

(1984) 08 GAU CK 0010
In the Gauhati High Court

Officer Commanding No. 5, Air Force and Another	APPELLANT
Vs	
Chandika Bora	RESPONDENT

Date of Decision : 06-08-1984

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 337, 421

Citation : (1986) ACJ 1112 : (1984) 2 GLR 86

Hon'ble Judges : T.S. Misra, C.J.;K.N. Saikia, J

Bench : Division Bench

Judgement

T.S. Misra, C.J.—The life of Sonaram aged 27, was cut short in the prime of his youth while he was on his way back to his home after day's work from Mariani. He was the sole bread earner of his family supporting his mother by his meagre income of Rs. 300/- per month, which he earned by serving in the Wood-Craft, Mariani. While cycling on the road on 7th January, 1974, he was hit from behind by a motor vehicle at about 8.30 P.M. which proved fatal. He died at the spot. His colleague in the Wood-Craft, Ramji was also nearby the accident and witnessed the occurrence. Ramji, noticing the said vehicle coming in high speed from Mariani side, entered into a shop. When he came out of the shop, he found Sonaram lying dead in a drain and the vehicle had turned turtle. The Police was informed. The vehicle was seized and the driver was sent to the hospital. The dead body of Sonaram was sent for post-mortem and the mother of the deceased was informed. Later she filed a petition before the Motor Accidents Claims Tribunal, Jorhat, claiming compensation in the sum of Rs. 50,000/-. The petition was resisted by the present appellant denying that the vehicle was driven in a rash or negligent manner and that it could not be held responsible for the death of the deceased. The parties adduced evidence in support of their contentions. The Tribunal, on appraisal of the evidence found that the accident was caused by the negligence of the driver of the vehicle ; that at the time of occurrence the deceased was earning Rs. 300/- per month and the loss to the family on account of his death could be put to a sum of Rs. 150/-per month and on that basis the Tribunal awarded a sum of Rs. 20,000/- as compensation to the

mother of the deceased. Aggrieved by the decision of the Tribunal, the Union of India has preferred this appeal.

2. The sole point urged before us was that the deceased Sonaram was himself responsible for the accident and as it was not established that the vehicle was being driven rashly or negligently at the time of the occurrence, the appellant could not be held liable for payment of any compensation. The contention on behalf of the respondent was that the evidence on record and the surrounding circumstances proved that the accident occurred on account of the negligence of the driver. We were taken through the evidence.

3. The claimant had examined before the Tribunal four witnesses ; whereas the present appellant had examined one witness, namely, Jogendra Kumar Dixit, the driver of the vehicle. Moni Madhab Barua, P.W. 1 was the Asstt. Surgeon I. He had held the post-mortem on the dead body of Sonaram on 8th January, 1974 and found that the death was caused on account of shock and haemorrhage and due to injuries sustained by Sonaram. Jatindra Mohan Goswami was examined as P.W. 2. He had brought the case diary of G.R. 13/74 and had proved that the FIR about the accident in question was lodged at the police station and a charge-sheet was submitted on 17th July, 1974 against K. Dixit Under Sections 279, 337, 421 and 304A I.P.C. He had deposed that the vehicle was seized. It was an Airforce ambulance. There was no indication in the seizure list or report of Motor Vehicle Inspector that the right front tyre was found burst. Ramji Ram was employee of the Wood-Craft, Mariani was examined as P.W. 3. He knew the deceased. His house was about 3 nals from the company premises ; whereas Sonaram's house was about 4-1/2 miles away. He deposed that Sonaram was also an employee of Wood-Craft as Fitter. According to this witness the accident took place at about 8.30 P.M. Sonaram was about 4 nals ahead of Ramji. Both were on cycle. The accident occurred near Sarkata Tin Ali. They were on their left. Ramji saw a military vehicle coming from Mariani side in a high speed. Sonaram and Ramji were also coming from Mariani side. Sonaram was knocked down to that vehicle and thrown in a drain on the left side of the road. Ramji entered into a shop seeing the vehicle. When he came out of the shop, he saw the vehicle in a capsized condition on the right side of the road. This witness deposed that Sonaram had died at the spot. In his cross-examination, he stated that at the time of occurrence he had not seen anybody else on the road. At this stage of the cross-examination, the witness fainted in the witness shed and fell down. Quite possible, the witness could not bear the remembrance of the ghastly scene and he fainted. Chandika Bora, who had filed the claim petition, examined herself as P.W.4. She is the mother of the deceased Sonaram. She deposed that Sonaram, at the time of his death, was aged 27 years, he was unmarried and was an employee of Wood Craft and that he was maintaining her. He used to receive Rs. 300/- as pay per month. Significantly no question was put to her in the cross-examination.

4. From the deposition of these four witnesses, it turns out that Sonaram was

aged 27 years when he breathed his last ; that he was an employee of Wood-Craft earning Rs. 300/- per month and that he supported the claimant, his mother and that while returning to his home from Mariani on his cycle he was knocked down by an ambulance vehicle which was owned by Air-force at about 8-30 P.M. The present appellant examined Jogendra Kumar Dixit, the driver of the vehicle as D.W. 1. He stated in his deposition that he was a driver under Air force. That on 7th January, 1974 he had taken certain patients from Air-force hospital to Mariani Railway Hospital in a Dodge Ambulance T.K. 599. He was driving that vehicle. After handing over the patients at the station, returned alone driving the vehicle. According to this witness it was at about 8 45 P.M. while he had covered about 6 k.m. from Mariani and was proceeding towards Jorhat. He saw one truck coming from the opposite direction with full head lights on. The road at that place was narrow and on the right side of the road was a protected railway track. There was also a curve ahead and a culvert. According to this witness he took his vehicle towards the left side and used his deeper. After the truck had crossed him, he brought the vehicle towards the pitched portion of the road and suddenly he saw a cyclist proceeding towards Jorhat. To avoid the cyclist, he took his vehicle towards right because there was a drain towards left. The ambulance hit against the railway barrier and the vehicle turned turtle, he became unconscious and he could not say if the cyclist was hit by the vehicle. He further deposed that he gained senses in Civil Hospital where he received treatment for about 3 months. The witness further stated that he had not noticed the cyclist before he had crossed the truck. In his cross-examination he admitted that he was 30-40 ft. away from the curve of the road and that he had seen the truck coming from the opposite direction from a distance of 50-60 ft. He also admitted that he had known from before about the culvert and that he had seen the truck before crossing the culvert. According to him the speed of his vehicle was about 20 K.M. per hour. It would be seen that Jogendra Kumar Dixit did admit the occurrence of the accident, but he denied that the vehicle was being driven by him negligently.

5. The facts in the instant case speak eloquently about what should have happened. Sonaram and Ramji both working in Wood-Craft were returning back to their houses. While he had reached the spot of the accident, Ramji had noticed the ambulance vehicle of the Air-force coming from Mariani side with high speed. Ahead of him was Sonaram on his cycle. Ramji left the road and went inside a shop. Soon thereafter the ambulance vehicle hit Sonaram from behind. He fell in a drain on the left side of the road where he died. The vehicle went off the road towards the right, hit the railway barrier, turned turtle and capsized. The driver Dixit sustained injuries and became unconscious. Dixit had deposed that while he had reached the spot of the occurrence, he had noticed a truck coming from the opposite direction with head lights on. He, therefore, slowed down his vehicle and when the truck crossed him, he brought his vehicle on the road but soon thereafter he found a cyclist and in order to save him he took his vehicle to the right which ultimately dashed against the railway barrier. According to Ramji the

ambulance vehicle was being driven at a high speed ; whereas Dixit had stated that the vehicle was driven @ 20 k.m. per hour at the relevant time. The Tribunal did not accept the testimony of the driver on this point and in our view rightly because if the speed would have been as slow as 20 k.m. per hour, it would not have hit against the railway barrier and would not have turned turtle. A vehicle driven normally would not go to the opposite side of the road and hit the railway barrier and turned turtle. Sonaram was on the left side of the road. There was no other person on the road as was deposed by Ramji. He was knocked down and received injuries which caused his death. The driver Dixit did see Sonaram but according to him he wanted to save him and, therefore turned his vehicle towards the right and ultimately his vehicle dashed against the railway barrier and turned turtle. It has, therefore, to be accepted that Sonaram was hit by this very vehicle. The circumstances do make out that the speed of the ambulance vehicle could not be 20 K.M. per hour as deposed to by Dixit, the driver, for the simple reason that if it was so slow, the vehicle could have been stopped, the accident could have been avoided and the life of Sonaram could have been saved. There can be no manner of doubt that Dixit was driving rashly and negligently. The road ahead had a bend ; there was a culvert. He knew of these facts. Driving the vehicle at high speed at such a place spoke of the negligence of the driver which resulted in the death of Sonaram. The width of the road according to Dixit was narrow ; another vehicle was coming from the opposite direction ; two cyclist were on the road also at the moment, the driver should not then have driven the vehicle at high speed. The testimony of Ramji on the point is trustworthy. Noticing that the vehicle was being driven at a high speed, he went inside the shop and within a few minutes, the accident occurred killing Sonaram. The vehicle would not have dashed against the railway barrier and would not have turned turtle if it was not being driven quite fast. The evidence on record and the surrounding circumstances clearly established that the accident was due to negligence attributable to the driver.

6. The appellant wants to avoid the liability on the plea that it was a case of inevitable accident. But the facts and circumstances of the case do not lead to that conclusion. Moreover this plea was not specifically taken in the written statement. That apart, the burden to prove this plea lay on the appellant. No doubt, the normal rule is that it is for the claimant to prove negligence but as in some cases considerable hardship is caused to the claimant and as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the claimant can prove the accident, but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of *res ipsa loquitur*. This maxim applies where it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused. Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did

not connote negligence on his part. In the instant case the maxim of *res ipsa loquitur* clearly applied.

7. True it is, that in order to succeed in an action for negligence the claimant must prove--(1) that the defendant had in the circumstances a duty to take care and that duty was owed by him to the deceased and that (2) there was a breach of that duty and that as a result of the breach damage was suffered by the claimant. The master also becomes liable for the conduct of the servant when the servant is proved to have acted negligently in the course of his employment.

8. In the case of *The Krishna Bus Service Ltd. Vs. Smt. Mangli and Others*, the Supreme Court laid down that where in an action for negligence the thing causing fatal injury to the deceased and consequent pecuniary loss to the plaintiff (persons suing as a result of the death of deceased) is shown to be under the management of owner or his servants and the accident is such as in the ordinary course of events does not happen if those who have the management use proper care, that affords reasonable evidence in the absence of explanation by the defendants (the driver or the person having management over the bus) that the accident arose from want of care; the person having the management is fully liable for the negligent act of his employee.

9. In the instant case, it would be seen that Sonaran was on the left side of the road. Ramji was following him. There was no other person on the road. It was a duty of the driver to take care that he did not hit other persons on the road and this he could very easily do because there was no traffic on the road except the two persons Sonaram and Ramji. Had he driven the vehicle carefully and without negligence, the accident could have been averted. He committed the breach of his duty to take care and as a result of the breach, the accident caused the death of Sonaram. The driver Dixit was admittedly driving the vehicle in the course of his employment. He had carried certain patients in that ambulance vehicle to Mariani Railway Station and while returning back he caused the accident. The Union of India was, therefore, vicariously liable to pay compensation.

10. No other point was urged and pressed.

11. In the result, the appeal fails and is dismissed with costs.