

**(1997) 09 MP CK 0114**  
**In the Madhya Pradesh High Court**  
**Case No : M.A. No. 70 of 1994 (I)**

M.P.S.R.T.C., Ratlam

APPELLANT

Vs

Smt. Salina Roz Aixerender and Others

RESPONDENT

**Date of Decision :** 18-09-1997

**Acts Referred:**

**Citation :** (1999) 1 MPJR 583

**Hon'ble Judges :** Shambhoo Singh, J; R.D. Shukla, J

**Bench :** Division Bench

**Advocate :** Mr. S.S. Kankar, for the Appellant;

**Final Decision :** Dismissed

## Judgement

R.D. Shukla, J.

This order shall also dispose of M.A. No. 71/94 (MPSRTC v. Smt. Kusum Mishra & Ors.)

Both these appeals are directed against the judgment and Award dated 1.10.93 of 1st M.A.C.T., Ratlam passed in Claim Case No. 13/92 and Claim Case No. 14/92 whereby claimant-respondents (in Claim Case No. 13/92) have been awarded a compensation of Rs. 1,67,520/- and claimants respondents (in Claim Case No. 14/92) have been awarded a compensation of Rs. 1,03,800/-. Hence these two appeals by the M.P.S.R.T.C, owner of passenger bus No. MKO-9843.

Claimants in claim case No. 14/92 (Appeal No. 71/94) have also filed Cross-objection for enhancement of the claim. No cross-objection has been filed in M.A. No. 70/94 i.e. in Claim Case No. 13/92.

Brief history of the case is that on the date of accident i.e. 15.4.90, John Kenedy Alexender was going from Badnawar to Rattan on a Luna moped. Satya-Narain Mishra was sitting as a pillion rider. When they reached Simlavada Bus-stand, motor-bus No. MKO 9843 driven by Nanuram came with a high speed and dashed against the Luna moped. Both the occupants of Luna were thrown. They

sustained injuries. John Kenedy Alexender died immediately. Satya Narain Mishra died after sometime. Legal heirs of John Kenedy filed Claim case No. 13/92 and demanded a compensation of Rs. 7,08,000/-; while the Legal Heirs of Satyanarain Mishra filed a Claim Petition No. 14/92 and demanded Rs. 4,00,151.

Respondents disclaimed the fact of rash and negligent driving and liability of payment of compensation.

Learned Tribunal found that the driver of Luna also Contributed to the accident to the extent of 40% and thus, 60% liability of the accident was placed on the motor-bus. After assessing the income and dependency, learned Tribunal has awarded Rs. 1,67,520/- to the claimants in Claim Case No. 13/92 and to the LR's of John Kenedy and Rs, 1,03,800/- to claimants in Claim case No. 14/92 i.e. Rs of Satyanarain Mishra.

Both these appeals have been filed by M.P.S.R.T.C. owner of motor-bus.

Contention of teamed counsel for appellant is that the Luna moped came on the middle of the road all of a sudden. As such, accident could not be averted. It was inevitable and, therefore, the whole responsibility of the accident lies on the driver of Luna and therefore appellant is not liable to pay compensation.

It has also been submitted that the income and dependency has been assessed on the higher side and, therefore, the amount of compensation deserves to be reduced.

As against it learned counsel appearing for claimants in Claim Case No. 14/92 submitted that the total responsibility of accident rests on the owner of the motor bus as that was much heavier vehicle as compared to Luna moped.

It has also been submitted that the total responsibility of accident lies on the motor bus. The deduction of 40% from the compensation was wrong learned counsel has also submitted that the income and dependency has been assessed on the lower-side.

Counsel appearing for claimants in Claim Case, No. 14/92 were requested to assist the court and make submissions for respondents in M.A. No. 70/94 (claimants in Claim Case No. 13/92) which they readily agreed and submitted that arguments advanced in M.A., No. 71/94 apply in this case also with full force.

We evidence of other evidence on record. The fact of Commission between motor-bus and Luna and death of John Kenedy and Satyanarayan Mishra on the spot has not been disputed and rightly so as that stands proved apart from the witnesses from the evidence of Dr. G.L. Verma who has conducted autopsy on dead bodies of both deceased persons.

Claimants have examined P.W.4 Subhash Upadhyay to prove the factum of accident and the fact of negligent driving He has stated that he was present on the motor stand in the morning at about 7.15 AM as he was waiting for the bus going to Ratlam. Meanwhile, two persons came on a moped from the side of

Multhan. They were going towards Rattan. One motor Metador ever took then and had gone about 30-40 feet. Meanwhile bus came from the opposite side it was going to Rattan. It hit the moped, The speed of the bus was 60 Kms. In para 2 of his statement he has further stated that he heard some sound prior to the actual collision also. Thereafter he has stated that the occupants of moped died on the spot. He knew one person Satyanarain. The other person was subsequently identified as John Kenedy Alexander.

Owner of bus has examined Nanuram, driver of motor-bus, who was also respondent before the learned Tribunal. He has stated that he was coming in a slow speed from his own side (i.e. left side), the Metador was from the opposite side. He gave side to the Metador and further slowed down the vehicle. The moped came all of a sudden in the middle of the road and, therefore, there was collision and accident. He has further stated that he is not responsible for the accident.

We have perused the documents filed in the case. The same has not been disputed by appellants-non-applicants before the Tribunal. After due investigation Nanuram was prosecuted. Site-map prepared by Police Officer has been filed as Ex.P/15. It shows that there was some skid marks behind the bus. Luna was lying on its left-side and on the right-side of motor-bus two persons thrown on the road were found on the middle of the road.

Heavier the vehicle heavy lies the responsibility of taking care for averting the accident. It is an admitted fact that motor-metador passed earlier to the accident. The motor-bus gave side to the Moped and after passing off the Metador it slightly swerved towards right and that resulted in accident. Some stone was found lying few steps behind the skid marks of motor-bus. This goes to show that the driver of motor-bus probably without taking proper care to the approaching Moped slightly swerved the vehicle for avoiding the dash of motor-wheel against the stone. It was for this reason that the front right side of motor-bus came into forcible contact of Luna.

Driver has tried to stop the vehicle and it was for this reason that skid marks were found but he failed to take proper care of approaching moped.

The moped driver after passing off the Metador did not take proper care of approaching motor-bus. It was the duty of the driver of Moped to have gone further to its left for avoiding the collision. Motor-bus is a heavier, taller and higher than the Metador and, therefore, the approaching motor bus must have been visible.

The very fact that the occupants of Moped fell down on the middle of the road and Moped was thrown slightly left of the road, goes to show that collision was on the front and slightly on right side of motor-bus. The driver of Metador must have gone to its left side for giving way to approaching motor-bus. It appears the driver of Moped because of miscalculation took it as if side has been given to him and he suddenly tried to go forward without caring for the approaching motor-

bus.

Thus, in our considered opinion, both the drivers of vehicles i.e. driver of motor-bus and driver of Moped equally contributed for the accident. As such, they will be held liable for the accident to the extent of 50% each.

Learned Tribunal was wrong in apportioning the same by 60% and 40% i.e. placing 60% liability on the motor-bus and 40% liability on the Luna.

Learned counsel for respondents here have referred to a case (A Supreme Court decision) reported in Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and submitted that the motor-bus was wholly responsible.

We are in agreement with the principle enunciated therein but the facts of that case are different. In that case scooterist had already entered the inter-section of the cross-road and had covered half of the intersection. He had blown the horn also but the truck approached without caring for scooterist.

This is not the case here. In this case accident occurred almost on the middle of the road. Driver of Luna failed to take care of approaching motor-bus which must have been visible even behind the Metador and came slightly towards right side after passing of the Metador. It is for this reason that it came into contact of the motor-bus. The driver of motor-bus tried to avert. He put brake also. The skid marks were found but it swerved towards right, probably for avoiding the dash against stone lying on the road. In such a situation we find that both the drivers of the vehicles were equally responsible for the accident.

Learned counsel for respondents have further referred a case (A Supreme Court decision) reported in Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad, in support of his contention; but in that case truck swerved to its right to over take a rickshaw Claimants' eye-witness deposed in that case that the truck was very fast its driver did not blow horn while swerving the vehicle. In that case Apex court relied on the eye-witness about the above facts and held the driver to be responsible. But in this case, on appreciation of evidence of the driver of the bus and independent witness Shri Upadhyay we have found that drivers of both the vehicles failed to take care after passing over of the Metador which resulted in collision. Thus, we find that both the vehicles were equally responsible for the accident.

The next point that arise for determination is as to what would be the proper compensation in the case.

In Claim Case No. 13/92 (M.A. No. 70/94) learned Tribunal has found that John Kenedy was aged 29 years. His income has been assessed to Rs. 2300/-per month. After ascertaining the dependency to Rs. 1200/- per month a multiplier of 18 has been applied.

We have gone through the evidence adduced in the case. Document Ex.P/18 shows that John Kenedy was in the grade of 950/- to 1500/- rupees and was

working as a Diesel Assistant. He must have been getting some dearness allowance as well. Smt. Salina Roz has stated that her husband was getting nearly Rs. 2300/- per month, including the payments for over-time. The payments for overtime cannot be taken to be regular income. However, there were chances of his promotions as he was 29 years of age only. In such a situation we assess the income to Rs. 2100/- per month. After deducting the 1/3rd amount for his personal expenditure the dependency of family would come to Rs. 1400/- per month i.e. Rs. 16800/- per year.

Looking to the age, a multiplier of 16 ought to have been applied. Reference may be had to a case reported in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . Thus, total compensation awardable comes to Rs. 2,68,800/-.

Since John Kenedy himself contributed to the accident to the extent of 50%, claimants are therefore, entitled to 50% amount, which comes to Rs. 34,400/- as general compensation.

Learned Tribunal has awarded Rs. 10,000/- for the loss of consortium love and affection and Rs. 2000/- for last rites. That calls for no interference No deduction on that amount can be made Thus a total compensation awardable to the claimants-respondents in claim case No. 13/92 (M.A. No. 70/94) comes to Rs. 1,46,400/- which may be rounded 10 Rs. 1,47,000/- The appeal deserves to be accepted to that extent. Claimant's are entitled to interest? 12% p.a. from the date of application till realisation.

Now so far as the claim of Satyanarain Mishra is concerned, learned Tribunal has assessed the income to Rs. 1,250/- and dependency to Rs 750/- p.m. Learned Tribunal has adopted a multiplier of 17.

The pay-slip of Satyanarain Mishra shows that he was getting Rs. 1250/- p.m. but there were chances of some increase in the pay. He must have been getting some dearness allowance also.

In our opinion, therefore, the income of Satyanarayan Mishra ought to have been assessed to Rs. 1500/- per month i.e. Rs. 18,000/- per year. If a deduction of 1/3rd is made for the personal expenditure the dependency of family would come to Rs. 12,000/- per year. In such a situation a multiplier of 15 ought to have been applied, on the basis of the principle enunciated in Susamma Thomas case (supra). Thus, amount of compensation comes to Rs. 1,30,000/-

As the driver of Moped contributed 50% of the claimants should be entitled for 50% of general compensation which comes to Rs. 65,000/-

Learned Tribunal has awarded Rs. 10,000/- to wards the loss of consortium and love and affection & Rs. 2000/- for last rites. Thus total compensation awarded comes to Rs. 77,000/- + interest @ 12% p.a. from the, date of application till realisation.

We do not find any substance in the cross objection filed by learned counsel for claimants respondents; We, therefore, reject the same.

As "a result, appeals (M.A. No. 70/94 and M.A. No. 71/94) partly succeed.

In M.A. No. 70/94 claimants-respondents are entitled to get compensation of Rs. 1,34,300 in all, with interest @ 12% p.a. from the date of application till realisation, instead of Rs, 1,67,520/- as awarded by the Tribunal.

In M.A. No. 71/94 claimants-respondents are entitled to get compensation of Rs. 77,000/- in all, with interest @ 12% p.a. from the date of application till realisation instead of Rs. 1,03,800/- as awarded by the Tribunal.

Cross-objection filed by learned counsel for claimants-respondents in M.A. No. 71/94 is dismissed.

Counsel fee Rs. 500/-in each of the two appeals.