for with the said finding. Shri Apte also contended that the quantum of compensation fixed is just and fair and it cannot be said that the compensation awarded is disproportionate so as to call for an interference in this first appeal.

7. With the assistance of the learned Counsel appearing for both the sides, we have gone through the entire evidence on record. In our opinion the learned Member of the Tribunal was quite justified in drawing the following conclusions from the recitals of the panchnamas, which were also not disputed before us. This is what the learned Member has observed in para 18 of his judgment:

"(i) The dash of the motor-cycle and the bus must be in the middle of the tar road.

(ii) The right rear carrier of the motor-cycle must have dashed the bumper and right front portion of the bus.

(iii) The head of the deceased Moula must have dashed against the driver's cabin of the bus and that is why blood and hair were still attached to the cabin and some blood and two teeth of the deceased had fallen in the driver's cabin.

(iv) The motor-cycle had gone ahead upto a distance of 35 ft. and then fallen on

the katcha road towards west. It was there that the deceased must have finally fallen, because there was a big pool of blood near the handle of the motor-cycle.

(v) While going ahead, the motor-cycle must have gone brushing the right portion of the bus as is clear from the scratch marks and sprinkling of blood on right side of the bus."

This is not the end of the matter. We have gone through the evidence of Shinde the pillion rider as well as the evidence of the bus driver and the conductor of the bus. Shinde has stated in his deposition that the deceased Moula was having a motor-cycle of Rajdoot Company at Jaunpur. He was having the motor-cycle for 5 to 7 years. Accordingly to him, Moula was having a driving license. So far as the actual accident is concerned, it is stated by him that the S.T. bus was coming from the opposite side. It was coming at a high speed being a super fast bus. The bus was coming by the middle of the road and it was the bus which dashed against the motor cycle. Thereafter the bus stopped at a distance of 100 to 150 feet from the place of dash. It was suggested to him in the cross-examination that the motor-cycle was being driven at a speed of 90 to 100 kilometres, which suggestion was denied by the witness.

8. So far as the evidence of the driver of the bus is concerned, in our opinion, the said evidence cannot help the appellants. The driver, Shri Gore has admitted in his deposition that he saw a motor-cycle coming from the opposite side and at that time his bus was at a distance of about 250 to 300 feet from the turn. He then wanted to suggest that he was not a party to the panchanama. However, obviously the said versions is incorrect. He admitted that it was true that while coming from Vita the driver of a vehicle cannot see the vehicle coming from beyond the turn till he goes upto the turn. He then stated that the driver of a vehicle at a distance of 150 ft. towards Vita side from the turn, can see a vehicle coming from beyond the turn. According to him, the speed of the bus was merely 15 kilometres per hour. The conductor of the bus Uttam Mahadik, has tried to support the version given by the bus driver, but had to admit in cross examination that he had personally not seen the accident. He admitted that when the bus was at the turn, there was a big noise. He also admitted as correct that the motor cycle had fallen on the katcha road at a distance of about 100 feet behind the S.T. bus. Therefore if this oral evidence is read together with the recitals in the panchnama, then, in our opinion the learned Member of the Tribunal was wholly justified in drawing the conclusions as enumerated in para 18 of his judgment.

9. It appears that the deceased Moula at the relevant time, had no driving license. But from that an inference cannot be drawn that he was not knowing as to how to drive a motor-cycle. From the evidence of Shinde and Moula's widow, it is quite clear that the deceased Moula was owning a motor-cycle of the Rajdoot model for the last 5 to 7 years. Therefore, simply because his driving license could not be produced or he was not holding a driving license it cannot be presumed that he had no knowledge of driving. The bus driver was driving the

bus in middle of the road and, therefore, was obliged to drive the vehicle with reasonable care, strictly observing the traffic regulations and rules of the road. The accident took place near the curve. As the curve was ahead, there was a further obligation upon the driver to drive the vehicle more cautiously. The duty to be careful and diligent increases proportionately with the danger involved. If two persons are driving vehicles on a turn, each owes to the other a duty and are obliged to drive the vehicle with due care and caution. A person driving a motor vehicle on a public road must drive the vehicle with reasonable care, strictly observing the traffic regulations and the rules of the road so as not to imperil the safety of others, who have a similar right to use the road. From the recitals in the panchnama, it is quite clear that the bus was being driven in a rash and negligent manner, and so also the motor-cycle. Both the drivers had not taken proper precaution or care. In this view of the matter, we have no hesitation in confirming the finding recorded by the learned Member of the Tribunal that both were equally responsible for the accident. Equal apportionment of the contributory negligence is also justified by the facts and circumstances of the case. Hence it is not possible for us to accept the contention of Shri Hegde that the contributory negligence on the part of the deceased should have been apportioned at 75%. In our opinion, the learned Member has rightly apportioned it equally. Hence the finding recorded in that behalf is hereby confirmed.

10. So far as the quantum of compensation is concerned, it is seriously contended by Shri Hegde relying upon the decision of this Court in Jaikumar Chhaganlal Patni and Others Vs. Mary Jerome D'souza and Others, , that while fixing just and fair compensation, a second thought should be given to question as to how much amount the dependent will be getting by way of interest on the investment of the lump sum for years to come. In support of this contention, he has placed strong reliance upon the observations of this Court in Jaikumar's case and particularly those in para 17 thereof. It is not possible for us to accept this contention of Shri Hegde for more than one reason. In para 17 of the said judgement this Court was dealing with a contention relating to the discount to be made for the lump sum payment. The compensation in that case was not fixed on the basis as to how much interest will be received by the claimants if the amount is invested in the Bank. The Madhya Pradesh High Court has also considered the said question as it thought it to be one of the standards of determining the compensation. This is what the Madhya Pradesh High Court has observed in Smt. Sushila Devi and Others Vs. Ibrahim and Another,

"(iv) If the period is a long one the "multiplier" will be much smaller than the number of years, even where the contingencies which are allowed for are of small account. The reason is that while in so far as the lump sum of damages is still unspent, it will be earning interest and the damages and interest together will be adequate to last out for the period. The reason is that a prudent person receiving a lump sum, to make good his loss over a period, is expected to invest it and to use it up gradually."

Therefore in our view the said observations are wholly irrelevant so far as the controversy raised before us is concerned. In *Fletcher v. Autocar and Transporters Ltd.*, 1969 A.C.J. 99 the Court of Appeal in England thought it proper to like at the overall figure again to see whether it is a fair compensation, and reduce or increase it accordingly and in that context, the amount of interest which will be received on the amount was taken into consideration. Similar was the case in *Mallet v. Mc Monagle*, 1969 A.C.J. 312 . In the present case, the method followed for fixing fair and just compensation by the learned Member was the multiplier method. For fixing the fair and just compensation by the learned Member of the Tribunal has applied the multiplier of 25. The deceased was aged 25 years at the time of the accident. The normal span of life in our country has practically reached 70. Therefore, compensation is not fixed by the Tribunal after taking into consideration the total span of life of the deceased. It is also obvious that the compensation was not fixed on the basis of the interest the lump sum will receive if it is prudently invested in the Bank. Further, in our view, as observed by the Full Bench of the Punjab High Court in *Joki Ram Vs. Smt. Naresh Kanta and Others*, "the interest theory cannot be adopted as an inflexible principle for the purpose of assessing the compensation specially in these days when the purchasing power in terms of money is being eroded after short intervals on account of runaway inflation." The matters might stand on a different footing in the developed countries. Judicial notice of this fact is also taken by the Supreme Court in *Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, , wherein it is observed :

"The delay in the final disposal of motor-accident compensation cases, as in all other classes of litigation, takes the sting out of the laws of compensation because an infant child who seeks as compensation a dependant of his deceased father has often to await the attainment of majority in order to see the colour of the money. Add to that the monstrous inflation and the consequent fall in the value of the rupee. Compensation demanded say, ten years ago, is less than quarter of its value when it is received today."

Similar view is taken by the Andhra Pradesh High Court in *Srisailam Devasthanam Vs. Bhavani Pramamma and Others*, wherein the observations of Delhi High Court that "the benefit of getting the lump sum payment is offset by the increase in prices and the progressive decrease in the value of the rupee's were quoted with approval. In all the cases on which placed by Shri Hegde the question regarding receipt of interest on the amount invested was considered in the context of choosing the correct multiplier or the method of deduction. In our opinion, it will not be correct to say that even though the correct multiplier in adopted and all necessary deductions are made, then also the question should be again reconsidered by giving a second thought and the compensation should be further reduced keeping in view the interest which a prudent man can get if the lump sum is invested.

11. As a matter of fact, loss of human life cannot be adequately measured in

terms of money. Even otherwise, the learned Member of the Tribunal has deducted 25% on account of lump sum payment and uncertainties and hazards in life which the deceased might have faced if he would have been alive. Any further deduction on the basis of interest theory is wholly unwarranted because of the rapidly falling rate of the value of the rupee. There is a good interest rate only for long term investment. Meanwhile there is increase in prices and cost of living and consequent fall in the value of rupee. This outweighs the rate of interest, even on long term investment. Further, because of illiteracy and ignorance, prudent investment itself is an exception and not a normality. Therefore, it is not down a general rule that while fixing just and fair compensation, it should always be based on the basis of the interest which will be derived or received if the lump sum is prudently invested. Thus, it is not possible for us to accept the broad proposition put forth by Shri Hegde. In our view, the compensation fixed by the learned Member of the Tribunal is just and fair and no interference is called for with the quantum of the compensation awarded.

12. In the result, therefore, the appeal fails and is dismissed with costs.

13. We are informed that the appellants have already deposited the amount of compensation. If this is so, then the Tribunal will have to pass appropriate orders in tune with the guidelines laid down by this Court in Nav Bharat Builders and another Vs. Pyarabai and others, . Obviously such an order will have to be made after giving an opportunity of being heard to the claimants. Therefore, the Tribunal is directed to pass appropriate orders after taking into consideration the guidelines laid down by this Court in Messers Nav Bharat Builders case. The amount deposited in the Court will be subject to the orders passed by the Tribunal.