

(1984) 10 BOM CK 0019

In the Bombay High Court

Case No : First Appeal No's. 639 and 640 of 1981

Malan Hanumant Meher and Another

APPELLANT

Vs

Balkrishna Vishnu Jadhav and Another

RESPONDENT

Date of Decision : 30-10-1984

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 6, 7
Motor Vehicles Act, 1988 — Section 116
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (1985) ACJ 141

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

Bench : Division Bench

Advocate : George Kurien and A.P. Vaze, for the Appellant; S.A. Hegde, for the Respondent

Final Decision : Allowed

Judgement

V.V. Vaze, J.—As one motors down from Sion to Panvel one comes across an intersection where a road from Thane going to Belapur cuts the main Sion Panvel highway. The Sion Panvel road is a 24 feet tar road having 5 feet broad katcha shoulders on either side while Thane Belapur road is 16 feet wide with 2 feet mud tracks on either side. Hardellia Chemical Factory is situated to the north of the crossing, which does not have a pattern of two roads intersecting each other at right angles. Rather for some stretch the Thane Belapur road and Sion Panvel road run on parallel lines. Even though the former takes a turn towards the south for Belapur, the continuity before the turn is maintained for a short while and a small strip runs parallel to the Sion Panvel road till it comes to a dead end. That is to say, even though a driver coming from Thane were to forget to take the turn for south to Belapur, he will be reminded of it when he reaches the dead end.

2. On 12.2.1978 a bus of Maharashtra State Road Transport Corporation coming from Panvel was found at the intersection of Thane Panvel road--known as Shirvane junction--some 75 feet away from the intersection; it had turned on its

left wing; its headlamps and the tin sheets were damaged and one scooter MTY 7958 had come under the front left wheel. The scooter was totally damaged and its steel-sheets of green colour were strewn near the site. A deadbody was found near the S.T. bus and it was identified as that of Hanumant Meher.

3. Malan, belonging to the C.K.P. caste, had married Hanumant Meher, a Koli, in 1964. Hanumant was then getting a salary of Rs. 230/- to Rs. 300/- per month and Malan was working as a teacher which she continued to do even after the marriage so as to augment the family income. The couple has two children; a son Sandeep and a daughter Sangeeta who was studying in eighth standard.

4. On the day of the incident, Hanumant was proceeding to Sarsole from Thane on the scooter and had taken Sangeeta on the pillion seat.

5. As Hanumant died as a result of an alleged rash and negligent driving of the bus owned by Maharashtra State Road Transport Corporation, Malan as the widow of the deceased Hanumant and Sandeep as the son, preferred Motor Accident Claim Nos. 81 and 82 of 1978 before the Motor Accidents Claims Tribunal at Thane. The learned Member of the Tribunal dismissed both the claims on the ground that the Applicants have not proved that Jadhav, the driver of the State Transport bus, was driving the bus in a rash and negligent manner. That is what gives rise to these two First Appeal Nos. 639 of 1981 and 640 of 1981.

6. Balkrishna Jadhav, the driver of the bus, has averred that he has been driving vehicles since 1962 and on that day he was taking the bus carrying about 50 passengers from Revdanda to Bombay. Though Jadhav claimed in the examination-in-chief that he was driving at a speed of 45 kilometers an hour, he admitted in the cross-examination that he is allowed to drive the bus upto 65 kilometers an hour and hence, the speed as given by him may be an underestimate. Jadhav reached the Shiravane junction of Thane Belapur road and Thane Panvel road and by the time he had traversed 3/4th of the junction, a scooter came from Thane side that is the western side and suddenly dashed against the bumper of the bus. Jadhav tried to apply brakes, turned his bus towards the left but as the scooter was entangled in the bumper of his bus, it got dragged and that is how the bus swerved to the left side of the road and turned on its side in the road-side ditch. Thus Jadhav puts up a case of complete innocence: of a scooter dashing against him when he was keeping to his left and did make utmost attempt to avert the collision even at the risk of the safety of 50 passengers and his own life.

7. On the other hand, the Applicants examined Krishna Kadu who was standing at the CIDCO bus stop, at a distance of about 100 feet from the intersection waiting to catch a bus for his village Bondkule. Krishna Kadu saw the scooter coming from Thane by the Thane Belapur road with a girl sitting on the pillion seat and when the scooter just crossed the highway, a bus came from Panvel at a fast speed and dashed against the scooter. The bus dragged the scooter for a distance of about 70 to 80 feet and then turned on its left side and fell down in a

ditch.

8. Even though an attempt has been made to suggest that the witness had not seen the accident and was giving false evidence at the instance of Atmaram Patil a common friend of the victim and the witness, there is not much difference in the manner in which the driver and Krishna Kadu have described the scene of the accident, It appears that Hanumant who had taken a learner's licence some ten days before the accident, came to the intersection and had to cross the Sion Panvel road to proceed Belapur. It is a common practice followed by town planners to have beds of flowering shrubs in the divider between two parallel roads which could serve to nullify the effect of glaring lights of vehicles coming from opposite directions. But no such obstruction has been suggested in this case and hence the bus driver had a clear unobstructed view of the incoming scooterist who had to take a turn and cross his path to proceed to Belapur. In addition, Hanumant was wearing a red cap and the time being 9 a.m. the road could be presumed to be sufficiently clear for Hanumant to notice the oncoming S.T. bus from Panvel and for driver Jadhav to notice the red capped scooterist coming from Thane side with a 12 year old girl on the pillion seat. Though Jadhav has tried to absolve himself of any responsibility by narrating the incident as if all of a sudden a scooter darted from the intersection without any warning to him and dashed against his bus, we find it difficult to believe in this version.

9. Out of the two drivers one is dead and hence the manner in which the accident occurred will have to be reconstructed from the evidence of the eye-witness Krishna Kadu, that of the driver Jadhav and the spot inspection notes made by the learned Member of the Tribunal regarding the scene of the incident. The panchanama, Exh. 50, which was recorded immediately after the incident during the investigation of a criminal case under Sections 304-A, 279 and 337, Indian Penal Code and Section 116 of the Motor Vehicles Act, shows that the panchas could observe skidding marks of the scooter tyre from the road till the point where the S.T. bus was lying, indicating the last minute effort of the scooterist to avert collision by applying brakes.

10. It appears to us that even though the scooterist and the bus driver could see each other near about the intersection, each thought that the other would give him a right of way. The scooterist probably calculated that he would be able to cross the 24" wide Thane Panvel road before the bus arrived at the spot. The bus was doing about a kilometer a minute and even though the oncoming bus a kilometer away looked far away, the scooter which had slowed down at the turn could not be accelerated sufficiently to cover the 24" distance before the bus arrived. The bus driver Jadhav with the usual smugness of a man in the driver's seat of a heavy vehicle assumed that the scooterist will refrain from crossing the highway after noticing the oncoming bus but when he realised that the scooterist has not given him the right of way and persisted in crossing the road, swerved the bus towards his left in a bid to permit the scooterist enough leeway to brake and avoid the collision. The scooterist did try to stop the vehicle by applying the

brakes but by then it was too late.

11. Rules 6 and 7 of the Tenth Schedule to the Motor Vehicles Act which in fact are rules of prudence have been pressed into service by counsel on either side. According to Rule 6, it is obligatory on the driver of the motor vehicle to slow down when approaching a road intersection, a road junction or the road corner and the driver shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of the persons thereon. Mr. Kurien the Learned Counsel for the Appellants placed reliance on this rule to show that had the bus driver complied with it after sighting the scooterist the accident could have been averted because he was duty bound to act in a manner so as not to endanger the life of the scooterist who was approaching the intersection.

12. On the other hand, Mr. Hegde, Learned Counsel for the Respondent, underscored the fact that Thane Panvel road is a national highway with the result that under Rule 7, a scooter driver on entering the road intersection when the road entered is a main road designated as such, was duty bound to give way to the vehicle proceeding along that road. As Thane Panvel road was a main road, argues counsel, the scooterist should have come to a halt at the intersection and should have allowed the bus driver to proceed ahead as he was on the main road. In support, Mr. Hegde places reliance on District Transport Co-operative Society Ltd. and Another Vs. Janak Rani and Others, , in which a scooterist who had not slowed down when entering the main road and was dashed by a bus coming along the correct side of the road was disentitled from any compensation from the driver of the bus as he had not complied with Rules 6 and 7 of Schedule X of the Act. In the facts of the Punjab case, it appears that from the evidence of the pillion seater, the driver scooterist did not slow down before entering the main road and the intersection was such that in order to take a right angle turn, it was necessary for the scooterist to turn the scooter from the middle of the road.

13. It is understandable that whenever there is an intersection between the main road and another road and one of it is totally blocked from vision in such a manner that the movement of the vehicle on the other road is not visible, one cannot expect the user of the main road to glance into the adjoining lanes and allies to see whether someone is darting through it onto the main road. Hence, as held in State of Punjab Vs. Roshnai Ram and Others, , when one car came from the side road through the by-lane and hit the one on the main road, the driver of the latter could not be held guilty of negligence. That is not the case here. As observed earlier, there was no building or any other obstruction which could have prevented the driver of the bus from noticing the red capped scooterist coming from the opposite direction on the parallel road. Likewise, it is the obverse of the same coin to suggest that the scooterist could also not be absolved of the duty to take reasonable care to keep a watch out for the traffic. The culpabilities of the two drivers as evidenced by the panchanama of the scene

of incident and the eye-witness account are evenly balanced which leads us to the conclusion that the scooterist as well as the bus driver are guilty of contributory negligence in the proportion of 50:50.

14. That brings us to the question of compensation to be awarded to the claimants in these two appeals. Even though the learned Member of the Motor Accidents Claims Tribunal has dismissed both the claims, he had recorded a finding that Hanumant was getting the salary of Rs. 790.40 per month and was expecting a promotion in 5/7 years. The learned Member took the salary of Hanumant as Rs. 800/- per month, made a deduction of 1/4th (one-fourth) therefrom as the amount which he would have spent for himself and came to the figure of Rs. 7,200/- as being the amount available as contribution towards his family. Thereafter, on the basis that Hanumant was HO years old at the time of the accident, the learned Member assumed a multiplier of 15 and came to the figure of Rs. 90,000/- (sic.) as total loss to the family. From this figure of Rs. 90,000/- a deduction of 1/3rd was made on account of risk of uncertainties of life.

15. In addition, the learned Member took notice of the fact that Malan was getting a pension of Rs. 200/- per month for 6 years and thereafter was to receive Rs. 100/- per month for life. An amount of Rs. 26,400/- was deducted from Rs. 60,000/- and from that the learned Member deducted the amount of gratuity and provident fund.

16. As we have adopted the multiplier method of 15 years, we are not taking into consideration the entire earnings of Hanumant till his date of superannuation and the pension which he would have normally obtained had he superannuated. Unfortunately, we do not even have the service conditions applicable to Hanumant on record except the word from Uddhav Surte, the office superintendent according to whom he and Hanumant were working in the General Administration Department from 1965 to 1975. We do not have any material as to whether the family pension which is being paid to Malan was an incident of service and whether any contribution was made by Hanumant to get a benefit of the family pension, nor do we have material on which to base a finding that on consideration of receiving the triple benefit of death-cum-retirement gratuity and family pension the servant of Zilla Parishad had opted out of a higher 50% pension normally available under the old rules. Be that as it may, on the basis of evidence available, we would follow the principle laid down by this Court in First Appeal No. 1012 of 1981-- United India Insurance Co. Ltd. Vs. Abdul Munaf Majur Hussain Momin and others, , decided by Sawant and Tated JJ. on 17th August, 1984 whereunder the family pension was not deducted from the amount of compensation arrived at in a claim for motor accident.

17. As regards the deductions of provident fund etc. made by the learned Member of the Tribunal, we find that such deductions are not warranted because amounts like gratuity and provident fund would have been receivable by Hanumant in the normal course upon completion of a certain years of service and are not dependent upon premature death either natural or accidental.

18. As regards the deduction of 1/3rd on account of risk of uncertainties of life, we find it to be on a very high side. Mr. Hegde argued that in view of the high return of interest which a nationalised bank offers on a fixed deposit the deduction of 1/3rd made by the learned Member was correct. Otherwise dependents would be getting much more than what Hanumant would have been able to offer to them in his lifetime. In an affluent society having a high degree of gross national product and high per capita income as well as higher median income, it is possible for an average prudent house-holder to lay aside certain sum towards savings and to invest in a profitable stock. As is apparent from the evidence of Malan she had to continue to teach even after marriage in order to augment the family income which was not at all on the high side. Under such peculiar circumstance of a shoestring budget of an Indian house-holder it would not be reasonably practicable for the house-holder to lay aside savings and invest them in a high interest bearing security all the time. Secondly, having followed the multiplier method, we are not taking into consideration the amount of full income which Hanumant could have earned even after his retirement and hence a high deduction of 1/3rd is not warranted. All the same, we are not oblivious of the fact that a lump sum settlement does have an interest earning potential and we would make a deduction of Rs. 10,000/- on that score.

19. Deducting a round figure of Rs. 10,000/- , we arrive at a figure of Rs. 80,000/- as the just compensation and as the contributory negligence has been put at 50:50, we arrive at a figure of Rs. 40,000/- for Malan and her son Sandeep Meher. To that figure of Rs. 40,000/- we would add another sum of Rs. 10,000 ? ?, = Rs. 5,000/- as compensation for non-pecuniary loss such as loss of consortium, love and affection etc.

20. In First Appeal No. 640 of 1981, the Appellant had claimed Rs. 50,000/- consequent upon damages arising out of the death of Sangeeta the daughter of Malan who was killed in the accident when she was proceeding on the same scooter as a pillion rider. In the Court the claim has been reduced to Rs. 15,000/- . The girl was studying in eighth standard was a clever student. Her mother Malan who is herself a daughter of ayurvedic medical practitioner had an ambition to send Sangeeta to a medical school so that she follows the footsteps of her grandfather. As Malan was herself a teacher, it would not be unrealistic to expect that she would have brought her daughter up in the manner deposed to by her in the box. Mr. Hegde had drawn our attention to a decision in Nagappaiah Vs. New India Assn. Co. Ltd. and Another, , in which, when there was a collision of two lorries and a passenger was injured, the accident was found to be due to the composite negligence of both the lorry drivers and liability on each vehicle was fixed at 50%.

21. It is one thing to specify and apportion the amount which will be paid by the insurer, by the owner or the driver of the vehicle or each of the vehicles involved in an accident of collision, as respects a passenger travelling in one of the vehicles and another thing when the minor daughter herself is riding the pillion

seat of a scooter driven by her own father. If Mr. Hegde's argument is accepted, it would mean that Sangeeta has a claim against her own father as well as the Maharashtra State Road Transport Corporation and as far as the 50% liability of her father is concerned, it would merge in the claim preferred by Malan and her son and she would be left with only 50% claim against the Maharashtra State Road Transport Corporation. In our view, the analogy of a passenger being injured in a collision and the one in which a minor is riding the pillion seat of a scooter driven by his or her father would not be proper. We would prefer to rely on the common law rule enunciated in *Oliver v. Birmingham and Midland Motor Omnibus Company Ltd.* 1 KB 35, in which the Plaintiff, an infant, was crossing a road in the care of his grandfather. When they had reached the middle of the road, the grandfather was startled by the approach of the Defendant company's omnibus and released the infant Plaintiff's hand. The Plaintiff was struck by the omnibus and was injured. In an action brought by the infant, suing by his father as next friend, the jury found that the company's servant was negligent and that the infant Plaintiff's grandfather was guilty of contributory negligence. The case was decided before the passing of the Married Women and Tort Feasors Act, 1935 in England when ordinarily the Plaintiff would have been non-suited in toto. Even then it was held that the Plaintiff was entitled to recover against the company notwithstanding the negligence of his grandfather, in view of the special duty which the driver of an automobile owes towards children. This principle would aptly apply to the facts of this particular case, when bus driver could not have missed the child on the pillion seat and we would not slash down the compensation of Rs. 15,000/- by 50%.

22. As a result, both the First Appeals are partly allowed. In First Appeal No. 639 of 1981 the Respondents shall pay jointly and severally a compensation of Rs. 45,000/- and in First Appeal No. 640 of 1981 the Respondents shall pay jointly and severally a sum of Rs. 15,000/- to the Appellants. The amount shall be deposited in the trial Court viz. the Motor Accidents Claims Tribunal, Thane, at Thane, within four weeks from the date of the receipt of the writ of this Court. In the event of a failure on the part of the Respondents to make the aforesaid deposit, the amount shall carry interest at the rate of 6% per annum from today. In view of the peculiar circumstances of the case and the partial success, there will be no order as to costs in both the First Appeals.

23. Upon the deposit being so made, the trial Court shall pass appropriate orders as to payment of the amount or investing the same in fixed deposit in consonance with the guidelines given by this Court in *Nav Bharat Builders and another Vs. Pyarabai and others*, . In First Appeal No. 640 of 1981 only the 1st Appellant Malan Hanumant Meher, the mother of Sangeeta will be entitled to the full amount of compensation and not Appellant No. 2 Sandeep Hanumant Meher.