
(1997) 03 MP CK 0044

In the Madhya Pradesh High Court

Case No : M.A. No"s. 558 and 559 of 1996

M.P. State Road Transport Corporation and Others

APPELLANT

Vs

Abdul Rahman and Others

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : AIR 1997 MP 248 : (1997) ILR (MP) 157 : (1997) 2 MPLJ 224

Hon'ble Judges : S.K. Dubey, J;Dipak Misra, J

Bench : Division Bench

Advocate : A.G. Dhande, for the Appellant; N.K. Shukla, for the Respondent

Judgement

Dipak Misra, J.

In these two appeals the Madhya Pradesh State Roadways Corporation (here-in-after referred to as "Corporation") and its Depot Manager call in question the warrantableness of the awards passed by the First M.A.C.T., Bilaspur at Camp Korba in C.T. No. 56/88 and 58/88 granting compensation in favour of respondents/claimants No. 1 and 2 in M.A. No. 558/96 and respondents/claimants Nos. 1 to 3 in M. A. No. 559/96 respectively. As the claims have arisen from the same accident and the appeals are interlinked and interconnected, findings being common in respect of some common major issues, they are disposed of by this common judgment which will govern both the cases.

The respondent No. 1 and 2 in M.A. No. 558/96 filed an application for grant of compensation against the Corporation, its representative and the driver and also against respondent No. 4, the owner of the Motorcycle which had collided with Bus No. MPE-2583 belonging to the Corporation driven by respondent No. 3 alleging that on 9-9-88 at about 11.30 p.m. while Mohd. Riyaz, a child of four years was going with his uncle Mohd. Matin and Mohd. Lukman on the Motorcycle owned by respondent No. 4, the accident took place as a result, Mohd. Riyaz and Mohd. Matin sustained injuries and ultimately succumbed to the same. The claim

of the claimants was resisted by the Corporation contending, inter-alia, that the Bus was being driven in moderate speed but the Motorcycle was carrying three persons and was in high speed, and due to the rash and negligent driving of the rider, the Motorcycle dashed against the Bus and the fatal accident occurred. It was also pleaded that the person driving the same by violating traffic rules. With these assertions the Corporation denied the liability. The respondent No. 4, the owner of the Motorcycle, filed an independent written statement refuting the claim and praying for absolution.

As far as M.A. No. 559/96 is concerned the claimants, the legal heirs of Abdul Matin have claimed compensation as the accident had occurred due to rash and negligent driving of the driver of the Bus. The Corporation filed written statement refuting the claim of the claimants. Similar written statement was also filed by the owner of the Motorcycle denying the liability.

The Tribunal on consideration of the materials came to hold that the rider of the Motorcycle was driving in high speed and the driver of the Bus was also very rash and negligent. The Tribunal weighing various aspects arrived at the conclusion that the legal heirs of Riyaz were entitled to get compensation of Rs. 1,52,000/- and the legal representatives of Abdul Matin were entitled to receive Rs. 22,3000/-. However, the Tribunal equally apportioned the liability on the Corporation and on the owner of the Motorcycle on the basis of their negligence.

Mr. A. G. Dhande, learned counsel for the appellants assailing the Award has strenuously urged that there was contributory negligence by the deceased persons and, therefore, the Corporation should not have been saddled with the liability. He has also canvassed that the finding of the Tribunal is, in fact, contributory negligence on the part of both the drivers though he has proceeded on the assumption of composite negligence. The counsel has vehemently criticised the method of calculation adopted by the Tribunal in respect of both the deceased persons on the ground that they are based on no norms and are alien to the basic concept of computation.

Dr. N.K. Shukla, learned counsel appearing for the respondents in both the appeals supporting the award has put forth that the question of contributory negligence is not attracted in a case of child of four years, the deceased in M.A. No. 558/96 and as far as Mohd. Matin, the deceased in M.A. No. 559/96 is concerned, he was not at the wheel and, therefore, he cannot be held responsible for contributory negligence. It is further submitted by him that as the Tribunal has recorded a finding that due to rash and negligent driving of the driver of the Bus as well as the Motorcycle the accident had occurred, the question of Contributory negligence of the child and the other deceased does not arise, and the finding of the Tribunal should not be interfered with as the same has been based on proper appreciation of materials on record. Combating the contention of the learned counsel for the Corporation relating to quantum Dr. Shukla has taken the stand that when the just compensation has been awarded there is no justification for reducing the same. He has also referred to the cross-

objection preferred by him challenging the findings of the Tribunal on certain aspects, more particularly, with regard to apportionment of liability on the tort-feasors.

To appreciate the rival contentions raised at the bar we have carefully perused the Award. We notice that the Tribunal has addressed itself with regard to the rash and negligent driving of the driver of the Corporation as well as the person driving the Motorcycle. On scrutiny of the evidence the Tribunal has arrived at the conclusion that Prahlad Singh, the driver of the Bus, was driving the Bus in a high speed. Similar finding has also been reached as far as the driving of Mohd. Lukman the rider of the Motorcycle, is concerned. On a perusal of the evidence we are of the considered view that the finding of the Tribunal in this regard is defensible and cannot be regarded as fallacious.

Shri Dhande, learned counsel for the appellants has seriously contended that the deceased persons suffered their late because of their contributory negligence inasmuch as they accompanied the rash and negligent rider.

We would first address ourselves with regard to the submissions relating to contributory negligence on the part of Riyaz Mohd., a child of four years. This aspect has engaged the attention of many an eminent author who have dealt with the same dexterously. In Halsbury Laws of England, Third Edition Volume 28 para 98 at page 93, it has been observed as follows :--

"A distinction must be drawn between children and adults, for an act which would constitute contributory negligence on the part of an adult may fail to do so in the case of a child of young person, the reason being that a child cannot be expected to be as careful for his own safety as an adult. Where a child is of such an age as to be naturally ignorant of danger or to be unable to fend for contributory negligence with regard to a matter beyond his appreciation, but quite young children are held responsible for not exercising that care which may reasonable be expected of them.

Where a child in doing an act which contributed to the accident was only following the instincts natural to his age and the circumstances, he is not guilty of contributory negligence, but the taking of reasonable precautions by the defendant to protect a child against his own propensities may afford evidence that the defendant was not negligent, and is, therefore, not liable".

In the case of Gough v. Thorne 1967 A CJ 183 while dealing with the negligence on the part of a child and the degree of child's responsibilities, Lord Denning, M.R. in his inimitable style spoke thus:--

"I am afraid that I cannot agree with the Judge, A very young child cannot be guilty of contributory negligence. An older child may be; but it depends on the circumstances. A Judge should only find a child guilty of contributory negligence if he or she is of such an age as reasonably to be expected to take precautions for his or her own safety; and then he or she is only to be found guilty if blame

should be attached to him or her. A child has not the road sense or the experience of his or her elders. He or she is not to be found guilty unless he or she is blameworthy."

In *Jones v. Lawrence* 1970 A CJ 358 while delineating with the concept of culpable want of care by child Cumming Bruce, J. has held that a child of seven years and three months has the propensity to forget altogether what had been talked to him; and becomes momentarily forgetful of the peril of the crossing of the roads and. therefore, the theory of contributory negligence has to be negated. In the case of *Macanmara v. E.S.B.* 1975 IR 8 the Court observed that in cases where contributory negligence is alleged against a child it is the duty of the trial Judge to rule in each particular case whether taking into consideration the age and mental development of the child, it is expected of him to take some precaution of his own safety and consequently be capable of being guilty of contributory negligence.

We may also refer to the case of *Tillander v. Gosilene* 1977 A CJ 306 a judgment rendered by Ontario High Court, Canada Wherein it has been held that a child of tender age could neither be said to do an act negligently or intentionally.

In this connection we may quote with profit a passage from the book by Clerk & Lindsell on Torts, in regard to liability of the children :--

"Liability to children :-- An occupier must be prepared for children to be less careful than adults. Something which would not be a danger to an adult may very well be one to a child; and a warning sufficient for an adult may be insufficient for a child. In *Moleney v. Lambeth London Borough Council*, an occupier was held liable to a four-year-old boy who fell through the bars of a balustrade. If a person of the size of the plaintiff lost his balance he was liable to go through the gap. The staircase did not comply with the occupier's duty of care to a child of that age. But in *Ward v. Hertfordshire C.C.* it was held there was no liability to a child aged eight who fell against a long-standing brick and flint wall in a school's playground. The wall was not inherently dangerous and the presence of a supervisor would not have prevented the accident."

Back home, there are catena of authorities which deal with the concept of contributory negligence in relation to a child. In the case of *Delhi Transport Corporation v. Ku. Lalita* 1983 A CJ 253 : (AIR 1982 Delhi 558) Court held thus (at p. 561 of AIR):

"Infants must, it seems, be treated as a category apart. In many cases infants have been held not guilty of contributory negligence where adults, would on similar facts, have been deemed to be contributory negligence. The test is what degree of care for his own safety can an infant of the particular age reasonably be expected to take? The age of the child is a circumstance which must be considered in deciding whether it has been guilty of contributory negligence.

In the case of a child of tender age conduct on [he part of such child contributing

to an accident may not preclude it from recovering in full in circumstances in which similar conduct would preclude a grown up person from doing so. What is negligence in a grown up person is not necessarily negligence in a child."

The High court of Punjab and Haryana in the case of K.L. Pasrija v. Oriental Fire and General Insurance Co. Ltd. 1986 A CJ 252 held, that a child cannot be held guilty of contributory negligence.

In the case of Muthusamy and another Vs. S.A.R. Annamalai and others, while discussing with regard to contributory negligence on the part of a child, aged about six the Court laid down as under (at p. 205 of AIR)

"It follows from the above decisions and the principles elucidated in them that at the age of 6, a child cannot be reasonably expected to take precaution for his own safety. The child would have little knowledge of the hazards of road traffic. At that age, the child would act more by instinct than by reason. The question whether a child is of sufficient age and intelligence to a child to realise and appreciate the risks he runs, so as to be capable of being guilty of contributory negligence is a question of fact in each case".

In this contest we may refer to the observations made by M.B. Lal, J in the case of Gothelal Chourasia v. Gajjanansingh 1988 A CJ 1120 (Madh Pra) which read thus :--

"In this regard it will suffice to say that a duty casts upon the driver of a motor vehicle while driving the vehicle on a highway that he must drive the vehicle with reasonable care strictly observing the traffic regulations and rules of the road. He is also expected to keep a good look-out on all the directions of the road, on sides and on stretch of road in front of him. As such in all possible manner he has to take care of the pedestrian and his duty becomes higher when the pedestrians are children of tender age, because the behaviour of children is uncertain on the approach of a motor vehicle".

In this regard we may also refer to the decisions rendered in the cases of Ramkumari Sharma v. Ramkishan 1985 A CJ 493 (Raj); Amritsar Transport Co. (P) Ltd. v. Swaran Kumar 1969 A CJ 82 (Punj & Hry); Motor Insurance Co. Ltd. v. A. N. Pattammal 1972 A CJ 380 (Madras); Mohanlal v. Ku Babi 1967 ACJ 123 (Punjab) and Gaimda Mull Hem Raj Vs. Arora Bros. and Others, wherein it has been held that a child of tender age cannot be treated at par with an adult and the standard to be affixed has to be different and the concept of contributory negligence would have no applicability.

From the aforesaid discussion relating to contributory negligence on the part of a child of tender age there is no doubt that the concept of contributory negligence cannot be made applicable to a child. A child functions according to his own reasoning and his intelligence. Logicality and rationality are not expected from a child as a child of tender age has no continuous thinking process and is governed by his impulse, instinct and innocence. Can one ever conceive that a child, if

would have been aware of the peril, would ever commit an act which is dangerous or hazardous for him? The answer has to be a categorical "No", because a child's action is childlike and really innocent. Possibly for that reason, it has been said :--

"The Maker of the Stars and Sea, become a Child earth for me?"

A child remains a child in spite of all training and directions and if anything sparkles it is the glory of his innocence which makes him indifferent to the risks which an adult apprehends and pays attention.

In view of our aforesaid analysis, we conclude and hold that Riyaz, the child of four, was not liable for contributory negligence.

With regard to the contributory negligence on the part of Mohd. Matin, fact remains -- he was not riding the Motorcycle and was a pillion rider. It has been held in the case of Manjit Kaur and Others Vs. Gurmail Singh and Others, that a pillion rider has no contributory negligence in causing accident. In the case of S.D. Balaji v. General Manager, Karnataka State Roadways Transport Corporation, Bangalore 1985 A CJ 150 the High Court of Karnataka has ruled that pillion rider ordinarily has nothing to do with occurrence, and hence the concept of contributory negligence cannot be made applicable to him. In the instant case, there is no evidence whatsoever, that Mohd. Matin had any role to play in causing the accident. In absence of such a fact, we are of the considered view, that the claim of the legal representatives of Mohd. Matin cannot be denied on the ground of contributory negligence.

Before we deal with cross-objection filed by the claimants/respondents, we will address ourselves with regard to the quantum. We find in M.A. No. 558/96, the Tribunal has awarded Rs. 1,52,000/- for the death of a child of four years. The calculation has been based on yearly income of Rs. 15,000/- and Rs. 10,000/- has been fixed towards contribution for the family multiplier of 15 has been applied to the said multiplicand Rs. 2000/- has been awarded towards funeral expenses. We are constrained to hold that this computation cannot stand close scrutiny. We are of the considered view, the maximum compensation which would become payable to the legal representative of Riyaz is Rs. 50,000/- and Rs. 2000/- for funeral expenses. We have quantified the compensation at Rs. 50,000/- as we are of the view, that would be the just compensation for a child of four years, in this regard we may refer the judgment rendered in M.A. No. 91 I/94 (Smt. Barsa Munni v. Sukritram Sahu). This Court has held as under :--

"Loss of Human life or limb of a human body has to be valued liberally and not miserly. The determination of compensation has to be in accordance with the statutory entitlement envisaged u/s 168 of the Act. Only such amount that, on the basis of the evidence adduced in the case, "appears to be just" should be awarded by the Tribunal. The word "Just" occurring in Section is of very wide amplitude. However, the award of compensation should not be punitive or a windfall, but should be reasonable, fair and just. Where there is no material for

determination of compensation the minimum compensation of Rs. 50,000/- as fixed in case of "no fault" for a human life by the Parliament u/s 140 of the Act should be taken as a guide for determining the compensation in a fatal accident case without going into the estimation of dependency and applying the multiplier method".

As far as M.A. No. 559/96 is concerned, we notice that the Tribunal has fixed the quantum on the basis of monthly contribution of Rs. 12,000/-p.m. and has applied multiplier of 18. He has awarded Rs. 5,000/- towards consortium and Rs. 2,000/- towards funeral expenses. On a consideration of the facts, we are of the view, that the multiplier of 18 should not have been applied and there should have been application of multiplier of 16. Thus, the sum on this head would become $12000 \times 16 = 1,92,000$. The compensation of other heads remain undisturbed.

Presently, we shall advert to the cross-objection preferred by the claimants/respondents. Dr. Shukla has contended that as the accident has occurred due to negligence of the driver of the Bus belonging to the Corporation and the Motorcycle driven by Mohd. Lukman, this is a case of composite negligence. Once we have held that, deceased Matin and Riyaz had no contributory negligence it becomes a clear case of composite negligence on the part of both the vehicle owners. Once it is a case of composite negligence, the question of apportionment of liability does not arise. The owners of both the vehicles become joint tort-feasors and, therefore, jointly and severally liable. This view has been taken in the cases of K. Gopalakrishnan Vs. Sankara Narayanan and Others, , Karunakar Pradhan v. Sarojini Mishra 1980 A CJ 121 (Orissa), A. Shivrudrappa v. The General Manager, Mysore Road Transport Corporation 1973 A CJ 302 (Mysore).

This Court in the case of Manjula Devi Bhuta v. Manjusri Raha 1968 MPLJ 302 has held that in a case of composite negligence both the tort-feasors are jointly and severally liable for the whole loss. Again in the case of Bisarti Bai v. M.P. State Road Transport Corporation 1990 Acc CJ 103 (Madh Pra), this Court has laid down that in the case of composite negligence liability cannot be apportioned. Recently, in the case of M.P.S.R.T. Corporation v. Smt. Vijanti 1994 (2) Vibha 210, one of us (Hon"ble Shri Justice S.K. Dubey) speaking for the Court has stated thus

"It is well-settled that in cases of composite negligence, liability cannot be apportioned, and the joint tort-feasors are jointly and severally liable".

Applying the aforesaid principles to the cases at hand, we are of the considered view that the apportionment of liability should not have been done by the Tribunal and each of the tort-feasors should have been held jointly and severally liable. Accordingly we accept the cross-objection and hold that both the tort-feasors are jointly and severally liable.

As we have already determined that the appellant as well as the owner of Motorcycle are jointly and severally liable. We direct the Corporation to deposit

the amount as determined by us within a period of three months which shall be disbursed keeping in view the principles enunciated by the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Lilaben Udesing Gohel, Shyamala Shashidharan Nayyar and Others, Pramilaaben 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, .

Consequently, the appeals are allowed in part and the cross-objection is allowed to the extent indicated above. However, in the peculiar facts and circumstances of the cases, there shall be no order as to costs.