
(1980) 01 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 75 of 1972

M.P. State Road Transport Corporation Bairagarh and Another	APPELLANT
Vs	
Benibai and Others	RESPONDENT

Date of Decision : 29-01-1980

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1980) ACJ 407

Hon'ble Judges : H.G. Mishra, J

Bench : Single Bench

Advocate : V.G. Khot, for the Appellant; N.P. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Mishra, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 (for short "the Act") against award dated 28-4-72 where by compensation amounting to Rs. 14,280/- has been awarded in favour of Respondent No. 1 Benibai, Respondent No. 4 Ashok Kumar, and Respondent No. 5 Munnibai, on account of death of their predecessor-in-title Balkishan, who had died on the spot as a result of motor accident.

2. Facts essential for decision of this appeal are as under:

Kishanlal Appellant No. 2, while on duty, was driving bus No. MPG 7284 belonging to the Appellant No. 1 Corporation, at the relevant time. On 29-11-67, Kishanlal driver was driving the aforesaid bus and was coming from Kampoo Bus Stand and going towards the Railway Station. This bus dashed against Balkishan who was coming on his bicycle from the premises of J. A. Hospital and was passing through the back-side gate of Hospital, on a cross road at the corner and who was on the left side of the road, where the road turns towards the North on the side of Jai Vilas Palace. As a result of this accident Balkishan was dragged with his bicycle by the bus for some distance and his head and face got completely crushed and deflated. He died instantaneously on the spot and his

bicycle also was completely damaged. The Respondents, who are legal representatives of the deceased Balkishan, claimed compensation amounting to Rs. 57,150/- on account of loss of earning of Balkishan, damage to the bicycle, and mental shock suffered to them.

3. The Defendant-Appellants resisted the claim of the Respondents inter alia on the grounds that the bus in question was not being driven by Kishanlal rashly and negligently at the relevant time; that the accident was inevitable and beyond expectance and control of the driver; that it was an out come of miscalculation and carelessness and negligence of the deceased himself. The Defendants also alleged that the deceased without having regard to the rules of traffic tried to cross the road and Kishanlal driver could not avoid the accident inspite of taking all precautions inasmuch as he turned the vehicle to its complete right side and applied brakes. They further alleged that the deceased had become nervous, tried to throw his bicycle which struck with the right side of the bumper of the vehicle and himself fell down. No wheel of the bus ran over any part of the deceased, The Appellants, thus disputed their liability in the matter. The quantum of compensation claimed was also disputed.

4. After recording the evidence, the Tribunal has held that the bus belonging to the Appellant Corporation was being driven by their driver Kishanlal, Appellant No. 2, rashly and negligently at excessive speed; that there was no negligence of Balkishan, the deceased. The learned Tribunal has awarded compensation of Rs. 14,280/- by the impugned award, out of which Rs. 8,280/- are ordered to be paid to his widow Respondent No. 1, and Rs. 3,000/- to each of the Respondents No. 4 and 5.

5. It is against the aforesaid award that this appeal has been submitted u/s 110-D of the Act by the Appellant Corporation and its driver Kishanlal.

6. In this appeal, Shri V. G. Khot, learned Counsel for the Appellants, contended (i) that there is no legal evidence to sustain the findings given by the learned Tribunal; that the accident was due to rash and negligent driving on the part of Kishanlal driver of the Corporation and that the accident was occasioned on account of negligence of Balkishan deceased; and, (ii) that the quantum of compensation is also inordinately high.

Shri N.P. Mittal, learned Counsel for the Respondents, argued in support of the impugned award.

7. Having heard the learned Counsel for the parties, I have come to the conclusion that this appeal deserves to be dismissed.

8. The first and foremost question to be decided in this appeal is whether the accident was an outcome of rashness and negligence on the part of Kishanlal in driving the bus at the relevant time or whether it was an outcome of negligence of Balkishan the deceased. Eye-witnesses examined on behalf of the claimant-Respondents are Radhaballabh (P. W. 1) and Prabhudayal (P. W. 5). Radhaballabh

(P.W. 1) has stated that at the relevant time he was going towards the J. A. Hospital and when he reached near the Hanuman temple, he saw a roadways bus coming from the side of Kampoo and was going towards the side of the Palace with considerable speed. At that time one cyclist was going towards the Palace on the left side of the road after coming from the back-side gate of the J. A. Hospital. At that very time roadways bus came with a considerable speed; the driver did not blow horn and front portion of the bus collided against the cyclist; that the bus dragged the cyclist for some distance and then stopped. The driver brought back the vehicle near the spot of occurrence. Due to the accident the cyclist sustained crush injuries on his head and upper part of the body; his bicycle was also badly damaged. He further stated that the cyclist died at the spot within 10 minutes of the aforesaid accident. Prabhudayal (Respondent No. 3) as P.W. 5 has stated that at the relevant time he was going from the side of K. R. G. College towards the J. A. Hospital. He further stated that the roadways bus at that time came from the side of Kampoo. It was being driven by Kishanlal driver at an excessive speed and dashed against the cyclist. When he reached the spot he found that the person who had met with the accident was no body else than Balkishan, his father.

9. Soon after the occurrence of the accident, Chandan (P.W. 3) came on the spot. He testified to the correctness as to the facts mentioned in the site plan, Ex. P.1, copy of which is Ex. P. 1-C taken on record, the original being part of Criminal Case No. 105/68 of the Court of Magistrate First Class, Gwalior. From the site plan, Ex. P-1-C, it is clear that at the time when the accident took place, Balkishan was on the left side of the road and there the bus dashed against him, and at point No. 1 the dead body of Balkishan was found lying immediately after the occurrence. He also states that Panchnama, Ex. P. 2, of the dead body of Balkishan was prepared on the spot, and testified as to the correctness of the facts stated therein. In order to rebut the positive evidence led by the claimants, on behalf of the Appellants, Mohammed Khan (D.W. 1), Pratap (D.W.2), Bhagwantrao (D.W.3), and Kishanlal, Appellant No. 2, as D.W.4, have been examined. These witness state that at the relevant time speed of the bus should have been 10, 15 to 20 miles per hour. Their testimony on the point has not been regarded as reliable by the Tribunal. Bhagwantrao (D.W.3) has admitted that he did not hear any horn being blown for warning the cyclist that the bus is coming from behind him, which was necessary to blow. As stated by Radhaballabh (P.W. 1) both the cyclist and the bus were going in the same direction. Moreover, if the speed of the bus would have been 10 to 15 miles per hour, as tried to be deposed by the witnesses produced by the Appellants, then the head and face of Balkishan would not have been deflated completely. Accordingly the speed of the bus must have been excessive and not such which was within the control of the driver thereof. That is why after accident Balkishan along with his cycle was dragged by the bus for some distance.

10. As between a cyclist and the driver of a motor vehicle, undoubtedly, the latter's responsibility to use care and diligence is greater. The duty to use care

increases proportionately to the danger involved in dealing with a vehicle. This is what has been held in *Indian Trade and General Insurance Co. Ltd. and Others Vs. Madhukar Govind Rao Bhagade*, . Moreover, when on major roads, it is the duty of the driver of a motor vehicle to bring his vehicle within control-able speed, as held in the case of *Kasturilal Gopaldas and Another Vs. Prabhakar Martand Patki and Another*, In the present case, Kishanlal, the bus driver, did not take due precautions like that of blowing horn and lowering down the speed and applying brakes.

11. The learned Tribunal after evaluating the entire evidence on record has recorded a finding to the effect that the accident was caused due to rashness and negligence of the bus driver. This finding is not shown to be vitiated by any mistake of law or misreading of evidence. It is not shown to be such which a reasonable man will not arrive at it. It has also been held by the Tribunal that the Appellants have failed to prove that the accident was a result of negligence of the deceased. Accordingly, the theory of "contributory negligence" and the apportionment of compensation is not applicable to the case. As such, reliance on ratio of *Yoginder Paul Chowdhry Vs. Durga Dass Punj and Another*, ; *Punjab State and Another Vs. Jaswant Kaur and Others*, *The Tourist Cooperative Transport Society Ltd. and Another Vs. Dr. Om Prakash and Another* and *Mohinder Kaur and Others Vs. Maaphool Singh and Others*, is not available in this case to the Appellants. So also, the ratio of *Mahadeo Hari Lokre Vs. The State of Maharashtra*, cannot be harnessed into service of the Appellants in this case because in the case of *Mahadeo Hari Lokre* pedestrian suddenly crossed a road without taking note of the approaching bus, and as such the bus driver could not be held to be negligent. Here, the position is different *Balkishan*, the cyclist, was already on the left side of the road and the bus in question was coming from behind him. Accordingly, it was not only *Balkishan*, the deceased, who could see the bus but it was the bus driver who could see him and had to observe all precautions to avoid the accident.

12. Reliance was tried to be placed on the ratio of *Delhi Transport Corporation Vs. Shabir Ahmed*, . In that case, the cyclist who emerged from a by-lane and tried to cross the main road. On noticing the bus approaching him along the main road, he fumbled backward and forward and was knocked down. On these facts, it was held that it would be not justifiable to say that the bus driver should have anticipated the movements of the: cyclist and that there was no negligence on the part of the driver. These facts make the ratio of *Delhi Transport Corporation Vs. Shabir Ahmed*, inapplicable to the present case.

13. The findings recorded by the learned Tribunal that the accident was caused by the negligence of the driver of the Appellant Corporation and not on account of the negligence of *Balkishan*, have been arrived at, after proper evaluation of evidence and after applying correct principles of law. As such, they deserve to be confirmed and are hereby confirmed.

14. This brings me to the further contention that the quantum of compensation

awarded to the Respondents is excessive. A challenge to the award of compensation can succeed on showing that the Tribunal has applied wrong principles of law or misdirected itself while determining the quantum of compensation or that the amount awarded is inordinately high or low that it must be held to be erroneous, as held in *MPSRTC v. Jahiram* 1979 J.L.J. 274. The compensation has been determined after taking into consideration the relevant date regarding earning capacity and longitude of life of the deceased. Due deductions have also been allowed. The amount awarded is Rs. 14,180/- which appears to be reasonable and is not shown to be too high in a case of instantaneous loss of a life. The amount of Rs. 100/- awarded by the Tribunal on account of damage to the bicycle is also proper. Mr. Khot, learned Counsel for the Appellants, was not able to point out that the determination of quantum of compensation by the Tribunal is incorrect being vitiated by mistake of law or any misdirection. Thus the challenge to the quantum of compensation awarded by the learned Tribunal also fails.

15. Accordingly, the appeal fails and is hereby dismissed with costs. Counsel fee. as per Schedule, if certified.