

(1998) 02 MP CK 0020

In the Madhya Pradesh High Court

Case No : M.A. No"s. 853 and 982 of 1994

Manju Rai and Others

APPELLANT

Vs

M.P. Electricity Board and Others

RESPONDENT

Date of Decision : 28-02-1998

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (1999) ACJ 853

Hon'ble Judges : Usha Shukla, J;S.K. Dubey, J

Bench : Division Bench

Advocate : Samir Seth, for the Appellant; M.L. Jaiswal, P.K. Jaiswal, A.G. Dhande, B.D. Jain and Sunil Jain, for the Respondent

Judgement

S.K. Dubey, J.—Misc. Appeal No. 853 of 1994 has been filed by the appellants-claimants for enhancement of compensation awarded in Claim Case No. 9 of 1989 vide award dated 10.8.1994 passed by the Second Motor Accidents Claims Tribunal, Raisen, while Madhya Pradesh State Road Transport Corporation has filed Misc. Appeal No. 982 of 1994 aggrieved of the said award.

2. Facts giving rise to the appeals are thus: Late Dr. Vikas Chandra Rai, aged 36 years, a Lecturer in Commerce Department in Bhopal University, was drawing Rs. 4,325.25 as his gross pay, died in a motor accident on 27.12.1988, when he was travelling as a passenger in stage carriage bus No. MPH 7893. On the fateful day the passenger bus was being driven by Omar Khan, respondent No. 4, during the course of employment of M.P. State Road Transport Corporation, the respondent No. 3 in Misc. Appeal No. 853 of 1994. At about 7.00 a.m. when the said bus reached between the villages Naktara and Khandera in Raisen District, it collided with truck No. CPL 6583, owned by M.P. Electricity Board, respondent No. 1, driven by Bali-ram Rai, respondent No. 2 and insured with respondent No. 5 (in M.A. No. 853 of 1994). Because of the collision, deceased Vikas Chandra Rai received severe injuries, who was taken to hospital but succumbed to injuries. The legal representatives of the deceased, that is, appellant No. 1, widow,

appellant Nos. 2 and 3, minor children and appellant Nos. 4 and 5, parents, filed an application on 17.3.1989 u/s 110-A of the Motor Vehicles Act, 1939, against the owner, driver of the two offending vehicles and also against insurer of truck No. CPL 6583, for compensation of Rs. 60,91,600. The claim was contested by respondents. Respondent Nos. 1 and 2 in their written statement took a defence that the accident was caused due to sole negligence of the bus driver. On 27.12.1988, at about 7.00 a.m. when the truck reached between villages Khandera and Naktara, the driver of the truck saw the passenger bus coming from the opposite direction at a very high speed from Raisen side going towards Begumganj side. Seeing this the respondent No. 2 stopped the truck on the extreme road side towards its left keeping its dim lights on as it was foggy. The cleaner of the truck got down to answer the call of nature; but, as the bus was not in control of respondent No. 4, the bus driver, it dashed against the right front side of the standing truck, which after dash, left the road and stopped about 85 paces away in the fields. The accident in the circumstances was for no fault of the respondent No. 2. The respondent Nos. 3 and 4 in their written statement denied any negligence on the part of the respondent No. 3 and took the stand that the accident was inevitable due to negligent driving of the truck.

3. To prove negligence of the drivers of the two offending vehicles, the appellants did not examine any eyewitness to the occurrence. The respondent Nos. 3 and 4 also did not lead any evidence. The respondent No. 4 did not enter the witness-box to establish the defence that the accident did not occur due to rash or negligent driving of the bus. The respondent Nos. 1 and 2, to establish the defence, examined respondent No. 2 only as NAW 1.

4. The Tribunal after appreciation of evidence on record, that is, of NAW 1 and the certified copies of the first information report, spot-map, Exh. P. 11-A, seizure memos of the bus No. MPH 7893 and of the truck No. CPL 6853 Exh. P. 9-A and Exh. P. 10-A, prepared during the investigation on the first information report lodged by the respondent No. 2 at the Police Station, Deogaon, District Raisen and proved by AW 4, Balmukund, held that the accident was caused due to sole negligence of the respondent No. 4. The Tribunal determined the compensation after assessing the monthly income of the deceased at Rs. 5,000; from that one-third was deducted towards personal living expenses of the deceased; the dependency was arrived at Rs. 3,400 per month; yearly Rs. 40,800 reduced to Rs. 40,000 per year; wherein multiplier of 10 was applied, the amount was worked out to Rs. 4,00,000. In this Rs. 10,000 for mental pain and agony due to injuries received by the deceased and Rs. 10,000 for shock, pain and suffering suffered by the legal representatives of the deceased and Rs. 15,000 towards loss of consortium to widow of the deceased were added; thus a compensation of Rs. 4,35,000 was worked out from which Rs. 15,000 were deducted towards the ex gratia payment made by the respondent No. 3. Thus a compensation of Rs. 4,20,000 was awarded with interest at the rate of 12 per cent per annum from the date of application till realisation which was ordered to be paid by the respondent Nos. 3 and 4 jointly and severally.

5. We have heard Mr. Samir Seth for the appellants; Mr. M.L. Jaiswal, senior counsel with Mr. P.K. Jaiswal for respondent Nos. 1 and 2; Mr. A.G. Dhande, learned Counsel for respondent Nos. 3 and 4 and Mr. B.D. Jain and Mr. Sunil Jain for respondent No. 5.

6. True, no evidence has been led on behalf of the claimants-appellants; but even in the absence of the evidence to establish negligence of the drivers of the two offending vehicles or any of the drivers, the claim cannot be thrown out as the accident is admitted and the two drivers had thrown blame for the accident on each other. In the circumstances, the question for our consideration is whether it was the driver of the bus alone who was responsible for the accident or the driver of the truck was solely or partly responsible for the same. The driver of the bus has not appeared in witness-box who had the first hand knowledge about the manner and the circumstances in which the accident had occurred. The driver of the truck, NAW 1, in his statement has thrown the whole burden on the driver of the bus. He stated that it was a foggy morning, the visibility was not clear, seeing the bus coming from the opposite direction, he took his truck to the left of the road and keeping one wheel on the road, stopped the truck. He used the dipper and keeping the dim lights on so that the bus coming from the opposite direction may pass. Even assuming the statement of NAW 1 as correct, it is evident that the road is not wide so that two vehicles may pass on the width of the road. In the written statement of respondent Nos. 1 and 2, it is not stated that the truck was taken on the kacha of the left side of the road; but it is stated that the truck was stopped at the extreme end of the road. From the evidence of AW 4, Balmukund, who is witness to the seizure memos, Exh. P. 9-A and Exh. P. 10-A and of the site-map and of AW 6, Nathuram Sharma, constable of the Police Station Raisen, who prepared the spot-map, it is evident that both the vehicles were badly damaged from the right side, that is of driver's side of the two vehicles. That shows that the accident occurred on the road and not on the kacha. Even if the driver of the truck kept the truck stationary, he did not leave enough space on the road so that the obstruction is not caused to the passenger bus coming from opposite direction and the accident is averted, particularly when NAW 1 has admitted that he saw the bus coming from the opposite direction driven rashly and negligently at a high speed. His statement that he took one wheel of the truck on the kacha, is at variance with the pleading and cannot be accepted, looking to the circumstances and site-map, the conditions of two vehicles and because of collision, the bus had gone 85 paces away. It is the principle of the Rules of the Road, that heavy goods vehicles are required to give pass to the passenger vehicle; it is the duty of the driver of the heavy vehicle to leave sufficient space for the passenger vehicle to pass. The respondent No. 2 had the opportunity to avert the accident but he did not take the wheels of the truck leaving sufficient space so that the passenger bus may pass. Though the respondent No. 2 took steps to avert the accident, but he cannot completely absolve himself from his liability. To say so, we take the support from the decision of this Court rendered at Bench at Indore in New India

Assurance Company Ltd. Vs. Smt. Surgyan Singhaniya and Others, . The bus driver was certainly more negligent as it is clear that the bus was not in controllable speed and after dash went about 85 paces away in fields. Therefore, in the circumstances, the liability of the two drivers can be apportioned to the extent of 1/4th of the truck driver and 3/4th of the bus driver.

Re: Compensation

7. From the evidence adduced, it is evident that the deceased had a bright career. He was a Gold Medallist and was a Doctor of Philosophy in the Faculty of Commerce. Therefore, on the principles laid down in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the multiplier method which is logically sound and also legally well established, we have to determine the "just" compensation. At the time of death, the deceased was aged 36 years and was drawing Rs. 4,325.25. Therefore, to augment the multiplicand the future prospects of advancement in life or career should also be sounded in terms of money; it will be appropriate to estimate the gross income at Rs. 6,000. From this has to be deducted his personal living expenses; looking to his style of living and the fact that he was maintaining a car and a scooter, it would be appropriate to deduct Rs. 2,500 from gross income towards the personal living expenses and treat the balance as amount spent on the expenses on the members of the family, the loss of dependency would come to Rs. 3,500 per month; yearly Rs. 42,000. In this appropriate multiplier of 14 is applied, the amount would work out to Rs. 5,88,000. In this for loss of consortium Rs. 15,000 and for loss to the estate an amount of Rs. 15,000 and Rs. 2,000 for the funeral expenses are added, the total would come to Rs. 6,20,000 which, in our opinion, would be "just" and fair compensation to which the appellants would be entitled.

8. As we have held that the owner and driver and the insurer of the truck cannot escape from their liability, which, in our opinion, is to the extent of 1/4th and that 3/4th amount of Rs. 6,20,000 would come to Rs. 1,55,000. Therefore, we direct that out of Rs. 1,55,000, Rs. 1,50,000 shall be paid by the respondent No. 5, the insurer of the truck to the extent of its liability with its interest at the rate of 12 per cent per annum from the date of application till deposit; and Rs. 5,000 shall be paid by the respondent Nos. 1 and 2, the owner and driver of the truck jointly or severally with its interest at the rate of 12 per cent per annum from the date of application till deposit. As the liability of the owner and the driver of the bus is fixed at 3/4th, they are liable to pay Rs. 4,65,000. From this Rs. 15,000 is to be deducted towards ex gratia payment made by the M.P. State Road Transport Corporation to the appellants at the time of the accident; the amount would come to Rs. 4,50,000 which will be deposited by the M.P. State Road Transport Corporation with its accrued interest at the rate of 12 per cent per annum from the date of application till deposit. Of course, the adjustment shall be given, if any amount has been deposited by way of interim compensation u/s 92-A of the Motor Vehicles Act, 1939 or u/s 140 of the Motor Vehicles Act, 1988,

or after appeal during the execution of the liability of the amount so fixed. On deposit, the amount shall be disbursed by the Tribunal keeping in mind the well settled principles laid down by the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Lilaben Udesing Gohel, Shyamala Shashidharan Nayyar and Others, Pramilaben Narendra Bhai Patel and Others, Ramabhai Shankarbhai Chavda, Lilaben and Others, Kantaben Anil Kumar Patel and Others, Motor Vahan Durghatna Sanghthan, Nadiad and Others and Shardaben Chandubhai Patel and Others Vs. Oriental Insurance Company Ltd. and Others, Hemraj Loduram Rajpur and Another, Nandubhai Ambalal Thakkar and Others, Ganibhai Ambabhai Vora and Another, Kaji Gulam Nabi Sheikh and Others, Gujarat State Road Transport Corpn. and Others, State of Gujarat and Others and Bachusha Dadusha and Others, .

9. In the result, the Misc. Appeal No. 853 of 1994 is allowed with costs. The award of the Tribunal shall stand substituted as indicated hereinabove. Misc. Appeal No. 982 of 1994, filed by M.P. State Road Transport Corporation shall stand dismissed in view of this order. In circumstances, the appellants-claimants shall be entitled to the costs of the two appeals, which are quantified at Rs. 3,000 which shall be borne in equal proportion. The insurer of the truck shall deposit Rs. 1,500 while Rs. 1,500 shall be deposited by the M.P. State Road Transport Corporation.

C.C. as per rules.