
(1976) 11 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 72 of 1973

Mrs. Nanibai and Another

APPELLANT

Vs

Dasbrath Lal and Others

RESPONDENT

Date of Decision : 17-11-1976

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1977) ACJ 145

Hon'ble Judges : J.S. Verma, J;B.R. Dubey, J

Bench : Division Bench

Advocate : B.G. Neema, for the Appellant; Jaiswal and B.S. Johar, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, J.—This is an appeal u/s 110D of the Motor Vehicles Act by the claimants against the award of the Tribunal dismissing their entire claim arising out of the death of their father Haji Abbuji in a motor accident.

2. On 9-10-1970 the deceased Haji Abbuji was travelling as a passenger in bus No. M.P.O. 3271 owned by Respondent No. 1, driven by Respondent No. 2 and insured with Respondent No. 3. The deceased had boarded the bus at Sathkheda for his journey to Shyamgarh. During this journey at about 6 p.m. the bus reached a place where the road was muddy on account of which all the passengers were required to get down from the bus and to board it again after the bad patch of the road had been crossed by the bus. The deceased after having alighted from the bus was crushed by a rear wheel of the same. The claimants contend that the bus was overcrowded and the deceased was thrown out of the bus while it was in motion and then crushed by its rear wheel. The defence was that the deceased tried to board the bus while it was in motion and slipped resulting in his being crushed. A sum of Rs. 20,000/- has been claimed as compensation by the claimants, who are his daughters.

3. The Tribunal had held that the negligence of the driver is not proved on account of which the entire claim has been dismissed.

4. From the undisputed facts and circumstances of this case, we have no doubt that the requisite negligence has been proved. The deceased was an elderly person found by the Tribunal to be of about 60 years of age at the time of his death. It is common ground that the deceased was a legitimate passenger in the bus having entered the bus at Sathkheda and during his journey he was required to get down from the bus to enable it to cross the muddy portion of the road without the load of the passengers. Admittedly, the accident occurred some time thereafter. In our opinion, the driver was negligent whichever version be true, the bus was set in motion before all the legitimate passengers including the deceased had re-boarded the bus. It was the duty of the driver to keep the bus stationary till every passenger had boarded the same. In view of the advanced age of the deceased, it is not reasonable to hold that the deceased did not exercise the requisite caution expected from an elderly person of his age while boarding a bus. The setting in motion of the bus in this manner was clearly an act of negligence of the driver. On the other hand if the claimants' version be true, then the deceased was thrown out of the bus while it was in motion as a result of overcrowding in the bus and a door of the bus opening by itself. This also would undoubtedly amount to negligence in permitting such overcrowding and not providing for doors in the bus which could be securely locked. The overcrowding in the bus is evident from the fact that some passengers, who were examined as witnesses have said so and also stated that many passengers were standing in the bus for want of seats. There is no challenge to this statement in the cross examination and even the conductor of the bus has not been examined as witness by the other side. There would undoubtedly be documentary evidence to show the number of passengers, who travelled in the bus during that journey and that record has also not been produced by the Respondents. We have, therefore, no doubt that the requisite negligence which gave rise to the liability of the Respondents has been duly proved.

5. The only surviving question now is with regard to the quantum of damages. In view of the fact that the deceased was aged about 60 years at the time of his death and was quite fit, it would be reasonable to hold that he would have ordinarily lived upto the age of 70 years. From the evidence on record, it is clear that the deceased could have provided Rs. 100/- per month to the Appellants after meeting his own expenses for the remaining period of ten years of his life. The total loss of pecuniary benefit would thus amount to Rs. 12,000/- That being so, a lump sum award of Rs. 10,000/- in all would be proper to award as damages in the present case. We, accordingly, award this sum as damages for payment by the Respondents. On the amount of Rs. 10,000/- awarded as compensation, the claimants shall also get interest at the rate of 3 per cent per annum from the date of claim till realisation of the amount.

6. Consequently, this appeal succeeds and is allowed in the manner indicated.

The Respondents shall pay the costs of the Appellants. Counsel's fee Rs. 200/- if certified.