
(1986) 02 MP CK 0041
In the Madhya Pradesh High Court

Major M.P.M. Pillai and Another	APPELLANT
Vs	
M.P. State Road Transport Corporation and Another	RESPONDENT

Date of Decision : 11-02-1986

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (1986) 2 ACC 169

Hon'ble Judges : K.M. Agrawal, J;C.P. Sen, J

Bench : Division Bench

Judgement

C.P. Sen, J.—By this order Misc. (F) Appeal No. 38 of 1982 (M.P. State Road Transport Corporation v. Major M.P.M. Pillai and Ors. is also disposed of. Both these appeals have been filed u/s 110-D of the Motor Vehicles Act, 1939 against the award of compensation of Rs. 20,664/- with costs and future interest at the rate of 6 per cent per annum. Misc. (F) Appeal No. 444 of 1981 has been preferred by the claimants for enhancement of the compensation by a further sum of Rs. 2,00,000/-, while Misc. (F) Appeal No. 38 of 1982 has been preferred by the Corporation for dismissal of the claim.

2. The claimants-Major R.P.M. Pillai and Mrs. K. Ruknum Hemmaare the parents of deceased Suresh Nair, who died after involving in an accident on 12-9-1977 at about 3.45 p.m. near the General Post Office situated on Sultania Road, Bhopal. The deceased was driving a scooter CPB 3917 and his friend Dr. K.P. Yadav (A.W. 2) was sitting on the pillion. Bus No. MPW 8039 belonging to the Corporation and driven by Mohd. Asghar Khan (NAW 1) collided, as result both the passengers of the scooter were thrown on the foot-path sustaining injuries. The police came to the spot and the injured were sent to the hospital. Dr. Suresh Nair succumbed to his injuries on 17-9-1977. As per the post mortem report he had sustained 24 injuries in all and the death was caused due to injuries to the head and thoracovisceral organs. The impact was so great that the base of the skull was fractured completely through and through in the middle cranial region. Dr. Yadav also sustained fracture of his leg. The deceased was the only son of the

claimants. Claimant No. 1, Major R.P.M. Pillai was aged about 54 years on the date of the accident, while his wife, claimant No. 2, was aged 50 years and the deceased was 26 years and was doing internship in Gandhi Medical College, Bhopal drawing a stipend of Rs. 250/- per month. The claimants filed the present claim petition u/s 110-A of the Act claiming Rs. 4,14,700/- as compensation against the Corporation and the driver. By way of amendment the claimants further claimed an additional sum Of Rs. 40,000/- for mental shock and agony, i.e. in all the claim was for Rs. 4,54,700/-. Dr. K.P. Yadav also filed claim case No. 88 of 1979 against the Corporation and the driver. The police also prosecuted the driver Mohd. Asghar Khan u/s 304A I.P.C.

3. The case of the claimants is that the accident occurred due to rash and negligent driving of bus by the driver Mohd. Asghar Khan causing multiple grievous injuries to the deceased; the deceased was to complete his internship on 8-3-1978 and thereafter he would have drawn a salary of Rs. 1000/- per month: the deceased would have retired as Director of Health Services or as a Dean of the Medical College, on a monthly salary of Rs. 3000/- per month and would have retired on attaining the age of 60 years: therefore, 24 years of service was left ahead of him and he would have earned not less than Rs. 2000/- per month on an average: so in 23 years of service he would have earned Rs. 5,52,000/-; he would have spent Rs. 500/- per month on him i.e. in 23 years he would have spent Rs. 1,38,000/- and therefore he would have a balance of Rs. 4,14,000/-; which the claimants are entitled to get; besides, Rs. 40,000/- for the mental shock and agony.

4. As per the joint written statement filed by the Corporation and the driver, it was denied that the bus was driven rashly and negligently by the driver resulting in the accident. According to them, the accident occurred due to the rash and negligent driving of the scooter by the deceased. The bus was being driven by Mohd. Asghar Khan from the rural depot to the divisional workshop, Bairagarh, Bhopal and the accident occurred in front of the General Post Office: the bus was in slow speed, being on a crowded road: the deceased was driving his scooter in speed and was in the process of overtaking a motorcycle: he got scared after seeing the bus coming from the opposite direction and dashed against the right side wheel of the bus: the bus was stopped immediately, but since the scooter was in high speed while being dashed against the bus, it resulted in serious injuries to the driver and the pillion rider: and as such the claimants are not entitled to any compensation.

5. The Claims Tribunal found that the impact took place 10 ft. away from the right side edge of the road and there was hardly 5 to 6 feet space left from the left side edge of the road, showing thereby that the bus was not on the wrong side of the road. It is also not proved that the bus was being driven at a speed of 60 to 70 kms. per hour. This is evident because the bus stopped immediately after the position of bus at the time of the accident. There was no dent on the bumper of the bus and this belies the contention that the dash was given by the

bumper of the bus to the scooter. However, Mohd. Asghar Khan was a mechanic and not a regular driver and he has not produced his driving licence. Since he was driving a heavy vehicle, much more caution was required on his part. However, there was contributory negligence on the part of the deceased, inasmuch as, he was expected to slow down the speed of his scooter while coming out of the compound gate of the General Post Office. Since the bus was on the main road, it had a prior right of way and the deceased did not observe necessary care and caution while entering the main road. Even though the bus driver had the last opportunity for avoiding the accident, the responsibility for the accident has been fixed on the proportion of 80 on the bus driver and 20 on the scooter driver. At the time of the accident the deceased was getting a stipend of Rs. 250/- per month and he was spending Rs. 900/- per month on himself after getting Rs. 650/- per month from his father. Being a medical graduate, he would have earned not less than Rs. 700/- or Rs. 800/- per month and since his father on retirement would get a pension of Rs. 600/- per month after commutation, the deceased would have managed to maintain himself on his salary and he would be contributing Rs. 200/- per month to his parents and since he was not expected to marry for another three years, his contribution to his parents would have come to Rs. 7200/- for three years. Father of the deceased was not dependent on him but his mother, who was aged 50 years at the time of the accident, was expected to live for another 10 years, 60 being the life expectancy, and the deceased would have contributed at least Rs. 100/- per month for about nine years. This would come to Rs. 10,800/-. Rs. 700/- was spent on the funeral of the deceased. The claimants are also entitled to Rs. 10,000/- for their mental shock and agony. So in all the claim would come to Rs. 28,700/-. After deducting for the contributory negligence in the ratio of 80:20 the amount comes to Rs. 22,960/- and after deducting 10 percent on account of lump-sum payment, compensation of Rs. 20,664/- has been awarded.

6. The claimants contended that the Tribunal erred in holding that there was a contributory negligence by the deceased in causing the accident; the Tribunal failed to consider that the bus was in the process of overtaking another vehicle and dashed against the scooter by rash and negligent driving; the photographs have been manipulated in order to escape the liability; the very fact that the deceased and the pillion rider were thrown on the left side of the foot-path showed the great impact of the collision; and Mohd. Asghar Khan being a mechanic and not a driver, he could not control the bus and so it should have been held that the accident was entirely due to rash and negligent driving by Mohd. Asghar Khan; the Tribunal has not taken into consideration the future prospects of the deceased and has also wrongly held the longevity to be 60 years, when it is now not less than 70 years; the deceased would have contributed not less than Rs. 500/- per month to his parents for a period of 15 to 20 years and the loss to the parents could not be less than Rs. 1,20,000/-; and so a further sum of Rs. 1,00,000/- should be awarded as compensation.

7. On behalf of the Corporation it was submitted that the accident occurred

entirely due to the fault of the scooter driver; the photographs show that the scooter dashed against the right side wheel of the bus because of the rash and negligent driving by the deceased and may be because he lost his balance while overtaking a motorcycle; and since there was no contributory negligence by the bus driver, the claim should be dismissed.

8. The first question to be considered is as to which of the two versions has to be accepted, the one given by the claimants that the accident took place due to the rash and negligent driving by the bus driver or the one given by the respondents that the accident occurred due to the rash and negligent driving of the scooter by the deceased. The Claims Tribunal has come to the conclusion that both were negligent, the negligence of the bus driver to the extent of 80 per cent and that of the deceased 20 per cent. For this purpose he has relied on the statements of two witnesses Atul Dixit and Shanker Narayan (mentioned as AW 1 and AW 3 respectively). These two witnesses were not examined in the present case but it appears that they were examined in the counter case preferred by the pillion rider, Dr. K.P. Yadav, in Claim Case No. 88 of 1979. Only true copy of the statement of Atul Dixit and certified copy of the statement of Shankernarayan were filed. But there is an order of the Tribunal dated 20-12-1980 saying that all the statements recorded in the other case should be read as evidence in the present case but only those statements recorded after 15-12-1980 should be read as evidence in the present case not the evidence recorded earlier. Statement of Atul Dixit has only been accepted regarding his admission about the Photographs (Exs. NA 2 to NA 5). These photographs are not much in dispute. It is not in dispute that the accident occurred on Sultania road which is a busy thoroughfare in front of the gate of G.P.O., Bhopal. According to the evidence of the claimants, the deceased was driving the scooter with Dr. Yadav (AW 2) sitting on the pillion and as soon as they came out of the G.P.O. gate to take a turn to the left they were dashed by the bus of the respondent-Corporation driven by respondent No. 2, while trying to over-take a tempo. But according to the respondents, the scooter was coming from the opposite direction on the main road and while trying to over-take a motorcycle, the scooter dashed against the bumper of the bus. It is admitted by the driver Mohd. Asghar Khan (NAW 1) that the scooter hit on the right corner of the bumper. It is difficult to believe that a scooter driven by a doctor with another doctor sitting on the pillion would drive the scooter so recklessly on a busy road. Unfortunately, in the present case no maps were prepared nor distances were measured, but the respondents' witness Nazim Ali (NAW 2) could deny that the road was 40 to 45 feet wide. The driver Mohd. Asghar Khan (NAW 1) on the other hand stated that two vehicles could easily pass side by side on the road leaving behind 2 to 5 feet space on either side. The Tribunal by relying on the photographs (Exs. NA 2 to NA 5) observed that there was sufficient space left by the bus on its right side and short space left on the other side of the road, without considering that the photographs were taken from right side of the bus, so the space appears more on the right side of the bus. The Tribunal has also not seen that on the left side of the bus there was

car standing and still there was some space left. So it is evident that the accident occurred while the bus came on the right side of the road. Regarding speed of the bus, Dr. Yadav (AW 2) has stated the bus was being driven at a speed of 60 to 70 kms per hour but that is his estimation. The two witnesses of the respondents, the driver Mohd. Asghar Khan (NAW 1) and Nazim Ali (NAW 2) are silent about the speed of the bus, so also Dr. Yadav and Shankernarayan (AW 2 & 3). There can be no doubt that even if the bus was being driven on a moderate speed, the driver of the bus who was a mechanic should have been careful in looking out while driving the bus in front of the G.P.O. from which traffic flows continuously. According to Dr. Yadav, as soon as they came out of the gate, they saw the bus being from the opposite direction at a distance of 150 ft. overtaking a tempo and in that process dashed against their scooter. This is corroborated by Shankernarayan (AW 3) who is an independent person and he was standing near the gate of the G.P.O. at the time of the accident. There is no reason why the statements of these two witnesses should not be accepted. The driver of the bus was rash and negligent in overtaking the tempo in front of the G.P.O. gate. Their version fits in with the circumstances of the case and so the version given by the driver of the bus cannot be accepted. Nazim Ali (NAW 2) who was the helper in the bus claims to have seen the accident. His presence inside the bus is doubtful because there is no mention of his name in the written statement of the respondents and he stated that the deceased was driving a Jawa motorcycle, while, in fact, he was driving a scooter. The Tribunal was also led away by the fact that in the photographs no dent has been shown in the bumper of the bus. A light vehicle like scooter could not have caused any dent by impact in the bumper of a bus. It is admitted by the driver that the dash of the scooter was in the corner of the bumper. The photographs also show that the bus was in a standing position showing that after overtaking the tempo the bus was in the process of going on the left side of the road. A Division Bench of this Court in *Bhagwantibai v. M.P.S.R.T.C.* 1976 MPLJ SN 60 has held that the bus driver owes a duty to keep his vehicle under control and to steer clear of the cart and the cyclist while crossing the cart and the last opportunity of averting the accident was on the bus driver. Another Division Bench of this Court in *Jamnibai v. Chhote Khan* 1980 MPLJ 678 has held that: Deceased coming by side-road on moped and reaching a major road 30 feet wide-Driver of the bus approaching with speed seeing deceased on the road but neither slowing down nor applying brakes till he heard sound of accident and running over deceased- -Accident held to be result of rash and negligent driving. Therefore, we have to hold that the accident occurred due to rash and negligent driving of the bus and there was no contributory negligence on the part of the deceased in driving the scooter.

9. The next question is what should be the award of compensation. Admittedly, the deceased was doing internship in the Gandhi Medical College Bhopal which was to be completed in March, 1978, i.e. within six months of the accident. At that time the deceased was drawing a stipend of Rs. 250/- per month and he was being reimbursed by a sum of Rs. 650/- every month from his father,

claimant No. 1. After completing the internship the deceased would have secured a job of demonstrator in the Medical College drawing a salary of Rs. 650/- per month with prospects of future promotion from time to time. The deceased was unmarried and it was expected that he would have married in another 2 to 3 years. The Tribunal has granted compensation for the first three years to the claimants at the rate of Rs. 200/- per month by holding that he would have been earning Rs. 1,000/- per month and thereafter at the rate of Rs. 100/- per month to his mother, claimant No. 2, for a period of nine years. So that the compensation awarded is Rs. 7,200/- for three years and Rs. 10,800/- for nine years making a total of Rs. 18,000/-. Rs. 10,000/- has been awarded for mental shock and agony and Rs. 700/- towards funeral expenses. The total came to Rs. 28,700/-. In view of the contributory negligence of 20 per cent on the part of the deceased, the claim has been reduced to Rs. 22,960/- and further reduced to Rs. 20,664/- on account of lump-sum payment. The Tribunal has not taken into consideration the future prospects and increase in earning capacity of the deceased and that the longevity of the claimants would be till age of 70 years atleast. So the annual dependency should have been fixed at Rs. 300/- per month and looking to the future prospects the multiplier should have been 15. So the amounts comes to Rs. 54,000/-. Therefore, the claimants are entitled to Rs. 54,000/- + Rs. 700/-. No reduction is being made for the lump-sum payment, as the money value of the rupee is going down every day. The Supreme Court in C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, has held that it is not a condition precedent to the maintenance of an action under the Fatal Accidents Act that the deceased should have been actually earning money or money's worth or contributing to the support of the plaintiff at one before the date of his death, provided that the claimant had a reasonable expectation of pecuniary benefit from the continuance of the life.

10. Therefore, the appeal is partly allowed. The amount of compensation is enhanced from Rs. 20,664/- to Rs. 55,000/- with interest at the rate of six per cent per annum from the date of filing of the claim petition till realisation. Counsel's fee as per schedule, if certified.