
(1994) 06 GAU CK 0030
In the Gauhati High Court
Case No : M.A. (F) No's. 72 and 73 of 1993

Managing Director, A.S.T.C.

APPELLANT

Vs

Samir Chanda and Another

RESPONDENT

Date of Decision : 15-06-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 173

Citation : (1995) ACJ 725

Hon'ble Judges : J.N. Sharma, J;B.N. Singh "Neelam", J

Bench : Division Bench

Advocate : P.C. Deka, C.K. Das and U. Barua, for the Appellant; A.C. Mahanta and C. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—These two appeals are against the judgments and awards dated 2.2.1993 passed by the Member, Motor Accidents Claims Tribunal at Kamrup, Guwahati, in M.A.C.T. Case No. 64 (K) of 1984 [M.A. (F) No. 72 of 1993] and M.A.C.T. Case No. 65 (K) of 1984 [M.A. (F) No. 73 of 1993].

2. The question which arises in these two cases is that whether a Motor Accidents Claims Tribunal can pass an award with regard to injuries caused by bomb blast by terrorist activities? On 17.10.1993 at about 7.55 p.m. the Assam State Transport Corporation (for short "A.S.T.C.") city bus stopped at the last stoppage near the 4th APBn. During the stationary condition passengers started alighting from the bus and in the meantime a bomb exploded which caused grievous injuries to the claimants. The learned Tribunal found that there is no omission or commission or violation of any provision of the Motor Vehicles Act or Rules framed thereunder. "But when the atmosphere is polluted and there is possibility of internal or external danger to the vehicle, however remote the cause might be, an extra vigilance and care is necessary even when the vehicle is found properly parked and in stationary condition. The driver and conductor are bound to take extra care which is found lacking here."

3. No doubt, recently the insurance companies have started to insure vehicles to pay loss and damages to the motor vehicles caused by terrorist activities. But that does not cover the loss because of the use of the motor vehicles. Sections 110 to 110-F were substituted for the former Section 110 by the Motor Vehicles Amendment Act, 1956. The object and reasons of the amendment are as follows:

Under the existing Section 110 powers to appoint persons to investigate and report on motor accidents have been given to State Government but the officers so appointed are not empowered to adjudicate on the liability of the insurer or on the amount of damages, except at the express desire of the insurance company concerned. The provisions have not helped persons of limited means in preferring claims on account of injury and death, because a court decree has to be obtained before the obligation of an insurance company to meet claims can be enforced. It is, therefore, proposed to empower State Government to appoint Motor Accidents Claims Tribunal to determine and award damages.

4. Accordingly, these Motor Accidents Claims Tribunals were constituted by the different State Governments. The liability to pay the damages for accidents arises out of the use of motor vehicles and if the statute does not create the liability without proof of negligence, no damages can be granted. The statute has created the no fault liability u/s 92-A of 1939 Act (corresponding to Section 140 of 1988 Act). This has been interpreted by the Supreme Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, holding that Section 92-A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. That case was followed by a single Judge of this court in the case of State of Assam Vs. Pranesh Debnath and Others, where the single Judge of this court held that the amount of compensation for no fault liability shall be available in an accident due to bomb blast and the single Judge further held that where there was a bomb blast as a result of which the accident took place it may be relevant for the purpose of determining the fault of the owner or the driver. It is not material for determining the no fault liability u/s 92-A (section 140 of 1988 Act). But the question which arises in this case is something different and as such this matter was placed before the Division Bench.

5. Even in the earliest case of tort in Rylands v. Fletcher ILR(1868) HL 330 which is founded upon a theory of strict liability, it was pointed out that in order to be liable under the tort there must be duty cast on the owner if the damage is caused because of interference of a stranger and over such activities the owner has no control, the owner shall not be liable.

6. Salmond defines a tort as "a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation." The liability for a tort may be said to be commonly based on the coexistence of two conditions- (1) damages suffered by the plaintiffs from the act of the defendants.

(2) wrongly intended or culpable negligence on the part of the defendants. The negligence may be either wilful or it may be carelessness. These are the cases where the defendant has a duty of ensuring safety to others.

7. In *Minu B. Mehta v. Balkrishna Ramchandra Nayan* 1977 ACJ 118 (SC), the Supreme Court considered Section 95 of the Act of 1939 and the liability of the owner or of the insurance company and it was held that the proof of negligence is necessary. The Supreme Court in para 23 pointed out as follows:

The Indian law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing Chapter VIII of the Act. These provisions almost wholly adopted the provisions of the English law. The relevant Sections found in the three English Acts. Road Traffic Act, 1930, Third Parties (Right against Insurers) Act, 1930 and Road Traffic Act, 1934, were incorporated in Chapter VIII. Before a person can be made liable to pay compensation for any injuries and damage which have been caused by his action it is necessary that the person damaged or injured should be able to establish that he has some cause of action against the party responsible. Causes of action may arise out of actions for wrongs under the common law or for breaches of duties laid down by statutes. In order to succeed in an action for negligence the plaintiff must prove (1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the plaintiff and (2) that there was a breach of that duty and that as a result of the breach damage was suffered by the plaintiff. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment. Apart from it, in common law the master is not liable for as it is often said that owner of a motor car does not become liable because of his owning a motor car.

8. In paras 28 and 29 the Supreme Court pointed out as follows:

(28) This plea ignores the basic requirements of the owner's liability and the claimant's right to receive compensation. The owner's liability arises out of his failure to discharge a duty cast on him by law. The right to receive compensation can only be against a person who is bound to compensate due to the failure to perform a legal obligation. If a person is not liable legally he is under no duty to compensate anyone else. The Claims Tribunal is a Tribunal constituted by the State Government for expeditious disposal of the motor claims. The general law applicable is only common law and the law of Torts. If under the law a person becomes legally liable then the person suffering the injuries is entitled to be compensated and the Tribunal is authorised to determine the amount of compensation which appears to be just. The plea that the Claims Tribunal is entitled to award compensation which appears to be just when it is satisfied on proof of injury to a third party arising out of the use of a vehicle in a public place without proof of negligence if accepted would lead to strange results.

(29) Section 110 (1) of the Act empowers the State Government to constitute one or more Motor Accidents Claims Tribunals for such area as may be specified

for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of or bodily injury to persons. The power is optional and the State Government may not constitute a Claims Tribunal for certain areas. When a claim includes a claim for compensation, the claimant has an option to make his claim before the civil court. Regarding claims for compensation, therefore, in certain cases civil courts also have a jurisdiction. If the contention put forward is accepted so far as the civil court is concerned, it would have to determine the liability of the owner on the basis of common law or torts while the Claims Tribunal can award compensation without reference to common law or torts and without coming to the conclusion that the owner is liable. The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in a public place cannot justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the lynchpin to recover compensation. The various enactments have attempted to mitigate a possible injury to the claimant by providing for payment of the claims by insurance.

In para 31 the Supreme Court pointed out as follows:

A person is not liable unless he contravenes any of the duties imposed on him by common law or by the statute. In the case of a motor accident the owner is only liable for negligence and on proof of vicarious liability for the acts of his servant. The necessity to provide effective means for compensating the victims in motor accidents should not blind us in determining the state of law as it exists today.

The Supreme Court concluded as follows:

We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner or the insurance company could be held to be liable for the payment of compensation in a motor accident claim case.

9. This being the settled position of law, we are constrained to hold that when there is a bomb blast and the accident is caused due to bomb blast, it is not a case of any negligence on the part of the owner or the driver, but because of some other events over which the owner or the driver has no control. Such an accident is not the result of negligence or failure to do some duty. It cannot be said in such a case that there is negligence on the part of the owner or the driver. If there is no negligence on the part of the owner or the driver, the question of paying compensation by the owner or by the driver does not arise. Accordingly, we allow these appeals and set aside the judgments and awards dated 2.2.1993 passed by the Member, Motor Accidents Claims Tribunal, Kamrup at Guwahati, in M.A.C.T. Case No. 64 (K) of 1984 and M.A.C.T. Case No. 65 (K) of 1984.

10. Before we part with the record, we pass the following order:

That at the time of filing these two appeals the appellants deposited Rs. 25,000 against each appeal u/s 173 of the Motor Vehicles Act, 1988. It was ordered that these amounts may be withdrawn. If these amounts have been withdrawn by the respondents, there would be no necessity to refund the same.